

MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE
February 15, 1983

IN JOINT HEARING WITH THE HOUSE JUDICIARY COMMITTEE.

CHAIRMAN BRAND OPENED THE MEETING AT 8 a.m. with all members present.

HOUSE BILL 705

Hearing was opened on House Bill 705 sponsored by Representative Spaeth.

REP. SPAETH: "This bill is being sponsored by the Public Employees' Retirement Division. Essentially, this deals with the judges' retirement, which is not in very good shape at this time. It does three things: increases two court fees from \$20 to \$25; essentially reduces the percentage amount of money that goes into the county general fund; and increases the contribution by the judges who are paying into the system to 7 percent."

STEVE BROWN, lobbyist for the Montana Association of Judges: "This is an attempt to deal with the solvency of the Judges' Retirement System. The amount of the contribution to the Judges' Retirement must be immediately increased by approximately 12 percent in total contributions for the system in order to make the system solvent. That translates into, roughly, \$150,000 to \$200,000 a year additional funding that will have to be provided in order to make the system solvent. In approaching the problem we were very much aware of the concerns of past legislatures about the retirement system. We understand the sensitivity of trying to increase fees to solve these kinds of problems and, as you recall, in 1981 there was a bill introduced that would have increased all district court fees and to double them. That bill got nowhere. So, we went back and took a look at the situation and tried to come up with proposal that would increase the fees only enough to solve the retirement system problem, not take any money away from the counties and, if possible, even increase the state general fund portion of district court fees. I don't know if most of you are aware of it or not, but there is a portion that is collected with district court fees that goes to the state general fund. Over the past three years, the amount of money going to the state general fund has been reduced. I have a fact sheet here that I will pass around that will explain what House Bill 705 attempts to do. Remember, we are talking about additional funding - between \$150,000 to \$200,000 a year to make the fund solvent. So what I am handing out are case filings in the district courts throughout the State of Montana for the past three years."

Steve Brown said, "If you go to the first line there, you will notice there have been 31,000 plus cases filed in 1980; 32,000 plus cases filed in 1981; and approximately 30,000 is the estimate for 1982. I reduced that by the number of criminal cases because you don't collect filing fees from those kind of cases. You, also, don't collect fees involving political subdivisions. So, if there is a case involving the State of Montana, or a county, or a city, you do not collect fees from the state or the city in that litigation. I have called my local court clerk, here in the county. She advised me that 20 percent of the cases filed in the first district involve political subdivisions. I know that was a high figure. There are not, normally, that many cases involving political subdivisions outside of the first district; so I then reduced the case filing figure by an additional 10 percent, assuming a state-wide average - 10 percent involves one political subdivision or another and you don't collect the fee in that particular case. I came up with then, as you will see in assumption "D", approximately 25,509 cases on the average over the past three years, that we would collect the fees from both the plaintiff filing the case and the defendant answering. What we are proposing to do in this bill is raise only two district court fees. The fee for filing the complaint would be raised from \$20 to \$25. The filing fee for answering, if you are sued by someone, would be raised from \$10 to \$15. If you go to the middle of that first page, you will see the amount of fees that have been collected for the past three years and how that money has been distributed. Present statute allocates district court fees on a 60 - 40 basis (60 percent to the State of Montana and 40 percent to the counties), and you can see how that breaks out. If we assume, per case, we're talking about an additional \$255,000 in revenue. Go down, then, to the bottom of that page where I assumed an average of \$800,000 in the present district court structure, added the \$255,000 to it, came up with a total figure of approximately \$1,055,000 collected by district court fees, if House Bill 705 is enacted. We, then, had to change the allocation formula from 60 - 40 to 70 - 30 to ensure that the increased funding got passed on to the state and would be available to the retirement system. But, as I indicated, we were also concerned about not reducing the amount of funds available to the counties. As you can see, the way it breaks down, even under a 70 - 30 distribution, the amount going to the counties would be \$316,000. That exceeds the \$315,000 that was available to counties in fiscal year 82. So, I don't think we reduce in any way the amount of money that would be available to county governments. I have sent a copy of this fact sheet and the bill to my local clerk of court and asked her to forward to whomever she wished to share the information with; and I have not heard back, so I think that they agree with my calculations.

Steve Brown said, "Now from there, we zero in on the state portion of district court fees. Under the present law, 20 percent of judges' salaries plus a 6 percent contribution from the judges, 6 percent general matching fund contribution make up the retirement system. We then had to devise a way to take that increased collection of district court fees and channel it to the retirement system without reducing the state general fund share. If you look at the top of page 2, you will notice that over the past three years, the state general fund share has, in fact, been decreased, in order to meet the retirement system funding problems. It has decreased from \$243,000 in fiscal year 80 to \$173,000 in fiscal year 82. I am very much aware of the tight budget situation. I am also very much aware that legislators, like Rep. Waldron, have expressed concern about this amount of monies having decreased. So, I tried to come up with a formula, once again, that would address the retirement systems' problems and, fortunately, here also, provide some general fund relief to pay back the state general fund for the trend that has been occurring over the past three years. So, we have proposed in the bill that, rather than 20 percent of the total judges' salaries, 31 percent of the total judges' salaries would be paid to the Judges' Retirement System. That amounts to about \$417,000 a year. If you then, following along here, take the increased portion of funds available to the state, subtract money paid to the Judges' Retirement System, you wind up with \$265,000 being available to the state general fund. That is, in fact, an increase over what was available in fiscal year 80 by about \$20,000. I think that this is legitimate because of the trend, as you can see, at the top of the page, to where that state general fund amount has been decreased over the past three years. Is the filing fee we are proposing here exorbitant? I don't think so when you compare it to surrounding states. We are slightly higher than some states admittedly. We are significantly lower, even with the \$25 filing fee for a complaint and \$15 fee for an answer, than the State of Idaho, where you pay \$41 to file a complaint and \$21 to answer. In addition, the judges would increase their contribution to the retirement fund from the existing 6 percent to 7 percent. That applies to all judges after July 1, 1983, once they are elected, reelected or appointed." (Additional material attached.)

LARRY NACHTSHEIM, Administrator of the Public Employees' Retirement Division: "This bill was introduced at our request, to provide the funding for the Judges' Retirement System. I think that Mr. Brown explained the basics of the bill. I don't know what I could add. I do have copies of the judges' actuary evaluation if you want to go through them." (Additional material attached.)

Larry Nachtsheim stated, "I would make one comment. The 1 percent increase in the employee contribution rate for judges appointed or reelected in the future is a technical consideration. The judges, when we had a meeting with them, agreed to increase their contributions immediately; but there is a constitutional question whether you can change the rate to a current judge. If one judge would object, it would make our bill illegal, so we suggested we would do it at the point in time when they are next elected or appointed."

Rep. Spaeth closed: "We need to do something with the Judges' Retirement System. As Steve Brown pointed out to you, what has gone into this bill has taken a great deal of thought and I think it is a workable solution to an otherwise sticky problem, and I would urge that the Committee adopt this bill."

Chairman Brand asked if there were questions by members of either committee.

REP. MUELLER: "Steve, where does the 31 percent on page 2 come from?"

Steve Brown: "The present language in Section 19-5-405, first of all, establishes how the money is allocated between the counties and the state. If you go to line 23, you'll note that out of the state's share, the existing law provides for deposit into the fund, an amount equal to 20 percent of the salaries of district judges and supreme court justices. We are amending that section to say 31 percent so that a major portion of the increased share can go to the retirement system."

REP. HAMMOND: "What did the counties use this 30 percent for?"

Steve Brown: "It goes to the county general fund. I might add, the bill that was introduced in '81 was introduced at the request of the clerks of court. So it was a bill not only to solve the judges retirement problems, but as an increase revenue measure to county governments. And, as I say, it doubled all district court fees."

REP. PHILLIPS: "Larry, could you give us a little rundown. What are the ground rules when judges retire and what kind of percentages, and how do they compare to some of the other systems?"

Larry Nachtsheim: "Judges are eligible at 65 years of age with five years of service. The formula that they retire on is $3 \frac{1}{3}$ percent of salary for each year of service thereafter. What $3 \frac{1}{3}$ times 15 equates to is 50 percent of salary with 15 years of service and 1 percent for each year thereafter. Anybody with 12 years of service who is involuntarily retired, in an elective system that is not reelected, they are eligible to retire immediately without reduction. Anybody who does voluntarily, can retire at 60 with an actuary reduction. The thing that primarily creates problems in the system, and that was not funded at the time it was passed, is the provision that says a judges' retirement is based on the salary of the position from which he retired. So, it means that when a justice gets a raise, the retirees get a portion of it, based on their years of service. It is an automatic cost-of-living increase."

REP. EUDAILY: "This automatic cost of living is what I was looking at here. Can you elaborate just a little bit more on that Larry, so that everybody can understand it better?"

Larry Nachtsheim: "It's not a cost-of-living provision per se, but in effect it works as a cost-of-living provision. The Judges' Retirement System is based on the salary of the position from which they retired. So when a current district judge gets a raise, all the retired district judges or their beneficiaries get a proportional raise. A district judge who retires at 15 years and the judges get a raise, that retiree gets half of that raise because his retirement is based on current salary."

REP. KEYSER: "Steve, on your assumptions on the first page, on the total cases and the allocation of district court fees, you show the income and allocation of fee increases compared to under the present system. You're assuming an \$800,000 fee income under the existing structure. And yet, if we go up above, we see that there was a continuous drop from fiscal year '80 to fiscal year '81 to fiscal year '82. Now, why are you assuming that in fiscal year '83, under the total fees, under the present system, that it is going to increase up to \$800,000 and not, in fact, decrease to \$760,000."

Steve Brown: "We didn't have figures for '83 and, as soon as we get those, we can plug it in. The trend has been down and it is a mystery to me why the overall collection to the counties is down. The information I had for the first six months of '83 was that the filing fees were about the same, if not a little bit higher than '82."

REP. KEYSER: "If your assumptions are a little bit off and this 30 percent to the counties drop down very much, the counties are not going to be receiving any additional monies according to the facts that you have here."

Steve Brown: "I think the Committee should take a look at that. If you want, you may adjust the county-state split of district court fees to 69 percent, 31 percent, or 68 - 32 percent because there is some cushion for the state general fund."

Rep. Keyser to Larry Nachtsheim: "Of the retirement systems within the PERS Division and the ones that you now manage, how many of those employees receive an increase based upon the people in the profession receiving increases and getting a portion of that?"

Larry Nachtsheim: "Three of the eight systems we have -- the judges, the police officers, and the firemen."

Rep. Keyser: "Could that possibly be why these systems have had more problems actuarially than some of the other systems?"

Larry Nachtsheim: "Well, I beleive that is the case in the judges' system; but in the police and fire systems, there was consideration for that in the mechanism."

Rep. Keyser: "If the judges were not receiving this automatic increase, would this make this fund way more solvent than it is now?"

Larry Nachtsheim: "That would be true of any retirement system. If you take some benefits away, the retirement system will be more soundly funded."

REP. HANNAH: "Mr. Nachtsheim, if a problem has been created by the fact that the judges' system has automatic increases based on the current level of salaries, and if we adopt this bill, do you have any idea how long it will be before we have the problem again?"

Larry Nachtsheim: "The action that we are looking at today, is really an action that we should have taken at the time the law was drafted. Because the system is based on salaries, it is our position that this would fund the thing. Because of the increase in salaries, we will have more income to compensate for the increase in benefits."

Rep. Hannah: "I guess I don't understand that. I thought we were just increasing this funding base from 6 percent to 7 percent."

Larry Nachtsheim: "But, also, we are increasing the contribution we are taking from the court fees as 31 percent of salary, not 31 percent of the court fees."

Rep. Hannah: "The formula that we are operating under now is 20 percent state contribution. Steve, can you tell me what the formula is?"

Larry Nachtsheim: "It is 6 percent by the judge, 6 percent by the state, and 20 percent of the salaries from the court fees."

Rep. Hannah: "The 20 percent is from court fees? I thought you said that the contribution that we have now is not a percentage of salaries."

Larry Nachtsheim: "The original bill gave us 25 percent of court fees - it has been changed along the way to 20 percent of salaries."

REP. RAMIREZ: "If you take 31 percent of the judges' salaries out of the state share, as the salaries go up, the state share will go up, and the state general fund share is going to go down. When will you finally wipe out the state general fund share?"

Larry Nachtsheim: "I don't know."

Rep. Eudaily: "Steve, straighten me out on this now. With the 31 percent and the 7 percent, are we also putting in the 6 percent from the general fund on top of that?"

Steve Brown: "That is existing law, that is not going to be changed."

Rep. Eudaily: "If we are putting more judges on, we are going to have more people to cover by the retirement. If we keep the retirement system as liberal as it is now, how can we possibly maintain a system like this and be fair to the state and the people who have to put in the money?"

Steve Brown: "I understand your concern and I would be willing to meet with the members of this Committee to resolve this."

REP. KOEHNKE: "How soon will the other systems want to be tied to the raises in salaries of the present workers?"

Larry Nachtsheim: "I think it would be difficult for the other systems to do this."

Steve Brown: "I would like to respond to Rep. Eudaily's question: The state's contribution would be 37 percent and 31 percent out of district court fees plus the 6 percent matching. The judges are contributing 6 percent now and that would be raised to 7 percent with the bill."

REP. FARRIS to Steve Brown: "To follow up, when you were answering Rep. Eudaily's question, you said that there were ways the Committee could adjust this. I see three ways: the retirement could be fixed at the time of retirement; it could be based on cost-of-living (like Social Security); or it could be done like the policeman. Are there other ways or are those basically what there is?"

Steve Brown: "I don't know right now - that is something we would have to explore."

Larry Nachtsheim: "There is one point that should be made. You can only change it for future judges."

REP. ADDY: "There is very strong judicial doctrine that says that a judges' salary shall not be decreased while he is in office. This is to insulate him from the mob rule or the passions of the majority. If you can decrease his retirement, you could influence his or her decisions. Or if, when they run again, you would say you're only going to get half your retirement, thereby encouraging them to retire, it would be the same kind of untoward influence."

Rep. Brand: "Larry, I notice that you only have 36 contributors into this system. When you have such a small number of contributors, could it ever be consolidated with other systems?"

Larry Nachtsheim: "This would be against federal law more than state law."

Rep. Brand: "It seems to me that the local districts are paying more in proportion and less than one quarter of the judges we have are in the Supreme Court. The state isn't contributing its fair share according to your figures."

Larry Nachtsheim: "The idea was to tie the contributions to the court fees, similar to that of the Highway Patrol's on the basis of drivers license fees."

Rep. Brand: "Aren't there any fees coming in for the Supreme Court?"

Larry Nachtsheim: "We get 1 percent of those fees."

Rep. Brand: "But 1 percent of those fees is minute."

Larry Nachtsheim: "The percent can be anything that the legislature decides."

Rep. Addy mentioned that the fees should be kept as low as possible to maintain good access to the courts and asked if there was any other good funding source.

Steve Brown said that there had not been comparisons made, as far as what they were doing in other states.

REP. DAILY to Larry Nachtsheim: "How many judges retired at the beginning of this year?"

Larry Nachtsheim: "Nine judges retired, seven on the Judges' Retirement and two on PERS."

Rep. Daily: "Do they have to work 15 years as a judge to receive half-salary?"

Larry Nachtsheim: "Yes."

Rep. Daily: "Can they retire and still practice law?"

Larry Nachtsheim: "Yes."

CHAIRMAN BRAND CLOSED THE JOINT HEARING ON HOUSE BILL 705 at 8:58 a.m.

VICE CHAIRMAN O'CONNELL, IN THE ABSENCE OF CHAIRMAN BRAND, OPENED THE MEETING OF HOUSE STATE ADMINISTRATION WITH HOUSE BILL 689 SPONSORED BY REPRESENTATIVE WINSLOW.

HOUSE BILL 689

REP. WINSLOW: "I would like to submit at this time a statement of intent for this bill as well as a summary sheet. (Summary sheet and fact sheet are attached.) House bill 689 is an attempt to make government more responsible, and I guess an overall better government, a government based on honesty and accountability."

Rep. Winslow: "The purpose is to develop better government by setting up the mechanics for ethics and putting some teeth into it. People need to believe in their government, and we need them believing in us. This bill is a composite of measures brought before this legislature over a period of years. Representatives Bardanoue, Harrington and McBride all had similar measures in the past although they were dealing with one area and, I think, this is a pretty comprehensive measure that should be able to help us develop a better ethics program in the state. The bill that you have before you calls for an Ethics Commission. The commission will be made up of three Republicans and three Democrats chosen by the leadership within those parties."

CLIFF CHRISTIAN, Secretary of State's Office: "I would like to speak, first of all, to why we should have a commission versus our current setup. We feel strongly that when decisions of an ethical or political nature are called for that those conclusions should be made by more than one person. This commission is set up in the same manner as the Federal Election Commission on an equal bipartisan basis. The FEC has been around for quite some time, both under Democrat and Republican administrations. We never hear that the FEC is partisan. Nothing would happen to the current commission, in our opinion. Peg Krivec could just assume the position of executive director of the new commission. In fact, our office strongly favors the retention of Peg Krivec as the director, so that the new commissioners will have an able, experienced director to advise them. The commission does have the authority to replace the staff; but we cannot imagine that happening."

ALAN ROBERTSON, Legal Council for the Secretary of State: "This bill was developed as part of a long process. It was the culmination of the effort we undertook prior to the district court hearing declaring part of the statute unconstitutional. This bill grew out of a meeting we held on November 12 here in the capitol, which was attended by a lot of people. I want to give you a summary of the minutes of that meeting. We have taken the approach in this bill of trying to add in everyone's concern. What is the current situation without this ethics bill? Right now, in Montana, we have confusing statutes. We do have some standards though, we do have enforcement by the county attorney. We do have a penalty. But the penalty is only money. It only covers conflicts that are of a financial nature. We do have voluntary disclosure." (Material attached.)

DON JUDGE, AFL-CIO, spoke as neither a proponent nor an opponent: "I have several questions about the bill. To begin with, as it has been pointed out, this bill does not cover requests for opinions regarding legislative activities. That was the issue, as I recall in 1981, that led to whole discussion of the Code of Fair Practices and whether or not we should have someone overseeing the activities of elected public officials. We always thought that if there were to be a code of ethics commission, it ought to be a broad commission. It ought to cover the Secretary of State; it ought to cover the Attorney General; it ought to cover the Public Service Commission; it ought to cover the Superintendent of Public Instruction; and so on and so on. On page 4, lines 16 through 24, we have got some problems with the confusing criteria for a county attorney to establish a need to request an advisory opinion. On line 17 and 18 of page 4, they seem to have sole discretion. But on lines 22 and 23 that discretion is limited, as we see it, by an imaginary panel of citizens that would need advice as compared to conduct in other counties of the state. Line 25 on page 4 and lines 1 and 2 on page 5, says he requests an opinion. The opinion is not held to be mandatory. We could end up with 56 different opinions from 56 different county attorneys. On page 11, lines 1 through 12, on the limitations as to who may request an advisory opinion, officials and employees can request opinions in regard to their own acts and supervisors can request opinions regarding employees actions. That seems to interfere with collective bargaining agreements and with establishment of criteria for termination, suspension, and other awards under collective bargaining agreements. And what about an employee who thinks that a supervisor is abusing his position? On line 9, "any county attorney who has received a complaint from any citizen, and who in his discretion," can go ahead and request an opinion, which is not going to be binding, -- again an awful lot of confusion. Lines 13 through 16 of page 11, say if the commission decides that they would like to initiate an investigation into an issue that appears to be a conflict of interest, they cannot do it. Someone else has to bring that issue to them. So, we have a commission created that potentially could do something but they are hamstrung in their ability to do something because this particular section prohibits their ability to do anything. On lines 15 through 25 on page 12 and lines 1 through 5 on page 13, I am not sure that it is wise to set mandatory criteria for the form and content of the request and then mandate that inappropriately filed requests be immediately forwarded to a county attorney and to the covered officials and to that supervisor, without that commission having the authority to get an amended request."

Don Judge: "On page 14, lines 9 through 14, where is the public's access to the activities of this commission? The commission is prohibited from holding hearings. Wasn't the whole issue, that the public was concerned about, what was going on with regard to elected public officials? Aren't we supposed to be opening this whole process up to the public? On page 30, if I understand Mr. Robinson correctly, they are not concerned about whether these sections stay in the bill. We have some concerns on line 6 through 23 about the provisions of false and misleading information regarding ballot issues. We think they are vague and probably unworkable. On page 31, I am concerned about the \$50 per letter. We are an organization that has 40,000 members. Do you mean \$50 per unit of letters that we send out or \$50 per letter that is sent out to 40,000 people. The section about candidate complaints, about other candidates or committees because of unfair statements, seems vague. What about the timing and the filing of such complaints? Could this not, indeed, cause a hardship on candidates or committees subpoenaed to appear before a commission as a crucial time in an election? If the charges are dismissed, but the subpoenaed candidate loses the election because of the timing of the complaint, what is the recourse? Page 34, lines 14 through 24, appear to give this commission the authority to subpoena all records, all drafts, etc. from candidates or committees. Again, the timing comes into this. I should think you would want to tighten this up a little bit. We think it's a good idea. Perhaps this bill is a good format for doing it; but, please, do something with the bill. We urge you to amend the bill but give it a do pass recommendation."

SENATOR ECK: "I think that we are all having the same problem, in that we just received the bill and it is a long complicated bill and there are some things in it that we hadn't expected. I think that, on the whole, the thrust of it is good. Let me say, at the beginning, that we do have a resolution, not a bill, setting up a joint ethics committee between the House and the Senate. Among other things that they will do is recommended legislation. Despite that, I think that if in your deliberations you decide to amend the legislators into this, and I think you really should consider amending state elected officials into it so that it is sure that they are covered, that this would be fine. I think that you should talk with a few attorneys on this. I am not convinced that it can't all be done in one bill, despite the fact that we have had recommendations otherwise. I think also that one of the important things the Committee should do, and you will consider simplifying the bill, you might look at this on page 10, lines 11 through 13. "The commission is given the responsibility to review the provisions of this part and recommend legislation relating to ethics in any session of the legislature.""

Senator Eck: "I think that this could be maybe the most important function of the commission: to look at the whole area of ethics and what further legislation is needed. I think that also where you limit the commission as far as hearings go, this section should be excluded."

JACK LOWE, staff counsel for Commissioner of Political Practices: "We are in general favorably disposed toward this bill. I think the philosophy of it -- the thrust behind it -- is a good thing. You'll notice, as Alan Robertson pointed out, that probably 35 states in the union have ethic setups and campaign finance setups operated by a commission. It has worked out very well in those states. Better, in many respects, than it has in Montana. Originally, the legislature did not want to create a commission because of the cost involved. I think this bill has some mechanical problems; but I don't think they are that serious. Some of the eventualities that Mr. Judge warned of assumed an awful lot of evil intent on the part of the commission. Secondly, what this Committee is going to do is study their own law. First on the order of business is to study the ethics setup itself. Secondly, this bill solves as what I see has become the central problem of political campaigning in the second half of the 20th century, this business about who can say what about whom. The third thing I would like to say is that there is a problem where you have one commissioner in charge of areas that are politically sensitive. The problem is that he gets identified with the law and personally with any position that he takes."

JOE LAMSON, Executive Secretary of the state Democratic party: "Just a couple of areas - again I would like to emphasize the point that the whole reason there is a long bill here and that there has been a controversy for the last two years is because there have been some actions by a legislator that people had some problems with. And that is what the public push has been on. That has been the spark that got this whole thing going. And, to exempt the legislature from any kind of ethical conduct, like Senator Eck brought up, we are just talking about a resolution; we are not talking about any kind of law there. Also, in the new section 4, all through there we are talking about public officers which seems to exclude legislators. However, in section 4 it very clearly says "public official", which puts the legislators back into this particular thing. We agree with the idea that we should have an ethics commission. We have been very strong on that all along. The whole area that we were surprised at were sections 32 through 40 that gets into the fair campaign. The wording in those sections is extremely vague in a whole bunch of areas that Mr. Judge pointed out, and if we do keep that in there, we think that that needs to be tightened up."

JONATHAN MOTL, Lobbyist for Common Cause: "There was a specific charge in the Montana Constitution that the legislature devise a code of ethics. This particular bill would yield one of the major parts of a code of ethics that many scholars identify -- that part is the public trust part. The bill seems to better define public trust and it backs that system with legal enforcements. With that in mind, we believe that it is a good step forward and support the bill. There is no doubt in our mind, and I am sure there is no doubt in the Secretary of State's mind, that the bill could be stronger. For example, most scholars recommend that ethics opinions, when they are rendered, be binding. This bill would happen to be non-binding. We have five amendments that we would like to discuss. (Amendments attached.)

There were no opponents to House Bill 689.

Rep. Winslow closed: "I have no problem at all with the concept of the comments made by Common Cause. However, because of the ruling and because of the Attorney General's feelings, the legislature has not been included in this bill. Senator Eck's resolution would call for that action and I don't think there are any of us who are involved in that who would oppose it. I think, at this time, I would like to have the record show that Don Judge did not stand up as a proponent. In fact, I guess I would like to say that he spoke as an opponent. Not one time did he make a constructive comment about the bill. Another thing that many of us that have been around here for a period of time know, is that when it gets late in the session, and we are late, this is a long bill, and I am sorry that we didn't get it sooner; but it sat down in Legislative Council for weeks and weeks and we tried to get it out. The fact of the matter is that the best way to do away with the bill, at this late date, is to amend it to death."

REP. HAND: "Cal, Stan Stephens in the Senate says he's coming out with a bill for a super committee that is going to handle all the other committees. If he does, what would you propose? This would be blended into this master plan?

Rep. Winslow: "The committee that he is proposing is to review the legislative agencies that we have and our employees that work for the legislature."

Rep. Koehnke to Alan Robertson: "What are some of the problems you have been running into as far as ethics? Have the problems been mostly involving employees or supervisors?"

Alan Robertson: "We have had phone calls from county attorneys who were concerned about employees' actions."

REP. PISTORIA: "Will this clear the controversy I had with a school board member?"

Alan Robertson: "Yes, it would help you out in that case. This still needs the county attorney to act."

Rep. Brand: "Are the Republicans in favor of this bill?"

Allan Robertson: "I don't know."

CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 689.

CHAIRMAN BRAND OPENED THE HEARING ON HOUSE BILL 712 SPONSORED BY REPRESENTATIVE NILSON.

REP. NILSON opened: "This bill changes the definition of monthly compensation for part-time firefighters belonging to the pension fund. In a city such as Lewistown, the payments to the part-paid firemen were enough to barely pay the employee contributions to the pensions systems and part-paid people wanted this changed even though it will result in a lower retirement benefit at retirement age. In second-class cities, the high full-paid firefighter is \$1,533. In Lewistown, it is \$1,014. Those people are paying an average of \$1,320."

RAY BLEHM, representing the Montana State Firemen's Association: "The two basic points are: number one, this was at the request of the second-class cities. Mr. Nilson has done a good job of explaining why. Essentially they want the pension contributions and pensions to be based on the local economic conditions rather than the average. We did retain the average as a fallback, in as much as there are no longer any full-paid firemen in those cities, then they still have got that to base their contributions and their benefits on. I am submitting a letter from Mr. Nachtsheim who was unable to be here." (Testimony attached.)

Rep. Mueller to Ray Blehm: "If I understood you correctly, each city will have its own averages, but you will have a back-up of going back to the average of all four in case the department goes out of business?"

Ray Blehm: "It wouldn't require the department to go out of business. What is possible to happen is that a city would decline in population and end up with only part-paid firemen. And this is to provide for that eventuality."

Rep. Brand: "Right now the law says that it will be on individual fire department basis and you are trying to change it to get an average?"

Ray Blehm: "The law as it relates to full-paid firefighters is based upon the individual city. When we designed this legislation for the part-paid, we had to create some sort of salary base because they are on such a fluctuating scale. Well, we chose to use the average of the second-class cities. What happened was that the average was high enough that to the lower paid cities, like Lewistown, it was causing the problem where the guys were having to dig the pension contribution out of their own pockets because their monthly dues as a part-paid for training and call-outs wasn't high enough to cover the contribution costs."

REP. SOLBERG: "Who pays this, the cities or the firemen?"

Ray Blehm: "The 15 percent that I am talking about, that we use to figure out what the part-paid man's wage is, that just simply creates what his wage is. The contributions are exactly the same for the part-paid guy as for the full-paid guy: the state contribution, the city contribution, and the employee contribution."

Rep. Brand: "On this part-paid person, is he a person who has another job?"

Ray Blehm: "Yes, you always hear that some firemen moonlight. This is the converse situation where the person is moonlighting as a fireman."

CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 712.

CHAIRMAN BRAND OPENED THE HEARING ON HOUSE BILL 718 SPONSORED BY REPRESENTATIVE REAM.

HOUSE BILL 718

REP. REAM: "The bill I am presenting to you today is one that was requested by the Missoula County elections superintendent. It is an ethical question. The situation now on elections is that the county does pick up the cost of elections in odd-numbered years, for some of the political subdivisions, but not others. Most political subdivisions pay their way in both odd-numbered years and even-numbered years. What this bill does is bring the two years together. It does not affect special elections, for example, the school elections that are held at times other than the regular times of the primary or general elections."

Rep. Ream: "The one example I have from Missoula County, and it is going to vary from county to county, is the urban transportation district that we do have in part of Missoula County. They pay for their share of the election costs on odd-numbered years: but they don't pay on even-numbered years."

Bill Romine, Lobbyist for the Montana Clerk and Recorders: "The recorders did not sponsor this bill; but we do support it. It is a situation where a political subdivision could through its own processes determine whether it would or would not share the cost of the election by deciding when it will hold the election. As was pointed out by Rep. Ream, generally, the political subdivisions are sharing in those costs. In special elections, that subdivision pays all the costs. Several sessions ago, there was an attempt to put districts into a situation where they shared the costs of these elections with the county. But a few were excepted out, and they pay nothing for their share."

STEVEN MEYER, representing the Montana Association of Conservation Districts, spoke in opposition to the bill: "The conservation districts are the one exception that does not have to pay its share of the election costs. Not that we have any real problems with paying for the election, if you deem that it is part of the responsibility of the district, but what we have a problem with is that we are not familiar with the mechanics of how these costs would be assessed. Until we can become more familiar with how these costs are assessed, we will have to oppose passage."

Rep. Ream made his closing statement: "All we are looking for here is consistency. The soil conservation districts in Missoula County have their elections on even-numbered years not on odd-numbered years so that they can use the loophole in the law."

Rep. Mueller to Steven Meyer: "Wouldn't it be possible to go to the clerk and recorder's office and determine how they would assess?"

Steve Meyer: "I guess it would be. I am just not familiar with the mechanics and neither were the other people that I talked to."

Rep. Mueller: "Mr. Romine, could you respond to that question?"

Bill Romine: "The cost varies from county to county and from election to election. You have certain fixed costs such as publication of notices and preparing the ballot. The actual detail of how that is arrived at, the election administrator could tell you."

Bill Romine: "But as a broad answer, if you have printing costs, you can assess costs on a ballot one page long as opposed to one two pages long. Then you divide out and say a certain percentage of that ballot expense and then you portion it out."

CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 718.

CHAIRMAN BRAND OPENED THE EXECUTIVE SESSION MEETING.

EXECUTIVE SESSION

Chairman Brand asked what action the Committee would like to take on House Bill 718.

REP. SMITH MOVED DO PASS for HOUSE BILL 718. REP. MUELLER SECONDED the motion.

HOUSE BILL 718 PASSED the Committee with REPRESENTATIVES HOLLIDAY, KOEHNKE, AND PISOTRIA voting "NO".

Chairman Brand asked what action the Committee would like to take on House Bill 712.

REP. SALES MOVED DO PASS. REP. SMITH SECONDED the motion.

HOUSE BILL 712 PASSED the Committee UNANIMOUSLY.

Chairman Brand asked what action the Committee would like to take on House Bill 705.

REP. MUELLER: "I talked to Lois, just in passing, whether there was a possibility of amending into this bill to take out that miserable escalation clause that is killing this pension plan."

Chairman Brand asked Lois Menzies if this could be done.

LOIS MENZIES: "I think if you can constitutionally or legally do that, we can do so in this bill. My only concern would be whether you can cut the retirement of someone who, for example, has been serving for six terms and is reelected for another term.

The Committee indicated that they were only interested in changing it for the newly elected judges.

Chairman Brand suggested that Lois should get with the Judiciary Committee and with Steve Brown to amend this bill. It was decided that the bill would be deferred until the next day.

Chairman Brand asked what action the Committee wished to take on House Bill 689.

The MOTION was made by REP. HAND and SECONDED by REP. KOEHNKE that this bill be put in subcommittee. The MOTION PASSED.

Chairman Brand asked what action the Committee wished to take on House Bill 668.

Lois Menzies explained what the bill would do as amended: "It is an act permitting state employees and elected and appointed officials engaged in state business while away from their designated headquarters to be reimbursed for the actual cost of lodging, and meals; requiring state employees and certain officials to document meal expenses, increasing the amount authorized for use of non-commercial lodging, and then amending section 2-18-501."

Rep. Brand, speaking on the amendments: "I am going to oppose these amendments because that was not the intent of my bill. My bill was just increasing the lodging and meal allowances. It had nothing to do with actual expenses. I am going to oppose the amendments because that has nothing to do with my bill. I am afraid that when we get on the floor with this we will lose the whole bill."

REP. O'CONNELL agreed with Chairman Brand.

REP. SALES MOVED that the Committee accept the amendments for actual expenses. REP. MUELLER SECONDED the motion.

The MOTION FAILED.

REP. SALES PROPOSED AN AMENDMENT that the figures for the out-of-state meals and lodging be left the same as they are now and all the other increases be allowed.

Rep. Sales explained that there had been a healthy increase in out-of-state expenses last session.

REP. MUELLER SECONDED the motion, There was a ROLL CALL VOTE and the AMENDMENT PASSED with REPRESENTATIVES BRAND, O'CONNELL, HAND, HAMMOND, DRISCOLL, McBRIDE, McCORMICK, AND PISTORIA VOTING "NO". REPRESENTATIVES BLISS, COMPTON, HOLLIDAY, KOEHNKE, MUELLER, PHILLIPS, RYAN, SALES, SMITH, AND SOLBERG VOTING "YES".

REP. BARDANOUE was ABSENT.

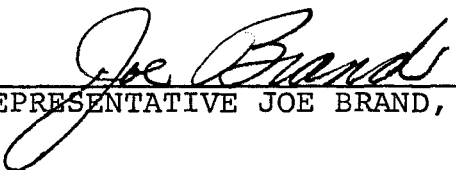
MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE
February 15, 1983

Page 20

REP. SALES MOVED DO PASS AS AMENDED. REP. SMITH SECONDED the motion. The MOTION PASSED with REP. McCORMICK VOTING "NO".

It was decided that Chairman Brand would carry the campaign practices bill. Rep. Driscoll will carry the bill for increasing salaries for elected officials.

REP. SOLBERG MOVED to ADJOURN at 11:30 a.m.



REPRESENTATIVE JOE BRAND, Chairman

STANDING COMMITTEE REPORT

FEBRUARY 15, 19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 718

first reading copy (white)
Color

"AN ACT REQUIRING OTHER POLITICAL SUBDIVISIONS TO SHARE WITH
COUNTIES IN THE COSTS OF EVEN-NUMBERED-YEAR ELECTIONS; AMENDING
SECTION 13-1-302, MCA."

Respectfully report as follows: That HOUSE Bill No. 718

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 15,

19 83

SPEAKER

MR.

STATE ADMINISTRATION

We, your committee on

HOUSE

having had under consideration Bill No. **712**

first

reading copy (**white**)
color

"AN ACT REVISING AND CLARIFYING THE DEFINITION OF MONTHLY
COMPENSATION FOR A PART-TIME FIREFIGHTER EMPLOYED BY A SECOND-
CLASS CITY FOR THE PURPOSE OF CALCULATING BENEFITS UNDER THE
FIREFIGHTERS' UNIFIED RETIREMENT ACT; AMENDING SECTION 19-13-104,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

HOUSE

712

Respectfully report as follows: That..... Bill No.

~~DO PASS~~

STANDING COMMITTEE REPORT

FEBRUARY 15,

19 83

MR. **SEBAKER**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **662**

first reading copy (white)
color

"AN ACT TO INCREASE THE AMOUNT AUTHORIZED FOR LODGING AND MEAL
REIMBURSEMENT FOR STATE EMPLOYEES AND CERTAIN OFFICIALS ENGAGED
IN STATE BUSINESS WHILE AWAY FROM THEIR DESIGNATED HEADQUARTERS;
AMENDING SECTION 2-18-501, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **663**

be amended as follows:

1. Title, line 7.

Following: "HEADQUARTERS"

Insert: "BUT WITHIN THE STATE; INCREASING THE AMOUNT AUTHORIZED FOR
USE OF NONCOMMERCIAL LODGING"

2. Page 2, line 15.

Strike: "\$60"

Insert: "\$50"

3. Page 2, line 16.

Strike: "\$4.50"

Insert: "\$4"

4. Page 2, line 17.

Strike: "\$7"

Insert: "\$6.50"

Strike: "\$14"

XXXXXX Insert: "\$12"
DO PASS

AND AS AMENDED

DO PASS

VISITOR'S REGISTER

HOUSE COMMITTEE

BILL HB 705

DATE 2-15-83

SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDGES'
RETIREMENT SYSTEM

ACTUARIAL VALUATION

AS OF

JULY 1, 1982



1820 Eleventh Avenue • Helena, Montana 59601 • Telephone (406) 442 5222

October 7, 1982

Mr. Lawrence Nachtsheim, Administrator
Public Employees Retirement Division
1712 9th Avenue
Helena, MT 59601

Re: Judges' Retirement System

Dear Larry:

Enclosed is the July 1, 1982 actuarial report for the Judges' Retirement System.

You will note that the cost as a percentage of salary has remained relatively constant since the last valuation, and program remains severely unfunded. We recommend that action be taken to increase the contribution rate by 12% of salaries.

Sincerely,

Alton P. Hendrickson, ASA

lm1

Enclosure

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SECTION I

INTRODUCTION

An actuarial valuation of the Judges' Retirement System of the State of Montana has been completed as of July 1, 1982. This valuation was authorized by the Public Employees' Retirement Board under Section 19-5-201, M.R.C. The purpose of the valuation was to determine the financial position of the fund, the normal cost, and the unfunded accrued liability based upon present and prospective assets and liabilities of the fund as of July 1, 1982.


Section II presents an analysis of the results of the actuarial valuation. The numerical findings supporting this analysis are shown in Section III.

In conducting the actuarial valuation, certain assumptions were made as to the future experience of the system. A summary and discussion of each of the assumptions is contained in Section IV.

The valuation was based upon the Judges' Retirement Act and incorporates all amendments as of July 1, 1982. A summary of the major provisions of the Act is contained in Section V.

ACTUARIAL CERTIFICATION

Based upon the assumptions stated in this report and the employee data and other records provided by the Public Employees' Retirement Division, the actuarial valuation contained in this report has been performed in accordance with generally accepted actuarial principles and techniques.


Alton P. Hendrickson
Member, American Academy
of Actuaries

SECTION II

ANALYSIS OF VALUATION

As a result of the valuation conducted as of July 1, 1982, we have determined that a contribution rate of 33.40% of salary is required to fund benefits as they accrue in the future. An additional 11.94% is required to amortize the current unfunded liability over a 40 year period. The total recommended contribution rate for the Judges' Retirement System is 45.34% of salary.

The recommended rate has increased from 44.97% in 1980 to 45.34% in 1982. This increase is attributable to the increase in salaries and monthly benefits. The payroll increased 29.2% with average salaries increasing from \$35,766 in 1980 to \$42,365 in 1982. The annual benefits paid increased 17.9% with average annual benefits increasing from \$15,257 in 1980 to \$16,695 in 1982.

The regular contribution rate for funding the Judges' Retirement System is 32% of each judge's salary. This rate is comprised of 6% from the state, 20% from district court fees and 6% from each member. In addition, one-fourth of the fees collected by the supreme court are contributed to the system. This amount represents approximately 1% of salary which allows a total rate of approximately 33% of each member's salary.

The current contribution rate is barely adequate to meet the cost of the benefits as they accrue in the future and allows no funding towards the past service liability. It is therefore imperative that the contribution rate be increased substantially. The total increase recommended by this report is approximately 12%.

SECTION III

SCHEDULE 1

NORMAL COST ALLOCATION

(1) Normal Cost Contribution Rate:

(a) Retirement	21.598%
(b) Death	4.171
(c) Disability	7.632

(d) Total Rate	33.401%

(2) Present Value of Future Salaries
Of Current Members

\$12,515,480

(3) Present Value of Future Normal Costs
For Current Members (1(d) x (2))

\$ 4,180,296

SCHEDULE 2

PRESENT VALUE OF BENEFITS

(1) Present Value of Benefits - Inactive Members

(a) Retirement	\$ 1,730,158
(b) Death	227,785
(c) Disability	1,091,836
(d) Vested	410,373

(e) Total Inactive	\$ 3,460,152

(2) Present Value of Benefits - Active Members

(a) Retirement	\$ 7,590,349
(b) Death	947,977
(c) Disability	1,651,534

(d) Total Active	\$10,189,860

(3) Total Liabilities \$13,650,012

SCHEDULE 3

CONTRIBUTION AND LIABILITY ALLOCATIONS

(1) Unfunded Accrued Liability

(a) Present Value of Benefits	\$ 13,650,012
(b) Present Value of Future Normal Costs	4,180,296
(c) Fund Assets	3,908,270

(d) Unfunded Liability (a)-(b)-(c)	\$ 5,561,446

(2) Contribution Rates Amortized Over 40.00 Years

(a) Present Value of Salaries During Next 40.00 Years	\$ 46,585,004
(b) Unfunded Contribution Rate 1(d)/2(a)	11.938%
(c) Normal Cost Rate (Schedule 1)	33.401%

(d) Total Funding Rate	45.339%

SCHEDULE 4
COMPARISON OF VALUATIONS

	<u>1980</u>	<u>1982</u>
Liability for Future Service	\$3,052,453	\$4,180,296
Unfunded Liability	\$4,221,166	\$5,561,446
Assets	\$2,769,292	\$3,908,270
Normal Cost Rate	33.19%	33.40%
Unfunded Liability Rate	11.78%	11.94%
Total Recommended Rate	44.97%	45.34%
Annual Payroll	\$1,180,287	\$1,525,150
Annual Benefits	\$ 198,325	\$ 233,736
Number of Active Members	33	36
Number of Retired Members	9	10
Number of Disabled Members	3	3
Number of Survivors	1	1
Number of Inactive Members	1	2

SCHEDULE 5

TABLE 1
NUMBER OF ACTIVE MEMBERS

COMPLETED YEARS OF SERVICE	AGE GROUP										TOTAL
	UNDER 25	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	OVER 65	
0-4			1	2	3		1	1	4		12
5-9					1		1	2		2	6
10-14							2	2	3	1	8
15-19						1	1		1	1	4
20-24								1	1	2	4
25-29										1	1
30-34										1	1
35-39											
40-UP											
TOTAL			1	2	4	1	5	6	9	8	36

TABLE 2
ANNUAL SALARIES OF ACTIVE MEMBERS
IN THOUSANDS

COMPLETED YEARS OF SERVICE	AGE GROUP										TOTAL
	UNDER 25	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	OVER 65	
0-4			42	84	127		42	42	171		508
5-9					43		42	84		84	253
10-14							84	84	127	42	337
15-19						42	42		42	42	168
20-24								42	44	85	171
25-29										42	42
30-34										42	42
35-39											
40-UP											
TOTAL			42	84	170	42	210	252	384	337	1521

TABLE 3
AVERAGE SALARIES OF ACTIVE MEMBERS

COMPLETED YEARS OF SERVICE	AGE GROUP										TOTAL
	UNDER 25	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	OVER 65	
0-4			42125	42125	42486		42125	42125	42666		42395
5-9					43208		42125	42125		42125	42305
10-14							42125	42125	42486	42125	42260
15-19						42125	42125		42125	42125	42125
20-24								42125	44288	42666	42936
25-29										42125	42125
30-34										42125	42125
35-39											
40-UP											
TOTAL			42125	42125	42666	42125	42125	42125	42726	42260	42365

TABLE 4
SUMMARY OF RETIREES

NUMBER OF MEMBERS

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	1	1	3	1	2	2	10

TOTAL MONTHLY BENEFIT

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	1694	1426	3381	1832	2342	1726	12401

AVERAGE MONTHLY BENEFIT

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	1694	1426	1127	1832	1171	863	1240

TABLE 5
SUMMARY OF DISABLED

NUMBER OF MEMBERS

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	0	3	0	0	0	0	3

TOTAL MONTHLY BENEFIT

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	0	5516	0	0	0	0	5516

AVERAGE MONTHLY BENEFIT

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	0	1839	0	0	0	0	1839

TABLE 6
SUMMARY OF SURVIVORS

NUMBER OF MEMBERS

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	0	0	1	0	0	0	1

TOTAL MONTHLY BENEFIT

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	0	0	1560	0	0	0	1560

AVERAGE MONTHLY BENEFIT

AGE GROUP								
UNDER 55	55-59	60-64	65-69	70-74	75-79	80-84	OVER 84	TOTAL
0	0	0	0	1560	0	0	0	1560

SECTION IV

ACTUARIAL FUNDING METHOD AND ASSUMPTIONS

The true cost of the Judges' Retirement System will be determined by its future experience. In determining the financial requirement of the fund, certain assumptions were made as to the expected future experience. This section summarizes the funding method applied as well as the basic assumptions used.

Any variations in the actual experience of the fund from those assumed in this valuation may cause changes in the projected future costs of the fund. It is therefore necessary that the actuarial assumptions be reviewed from time to time with adjustments as experience warrants. It is also important that regular valuations be performed to determine the financial effect of variations between the actual and assumed experience.

The assumptions shown below were based upon the past experience of the fund together with the projections as to future experience.

FUNDING METHOD

The method of funding employed is commonly referred to as the entry age normal cost method. This method establishes a normal cost of each fund as well as an unfunded accrued liability. The normal cost is the level percentage of total salaries required to fund the benefits, assuming this percentage has been contributed since each member's entry into the fund.

The unfunded accrued liability represents the excess of the present value of total liabilities over the present assets of the fund and the present value of expected future contributions for the normal cost.

In order to maintain the fund on an actuarially sound basis, the rate of contribution should be such as to meet the normal cost in addition to making progress towards the amortization of the unfunded liability.

ACTUARIAL ASSUMPTIONS

Mortality Rates

The mortality rates are based upon the 1971 Group Annuity Mortality Table.

<u>Age</u>	<u>Death Per 100,000</u>
25	62
30	81
35	112
40	163
45	292
50	529
55	852
60	1,312
65	2,126
70	3,611
75	5,529
80	8,743
85	13,010

Disability Rates

The disability rates are based upon the rates published by the Railroad Retirement Board in its seventh valuation.

<u>Age</u>	<u>Disabilities per 100,000 Active Members</u>
25	30
30	30
35	40
40	90
45	190
50	340
55	620
60	1,822
65	3,150

Salary Scale

The salary increases are based on projected experience with an underlying inflationary adjustment of 5½% representing cost-of-living increases

<u>Age</u>	<u>Expected Salary at age 65 as a Multiple of Current Salary</u>
40	4.29
45	3.21
50	2.40
55	1.79
60	1.34
65	1.00

Investment Earnings

A rate of 7% per annum was assumed for future investment earnings.

SECTION V

SUMMARY OF BENEFITS AND CONTRIBUTIONS

Effective Date -	July 1, 1967
Member Contributions -	6% of salary
State Contributions -	6% of active judges' salaries, plus 20% of salaries payable from district court fees in addition to one-fourth of supreme court fees.
Retirement Benefit -	Minimum service: 5 years Minimum age: 65 Mandatory retirement: 70 Normal form: Life annuity with a death benefit equal to the present value of the retirement allowance at the date of retire- ment less retirement benefits paid to date (full cash refund annuity). Benefit: 3 1/3% of the current monthly salary for the office retired from for each of the first 15 years of credited service, plus 1% per year of such monthly salary for each year of service in excess of 15 years.
Disability Benefit -	Service disability: Larger of 50% of monthly salary and accrued benefit. Non-service disability: Actuarial equivalent of the member's accrued retirement benefit; or accrued retirement benefit if over age 60.
Death Benefit -	Service death: Member's accrued retirement benefit. Non-service death: Actuarial equivalent of the benefit which would have been payable had the member terminated for reasons other than death.

SECTION V

(CONTINUED)

Termination Benefit -

If service discontinued prior to completion of 5 years of service, return of accumulated contributions without interest. If service discontinued after 5 years but less than 12 years of service, either return of the aggregate of accumulated contributions with interest or the actuarial equivalent of the member's accrued benefit. After 12 or more years, either return of the aggregate of accumulated contributions plus interest or the accrued retirement benefit.

FACT SHEET CONCERNING HOUSE BILL 705
MONTANA JUDGES' RETIREMENT SYSTEM

TOTAL CASES FILED IN MONTANA DISTRICT COURTS

	<u>1980</u>	<u>1981</u>	<u>1982</u>
	31,345	32,393	30,000 (est.)
Less Criminal Cases	<u>2,771</u> (8.8%)	<u>3,238</u> (9.9%)	<u>2,700</u> (9% est.)
	28,574	29,155	27,300

- (A) 20% of cases filed in 1st Judicial District involve political subdivisions and no fee collected from governmental entity;
- (B) Assume 10% of civil cases filed statewide involve political subdivisions;
- (C) Average case filings for last 3 years = 28,343;
- (D) Less cases involving political subdivisions (10% statewide average) = 25,509 fee cases;
- (E) If filing fees in §25-1-201(a) and (b) are raised by \$5;
- (F) Increased fee of \$10 per case would generate \$255,090 in additional revenue.

ALLOCATION OF DISTRICT COURT FEES UNDER PRESENT LAW

	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>
TOTAL FEES	\$840,747.03	\$803,703.77	\$788,359.07
STATE SHARE	504,448.22(60%)	482,222.26(60%)	473,015.44(60%)
CO. SHARE	336,298.81(40%)	321,481.51(40%)	315,343.63(40%)

INCOME & ALLOCATION WITH FEE INCREASE

- ASSUME:
- (A) \$800,000 fee income under existing fee structure; plus
 - (B) Additional fee income of \$255,090; and
 - (C) New allocation formula of 30% to counties and 70% to state.

	\$ 800,000	
	+ 255,090	30% to Counties = \$316,527
TOTAL	\$1,055,090	70% to State = \$738,563

DISTRIBUTION OF STATE SHARE

Present formula: 20% of judges' salaries contributed to Judges' Retirement System from state share, remainder to state general fund.

	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>
Retirement System	\$261,418.34	\$268,473.25	\$299,704.94
General Fund	243,029.88	213,749.01	173,310.50

Proposed formula: 31% of judges' salaries contributed to Judges' Retirement System from state share, remainder to state general fund.

TOTAL JUDICIAL SALARIES	\$1,525,150
	x .31%
	<u>\$472,796.50</u>

\$738,563.00	(state share w/increased fees)
<u>-472,796.50</u>	(to Judges' Retirement System)
\$265,766.50	(to state general fund)

COMPARISON OF FILING FEES IN OTHER JURISDICTIONS

	<u>FILE COMPLAINT</u>	<u>ANSWER BY DEFENDANT</u>
MONTANA (Present)	\$20.00	\$10.00
MONTANA (Proposed)	\$25.00	\$15.00
NORTH DAKOTA		
Civil	\$13.00	-----
Divorce	\$28.00	-----
SOUTH DAKOTA		
Civil	\$15.00	-----
Divorce	\$35.00	-----
WYOMING	\$25.00	-----
IDAHO		
Civil	\$41.00	\$21.00
Divorce	\$61.50	
WASHINGTON	\$70.00	-----
FEDERAL	\$60.00	-----

ADDITIONAL CONTRIBUTIONS BY MEMBERS AFTER JULY 1, 1983

Any judge elected, reelected or appointed after July 1, 1983 would contribute 7% of his or her salary to the Judges' Retirement System. Judges presently serving would continue to contribute 6% of their salaries to the Judges' Retirement System until reelected to a new term.

House Bill 689
Winslow et al

For answers on technical
questions call:
Alan D. Robertson
Legal Counsel
Secretary of State
449-4732

FACTS ABOUT ETHICS BILL

- o Legislature excluded -- can establish own procedures
- o Judiciary excluded -- procedures already in place
- o Constitutional mandate satisfied (Art. 13, Sec. 4)
- o Ethics function removed from Secretary of State's Office
- o Advisory Opinion function fixed
 - No hearings or investigations
 - Confidentiality maintained
- o Teeth to existing ethics statutes
 - Mandatory disclosure
 - Increased penalties (these would apply to legislators too)
 - Civil liabilities up to triple damages
 - Grounds for official misconduct
 - Grounds for recall
 - Grounds for employment discipline
- o Consolidates in one place all four areas generally considered under ethics umbrella
 - Conflicts of interest
 - Campaign finances and practices
 - Financial disclosure of elected officials
 - Lobbyist Regulation
- o Study
 - Standards need study and commission can do that.
 - No guarantee that interim legislative study will be funded even if resolution passes.
 - Study resolution was passed in 1981 but secret poll of legislature failed to rank ethics high enough priority to receive funding.
 - Had previous study been funded, results would be ready for action now.
 - Study not essential before taking action to fix mechanics or provide some teeth for existing statutes.
 - Much study has already occurred.
 - Public hearings held in June '81, Dec. '81, and Nov. '82.
 - Administrative Code Committee has reviewed area twice by reviewing proposed rules.
 - Secretary of State's office has reviewed whole area extensively and considered proposals from many angles.
 - Many organizations and individuals have studied area and made proposals
- o Independence and non-partisanship maintained
 - Three appointed by Democrats -- three by Republicans
 - Budget independence
- o Limitations on Commissioner retained on Commission
 - One six year term
 - Can't be a candidate for office for three years.
 - Appointment confirmed by senate.
- o Current Commissioner does not lose her job
 - Can assume position of executive director to the commission
 - job duties not diminished

- o Funding
 - Additional funding needed but not essential
 - Benefit still accrues without increased funding
 - Analogous to Lobbyist Disclosure situation I-80.
 - Only essential funding is salary and per diem for six people to attend six meeting a year.
 - Montana already funds many boards and advisory councils whose function is no more important, for example
 - salary commission
 - Funding commission at minimal level will take no more than funding an interim study by the legislature would take.
 - What should the price tag be on good ethics administration
 - We have already funded in Montana numerous other boards and advisory councils
 - Their functions are no more important than this
 - And in many cases their price tags are greater
 - Either the legislature is going to do something or nothing
 - Doing nothing is unacceptable
 - If they're going to do something then the options appear to be:
 - authorize and fund a study
 - or pass this bill for a commission
- o Why a commission
 - All parties providing input seem to agree that
 - Power shouldn't be vested in any one person
 - When judgment calls are required, better it's the judgment of more than one person
 - Compare proposals by others
 - 1981 - Rep. Bardanouve proposed commission for fair ballot issue practices
 - 1979 - Rep. Harrington proposed commission to arbitrate disputes regarding fair campaign practices
- o Creating this commission provides new opportunity to include in its duties functions previously suggested by Reps. Harrington and Bardanouve.
 - Public protected against unfair ballot issue practices
 - Candidates have somewhere to go if have complaint about unfair statements by other candidates or committee, for example
 - Republican complaints in 1982 against Montcel's actions
 - Democrats complaints in 1974 and 1976 against Leg. Camp. Comm.
- o Commission structure
 - Six members, six year terms -- staggered
 - Chair and vice chair elected from members
 - Not from same party
 - Term of office one year
 - Limited to one term as chairman so each member will serve as chairman for one year during term
 - Modeled after Federal Election Commission
- o Commission salary
 - Same as any other quasi-judicial board member or advisory council member
 - Only essential to fund six meetings
- o Commission meetings
 - Must comply with open meeting laws
 - Only six times per year
 - Other times only if budget allows on call of the chairman
- o Commission power
 - No greater than commissioner already has in existing areas

WITNESS STATEMENT

Name Don Judge Committee On State Administration
Address P.O. Box 1176, Helena Date 2/15/83
Representing MT STATE AFL-CIO Support To Amend
Bill No. House Bill 689 Oppose _____
Amend & Support

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. written comments will be submitted to the committee
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

SUMMARY OF PROVISION BEING PROPOSED FOR ETHICS BILL

I. Changes to Code of Ethics.

A. Limitations.

1. Make it clear that legislators are excluded; and,
2. Make it clear that the judiciary is excluded.

B. Penalties -- violations are grounds for:

1. Civil liability for up to triple damages;
2. A charge of official misconduct;
3. Recall under the Montana Recall Act; and,
4. Disciplinary action by supervisor, if any.

C. Remove functions from office of Secretary of State.

D. Mandatory Disclosure of Conflicts.

1. Change 2-2-131 from voluntary to mandatory.
2. Add new sub paragraph so that if a party is unsure whether they have a conflict which would require disclosure then they can:
 - a. Disclose that voluntarily anyway, or
 - b. Ask for an advisory opinion.

E. Fix Advisory Opinion Function.

1. Given by Commission on Ethics and Political Practices.
2. Requests for A.O. posed in hypothetical to protect identity.
3. A.O.'s can only be requested by:
 - a. An official or employee about their own contemplated behavior (if they're unsure whether they have a conflict which must be disclosed);

b. An official or employee regarding actions of one of their employees -- confidentiality maintained;

c. A county attorney -- at their sole discretion -- if they've received a complaint and would like the advice of the commission on whether a violation has occurred.

F. Certain other language previously suggested by Rep. McBride in 1979 and 1981.

G. Meaningful Standards -- No changes in these laws now, but commission authorized to review and recommend changes to the legislature.

H. Where can citizens go with a complaint:

1. Primarily to the County Attorney;

2. Secondarily to:

a. The person's supervisor, if any;

b. Can mail complaints to commission;

1) With these the commission can not:

a) make them public, or

b) take any action, except:

2) The commission can:

a) Forward the complaint without comment to the county attorney, and

b) also forward it to:

i. The legislature if it concerns a member or employee of the legislature;

ii. The supreme court if concerns a member or employee of the judiciary; or

iii. The supervisor of the person, if any.

I. Powers of the Commission re: ethics.

1. Issue advisory opinions according to procedures specified.

2. Publish and distribute summaries of advisory opinions issued for the use of others.

3. Study the standards and recommend changes.

4. Make rules in limited circumstances.

J. Limitations on commission re: ethics.

1. No hearings or investigations.

2. No opinions involving legislators or members of judiciary.

3. Opinions issued:

a. only in hypothetical,

b. only on facts presented,

c. only when 4 members agree,

d. only advisory.

4. No opinions at request of persons or concerning matters not specifically allowed.

5. No disclosing identity of person about whom opinion is requested or written.

II. Commission Created (In Part 1, Chapter 37, Title 13).

A. Six Members.

B. Appointment:

1. Three by selection committee made up of Republicans.
2. Three by selection committee made up of Democrats.
3. Confirmed by the senate.
4. May be removed for cause by governor.
5. May be impeached as provided.
6. Vacancy filled same as initial appointment.

C. Terms:

1. Six years - staggered.
2. Initially each selection committee appoints one for two years, one for four years and one for six years.
3. Limited to serve only one term. Unless previously served less than three years of someone else's unexpired term in which case can serve one full term of their own.
4. Prohibited from being candidate for office for three years after leaving office.

D. Salary -- Mileage and per diem for actual days working as provided in 2-15-124(7).

E. Structure:

1. Commission elects chairman and vice-chairman from among its members.
2. Chair and vice chair may not be affiliated with the same political party.
3. Term of chair and vice chair is one year.
4. A member may serve as chair only once during any term to which he is appointed.

F. Meetings:

1. At least once every other month.
2. Other times at call of chair.
3. All meetings conducted as required in Chapter 3 of Title 2 (the open meeting sections).

III. New Duties for Commission in areas of:

- A. Fair Ballot Issue Practices adopted substantially as proposed by Rep. Bardanouve in H.B. 779 (1981).
- B. Fair Campaign Practices adopted substantially as proposed by Rep. Harrington in H.B. 809 (1979).

IV. Miscellaneous Provisions.

- A. Violation of Code of Ethics as grounds for action added to:

1. Recall Act (2-16-603).
2. Official Misconduct section (45-7-401).

- B. References to Commissioner changed to Commission in:

1. Executive Reorg. Statutes (2-15-411).
2. Lobbyist Statutes (Title 5, Chapter 7).
3. Campaign Finances & Practices Statutes (chapters 35 and 37 of title 13).

- C. Effective Date July 1, 1983.

- D. Clauses for severability and codification instructions.

WHAT'S LEFT OF OUR ETHICS STATUTE?

The court has ruled that the Legislature acted improperly in establishing an Advisory Opinion process, for ethics. But that's the only portion of the Act which was invalidated. The balance of the Act remains intact. Criminal prosecutions are possible, though none has ever been attempted. And the voluntary disclosure provisions are still available, though not frequently used.

The questions remain, however, are these enough? Do they meet the constitutional mandate? Does the public want and deserve more? To answer those questions, it is important to first understand what is left of the ethics statute and how it works.

Purpose of the Statute. Article XIII, Section 4 of the Montana Constitution provides:

"The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees."

The only section of Montana law currently satisfying this constitutional mandate is 2-2-101, et. seq., MCA.

At the outset, let me say that any attempt to explain our current Code of Ethics is likely to be very confusing and cumbersome. That's so because the truth is that our Code of Ethics is very confusing and cumbersome. I urge the reader to review the statute itself whenever my words confuse you, and see if you get greater clarity from the statutes themselves.

Operation of the Statute. There is no doubt that the Act purports to prohibit all conflicts. It limits enforcement, however, to only those conflicts which amount to a departure from an official's "fiduciary duty". The prohibition mandated by the Constitution is provided for exclusively in Section 2-2-103. That Section, in effect, prohibits public officers, legislators, or employees from departing from their fiduciary duty. The penalty for such departure is civil liability and enforcement can be had via appropriate judicial proceedings initiated by the county attorney of the county where the trust is violated.

The balance of the Act is devoted to defining what constitutes a breach of fiduciary duty for each of three classes of people having a public duty -- legislators, state officers and employees, and local government officers and employees. Four sections specify actions which are conflicts "per se"; 104 covers everybody, 111 governs legislators, 121 controls state officers and state employees and 125 is for local government officers and employees.

For each of those sections, proof of commission of one of the listed acts is automatic proof that the actor has breached his fiduciary duty. In this way the code removes some of the uncertainty from an otherwise ambiguous concept like fiduciary duty. Commission of any one of the acts specified is presumed to be a breach of duty regardless of the circumstances, even though whether a prohibited act has been committed still must be established from the specific facts.

The statement of purpose further provides:

"The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances."

The "per se" conflicts are clearly those enumerated in the sections noted above and are given the common designation of "Rules of Conduct".

The Code of Ethics also deals with the "depending upon the surrounding circumstances" conflicts by setting forth "ethical principles". Section 112 is for legislators and Section 105 covers public officers and employees on both the state and local level. These sections talk in terms of "should not" and "should" rather than "must not" and "must". These sections are referred to as "guidelines".

It is my reading of the statute, however, that the legislature clearly intended that doing (or not doing) something enumerated in these sections could be every bit as much of a breach of fiduciary duty as any of the acts specified in the "Rules of Conduct" sections. The only difference being that acts covered by any of the "Rules" sections constituted a breach "per se" whereas acts covered by the "Ethical Principles" sections were only a breach depending on the circumstances. Commission of a "Rules" act creates liability, period. Commission of a "Principles" act creates liability only if done in such circumstances as to constitute a breach of fiduciary duty.

Regardless of which kind of act, or which class of actor you are dealing with, the offense remains the same -- departure from fiduciary duty. And the penalty remains the same -- civil liability to the people of the State. And the officer to prosecute the offense remains the same -- the county attorney of the county where the trust is violated. And the manner in which any offense is to be determined and any penalty assessed remains the same -- any "appropriate judicial proceedings".

Fiduciary Duty. My reading of the statute is that Section 2-2-103 is not limited to the acts specified in the remainder of the Code of Ethics. Rather, my view is that the penalties contained therein would apply to any departure from a fiduciary duty.

Our whole Code of Ethics, as it currently reads, is based not in whether someone has a conflict of interest, but whether an official's actions violated their fiduciary duty. The problem is, fiduciary duty is a very technical legal term.

Black's Law Dictionary, Revised Fourth Edition, defines "Fiduciary" and "Fiduciary Relations" as follows:

"FIDUCIARY. The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. *Svanoe v. Jurgens*, 144 Ill. 507, 33 N.E. 955; *Stoll v. King*, 8 How. Prac., N.Y., 299. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. *Haluka v. Baker*, 66 Ohio App. 308, 34 N.E. 2d 68, 70. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence."

"FIDUCIARY RELATION. An expression including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another. *Peckham v. Johnson*, Tex.Civ.App., 98 S.W. 2d 408, 416. It exists where there is special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of one reposing the confidence. *Neagle v. McMullen*, 334 Ill. 168, 165 N.E. 605, 608. A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith."

It would seem appropriate to have a more clearly defined set of standards. With only the notion of "fiduciary duty" to go by, neither the public nor the officials can tell precisely what is expected.

The Constitution appears to me to require a prohibition of all conflicts between private interest and public duty. Yet, our current Code limits this prohibition to only actions which violate one's fiduciary duty. Eyebrows might be raised if an official accepted a plane ride to a conference from someone he/she was supposed to be regulating. But is that activity prohibited?

Penalties. Not only does the current Code limit the prohibition, but it also limits the penalty. Section 2-2-103(2) MCA provides:

"A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under 72-20-203(2), and shall suffer such other

liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency."

Section 72-20-203(2) provides:

"A trustee who uses or disposes of the trust property contrary to subsection (1) may, at the option of the beneficiary, be required to account for all profits so made or to pay the value of its use and, if he has disposed thereof, to replace it with its fruits or to account for its proceeds with interest."

Basically, what this amounts to is that, if an official breaches his fiduciary duty and the result is a financial loss to government or a gain to himself, then he may be required to make up the loss or forfeit the gain.

The first thing to be said about this is that it is still very confusing to nearly everyone but lawyers. What's more, what about actions which may be a conflict of interest but don't involve either financial loss to the state or gain to the individual -- like for example, an official granting a certificate of need to one hospital over another because his brother-in-law is on the Board of Directors of one.

To examine how our current Code of Ethics operates, consider how it could be employed to stop a police officer from operating a security business in his spare time. Or a government appraiser from using his spare time to do professional appraisals. Or an appraiser from doing the government appraisal on his neighbors house.

Rather than placing the burden on officials to act appropriately, our current statutes seem to place the burden on the public and/or county attorneys to discover when they've been cheated and chase after the money.

Our Code seems to prohibit officials from going into business with those employees he's supposed to supervise (2-2-121(2)(b)). But what's the penalty if this is done at no financial loss to government and without the use of any public facilities?

Remedies. The question must at least be raised, whether civil action brought by a county attorney is an adequate remedy. It currently is the only avenue available to a citizen who suspects questionable behavior on the part of an official.

Our current Code of Ethics went into effect in July of 1977. Over five years have passed and not a single action has been brought under the Act. Montana either has extremely "clean" government officials, or the remedy provided is not adequate.

Voluntary Disclosure. The Code of Ethics further provides for voluntary disclosure of potential conflicts. It sets forth the manner in which a disclosure is to be made, what is to be disclosed and that the disclosure should be made to the Secretary fo State. This section only covers public officers or employees who are distinguished from legislators by definition. Legislators are to make any disclosures they elect to make in the manner provided in the joint rules of the legislature.

I can find nothing in the current rules whereby the legislature has provided for the manner of disclosure. Rule 9-2 does provide:

"A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member." Rules of the Montana Legislature, 47th Legislature, 1981.

Although it doesn't specifically speak of disclosure, Joint Rule 1-9 may control in the absence of more. I am not aware whether any disclosures have been made under these rules.

In the case of some state or local officials or employees, making a voluntary disclosure can absolve the official of potential liability in certain limited cases. (See, 2-2-121(3) and 2-2-125(3)).

Some Basic Problems with the Ethics Statutes

1. There is some serious doubt whether section 2-2-101 et. seq. satisfies the requirements of Article XIII, Section 4 of the Constitution.

a. The Constitutional mandate requires a prohibition of conflicts between public duty and private interest. The implication is that all conflict be prohibited.

b. The statutes only "prohibit" those acts which would breach an official's "fiduciary duty"

c. The penalty used to create the prohibition only applies to acts where financial gain to the official or loss to the state is involved. Thus there is no effective prohibition, (because there is no penalty or remedy), for conflicts where there is no financial loss to the state or gain to the official (e.g. the passing of inside information to friends which inures to their personal financial gain).

2. Distinctions between conflicts "per se" and conflicts depending upon the surrounding circumstances are confusing to the public and difficult to understand.

3. Specific acts prohibited are very few, especially for legislators.

4. Discrepancies between prohibited acts are difficult to rationalize. Compare sections 111 for the legislature, 121 for state officials and employees and 125 for local government officials and employees.

5. a. The ethical principles or "should nots" list is very short:

b. The "should nots" list for legislators is nonexistent. Compare 105 to 112.

6. As a practical matter, the whole code of ethics for legislators consists of the two "may nots" contained in 2-2-111

(1) except a fee for passing or opposing legislation.

(2) use office to solicit jobs or contracts.

7. Legislators frequently suggest that their "part-time" stature, by necessity, justifies their not being prohibited from too many acts. However, there are part-time council, board, and commission members too, and they are still covered. Notice that state officials and employees are prohibited from using state time, facilities or equipment for their private purposes. It is difficult to justify not extending this same prohibition to legislators simply because they are part-time.

8. The Code provides for handling some of the "part-time" problems for state and local officials by relieving them of liability if specific disclosures are made in a specified manner. Why couldn't the same procedure be used for the legislature?

9. There is some substantial judicial authority -- namely in the form of decisions of the United States Supreme Court regarding a former congressman from New York -- that only the legislature may judge the qualifications and behavior of its members. Given this, there is serious doubt in my mind whether the judicial remedy provided in the statute is constitutional as to legislators. If it is not, then in effect, there currently is no mechanism for citizens to lodge ethical complaints against legislators.

10. The concept of "fiduciary duty" is a complicated legal principle and the public deserves a more straightforward standard against which to measure their officials.

11. At the two public hearings we held on this issue previously, there was substantial comment about the desirability of having somewhere for a citizen to go, other than the courts, if they had a question about the propriety of a particular official's actions.

SUMMARY OF ETHICS MEETING

Secretary of State Jim Waltermire opened the meeting at 1:30 p.m. on November 12, 1982 in Room 437 of the Capitol. In attendance were Jim Waltermire, Secretary of State; Alan D. Robertson, Chief Counsel to the Secretary of State; Jane Hudson of Billings; Frank Steyaert of Great Falls; Wanda Alsaker of Missoula; Jack King of Billings; W. S. Murfitt of Helena; Attorney General Mike Greely; Lonn Hoklin, Executive Assistant to the Attorney General; Barbara Curry of Helena; Don Curry of Helena; Rev. Joseph Finnegan of Butte; Lowell Hildreth of Dillon; Sara J. Davis of Helena; Sen. Dorothy Eck of Bozeman; Mrs. Helen Kerr of Bozeman; Forrest Boles of the Montana Chamber of Commerce; and Margaret Davis of the League of Women Voters of Montana.

Mr. Waltermire began the meeting with a brief explanation of why he had called the meeting. He said that the purpose of the meeting was basically to discuss the current Code of Ethics -- whether it's adequate, any problems with it, and any areas for improvement. He said the goal was to get a consensus, if possible, of whether people want to see the Code modified and how. If a consensus can be achieved, Waltermire said he would work with interested persons or groups to develop legislation and work for its passage.

Waltermire said he was doing this because he believed that Judge Bennett's ruling should not be the end of the matter. Rather, he felt it should be the beginning of a review of the whole area. He noted that the Judge's ruling had ended a year and a half of effort. On balance, he said, it was a very positive period. He noted that the current Code of Ethics was passed in 1977 but added that it was never scrutinized or studied for four years. Even worse, according to Waltermire, the Code was rarely used. Waltermire added that in March, 1981, shortly after he took office, everyone -- press, legislators, public officials and his office -- pulled it out and began to look it over closely. Waltermire noted that a lot of study and thought went into the whole ethics area by a lot of people in that year and a half. He said he felt that was the most positive thing about it. And, he added, the only tragedy would be if we didn't build on that experience.

Finally, Waltermire said, he wanted to explain how he viewed his role in this process. He said he intended to function only as a facilitator for the wishes of concerned citizens. He said he really didn't have any preconceived notions or secret agenda. He said that if the consensus here today is that our current Code of Ethics is adequate, then we'll leave it alone.

Waltermire said he had no predisposition toward the creation of an Ethics Commission. He added that it was just another option. He noted that of the 29 states which attempt to regulate conflicts of interest, 25 of them use some form of commission or board.

Waltermire said he also had no predisposition to having the ethics function being performed by the Secretary of State. He said he felt there were some good arguments for putting it in his office -- mainly the experience they have had in the last year and a half. He

also noted that all the states which do not have a commission, give the duty to the Secretary of State. He added, however, that there are also good arguments for putting the function elsewhere.

Waltermire said that the most important thing, in his view, was not to let who will do it get in the way of improvement. He said he was willing to do the job if it were assigned to him, but that he was equally willing for it to go somewhere else. He added that he might even prefer that. He said that the old adage of "it's a tough job but somebody's got to do it" certainly applies here.

Waltermire then asked his legal counsel, Alan Robertson, to review his interpretation of what is left of our ethics statute.

Robertson began by explaining that there are four separate areas which frequently come under the heading of ethics. They are: 1) conflicts of interest; 2) financial disclosure by elected officials; 3) campaign finance; and 4) lobbyist regulation. He said that the only one we would be dealing with today was conflicts of interest. He next reviewed the handout "What's Left of our Ethics Statute?", a copy of which is attached.

Waltermire then opened the meeting to any questions people had for Robertson.

First to speak was Frank Steyaert, County Commissioner from Cascade County and a former Ethics Commission member. Mr. Steyaert asked about the many county officials in small counties who are part-time also. Robertson responded that they are governed by the same rules as fulltime officials under the Code of Ethics.

Jack King, also a former Ethics Commission member, then asked what Judge Bennett had said in his ruling. Robertson answered by saying that Bennett ruled that Section 2-2-132 is too broad, that there are not enough guidelines to express legislative intent. Now, he pointed out, when the legislature grants rulemaking authority, it also puts a statement of intent on the bill. In 1977 that was not a rule so there was no statement of intent set forth.

Mr. Lowell Hildreth asked what guidelines it would take to make the statute legal. Robertson said the guidelines would need to cover such things as who can get an opinion, when they can ask for an opinion, for what kinds of acts, whether the question can be hypothetical, and what the Secretary of State is to base his decision on, are a few of the guidelines needed. Also needed would be guidelines for any rules to be adopted. Mr. Hildreth asked whether, the more guidelines there are, the broader the Code becomes; Robertson answered that could happen but also pointed out that the Legislature could use the guidelines to make the Code very narrow. Robertson pointed out that guidelines would only cure the defect in the advisory opinion process, they would not cure the other problems with the statutes.

Father Finnegan asked, "Does this mean that we scrap the whole thing and go back to square one because there aren't enough teeth in the current Code?" Senator Dorothy Eck added that as to the teeth

in the current Code, that once a person had paid back the money to the state or county, that the person was "off the hook". She felt there should be an increase in the penalties.

Mr. Forrest Boles thought that it is impossible to prohibit all conflicts of interest. And that the Legislature was correct in trying to limit the conflicts to fiduciary duty. He added that maybe we need something besides "fiduciary duty" but the mandate in the Constitution was not to prohibit all conflicts. Senator Eck added that she had noticed that, in looking at the ethical principles wording in the original bill, that it had been changed by the time the bill was passed and she wasn't sure why.

Waltermire then opened the meeting to comments from the floor and asked Attorney General Mike Greely if he wanted to speak first. Mr. Greely had a prepared statement which he read. A copy is appended to these minutes.

When he finished speaking, there was a question and answer period for Mr. Greely. Jim Waltermire began the questioning and asked how broad a coverage Mr. Greely was proposing. Greely responded that his view was mandatory reporting of any conflict of interest. Waltermire then asked how Greely proposed that the state deal with a person who didn't benefit financially from the conflict -- what kind of penalty did Greely have in mind. Greely said he was proposing to have the disclosure previous to the conflict for all potential conflicts. Waltermire asked how Greely thought we would enforce the disclosures; and Greely answered that he hadn't prepared all the details but that there would need to be some enforcement procedures for the mandatory disclosure. He said he felt that more study may be needed. The important thing he felt was the previous disclosure.

Senator Eck added that the Campaign Commissioner could be used to receive the disclosures. She felt that it should be simple to make the disclosure.

Jane Hudson asked Greely why he thought the Legislature would respond any differently this time to ethics legislation. She pointed out that bills were introduced in 1979 and 1981 to clarify the situation but they were killed. Greely answered that in 1977 an attempt was made to implement the constitutional mandate. The responsibility for implementation still has to be with the Legislature. The only other way would be with an initiative. Greely added that some conflicts get blown out of proportion but that if the conflict is declared in advance, then it is all out in the open. Greely felt that Montana needed to look at other states to see what they are doing in the ethics area. He said he wouldn't predict what the Legislature would do.

Robertson asked Greely if he saw any role for the advisory opinion process and whether one person or a group should make the decisions. Greely responded that the advisory opinion makes sense, especially for the hypothetical question. He also favored a group to decide but was concerned as to who should be on any commission. He also felt that the Legislature would be reluctant to establish a bureaucracy to enforce the Code of Ethics so one person would probably have to do it.

Robertson then asked if Greely felt the ethics function should go to someone like the Campaign Commissioner. Greely responded that the function definitely should not be left to an elected official and that the Campaign Commissioner would be a good place for ethics to go, but that there must be some guidelines from the Legislature and the authority would have to be limited.

Next, Robertson asked whether Greely agreed with his interpretation that only the Legislature could deal with the ethics of its members. Greely said that this was probably the case, and noted he had recommended separate provisions for the legislative and executive branches. Robertson then asked, "since only the Legislature can judge the qualifications and behavior of its members, and given that our current Code establishes a judicial review process for legislative behavior, which is probably invalid, do we have any Code of Ethics right now dealing the Legislators?" Greely allowed that we probably do not. Robertson then asked, "Doesn't the Legislature have to do something with its own ethics situation this session because of the Constitutional mandate?" Greely responded that the Constitution says there has to be a Code of Ethics for legislators but it doesn't say when. He said there really isn't much we can do about it -- there could be an initiative but we can't put them all in jail. That was all of the questions for Mr. Greely, and he had to leave the meeting.

Next to comment was Frank Steyaert who raised the question of what happens when you leave office, are you then off scot free for anything you did while in office?

Waltermire then asked for other comments. Jane Hudson, who chaired the former Ethics Commission spoke first. Hudson said her experience with the Code of Ethics had been one of frustration and confusion. She noted that there is a Constitutional mandate and felt that people do have the right to get opinions on actions, past or future. Also, that the people have a right to a Code to follow what is fair and in the public interest. Right now, she added, we don't have one. The Code needs to be clarified for public officials and the public in general.

Frank Steyaert spoke next, saying that we need either an ethics operation or perhaps a grand jury procedure for Montana. There is currently a real problem, he said, if a person takes an ethics complaint to a county attorney and he doesn't want to prosecute. Does the person then go to the Attorney General? And what if the Attorney General doesn't want to prosecute either?

Next Wanda Alsaker spoke. She seconded what Hudson had said and added that there needs to be a place for citizens to go other than the courts. She very strongly feels that there are unethical situations which do not involve monetary gain.

Jack King spoke next and said that he cringed at the thought that the responsibility for the Code of Ethics would be turned back over to the Legislature. We need something now he said, not more study and delay. He also felt it shouldn't just deal with financial conflicts.

Next there were questions for members of the former Commission. Robertson asked if, from their experience, they felt the function should be performed by a group or by an individual. All responded that they felt it should absolutely be given to a group. Members of the former Commission noted that they frequently had spirited discussions over what was considered ethical or not, that it varied from person to person, and for that reason should not be left to any one individual.

Senator Eck asked whether the former members felt that any future commission would need investigatory powers. She added that if you don't have safeguards for people, then courts might eventually throw out the findings of the commission. Frank Steyaert commented that he would not personally want to be involved in any future effort that included investigation. He just felt that was too much. Robertson pointed out that investigation powers were not necessary if requests were limited to employees seeking advice about their own behavior. You don't need to give investigatory powers if you limit requests to future acts and only on the request of the official themselves, he said. Investigatory powers are needed only when third party requests are allowed. For example, when a member of the public asks for a determination about the past behavior of a particular official. Then, he said, you either need to take the request at face value and issue your opinion only on that, or you need to seek additional information through investigation. Senator Eck added that no investigatory powers are needed to handle hypothetical questions. Robertson agreed but added that hypothetical questions get real difficult to handle because you have to make so many assumptions.

Senator Eck further commented that she felt the new Mansfield Center for Ethics in public affairs at the University of Montana might be a good place to get some help once it starts up. She also felt that it was very important to begin getting public officials "sensitized" to ethics. Perhaps, she said, a commission or study group could put together some standards of ethical behavior. Although, Senator Eck added, it might be difficult to get the Legislature to authorize a new commission. There's no desire in the Legislature to tackle ethics, she pointed out. She added that an initiative would be very difficult without study groups to educate the public. Senator Eck said that she and Rep. McBride had studied the matter thoroughly but that they felt unable to write legislation to handle ethics. Also, that they would prefer that ethics be transferred to the Commissioner of Campaign Practices. She felt that public disclosures would be of some help but the real need is to "sensitize the public officials" and that what is inappropriate is not necessarily unethical. It is the appearance of evil that undermines the public confidence, she noted. We can't just get a list of what's unethical she added.

Next was a period of questions for Senator Eck. Waltermire asked for her feelings about conflicts outside the realm of fiduciary duty, and did she feel that disclosure is enough. She responded that disclosure was a good start, and that the disclosures should be reviewed by the public. To another question she responded that there should be a process to get an opinion as to whether an action was ethical. Regarding whether she favored a group or one person to give the opinion, she

felt that at least one staff person would be needed to do the research, and that she preferred a group rather than a single individual to make the determinations.

Frank Steyaert commented that county officials have to operate in the gray areas of ethics because there is no clarity, and that he doesn't like it. Senator Eck agreed, saying that some people have problems operating in gray areas but for some it causes no concern. She feels that Legislators need a list of examples of what is ethical, local officials more so and officials of small counties even more so because in small towns local government is so involved in what goes on in the town.

Robertson noted that he had a lot of information from other states including some material from the Hasting Center which has studied the matter at length and even has put together a model act. There is a lot of information available, he said, it isn't as though we have to wait for the University of Montana group to study it.

Boles commented that he felt that an advisory group was crucial. Mandatory prior disclosure of every possible conflict could be a real problem, he felt, and might discourage people from serving on public boards and commissions as well as running for public office.

Father Finnegan asked if voluntary disclosure absolved the official from liability. Robertson explained that the law was very limited as to who was absolved and that it only covered members of the governing body at a local level and department heads or board members if their vote was needed at the state level.

Sara Davis, a concerned citizen from Helena, spoke next and said she didn't see anyone coming up with recourse for non-monetary breaches of ethical duty. She didn't know what to do but wants to have a place to go when she has a problem.

Father Finnegan commented that it falls on the citizen to pursue the wrongdoer and that the citizen can end up fighting a state agency or a county attorney. He said that's a lot of burden to put on the citizens of Montana. Robertson said that was an excellent point -- that a county attorney might say "prove it" to the citizen when he made his accusation. Senator Eck added that we also need to protect state government from being harrassed.

Lowell Hildreth spoke next and pointed out that the citizens of Montana need to be protected from being maligned and smeared too. He felt that a group of citizens like an ethics commission was the proper approach and that they should decide what's ethical or not -- not the Legislature.

Maggie Davis next commented that hypothetical versus real conflicts was critical. She felt that the Attorney General's recommendations didn't emphasize enforcement enough and that the Legislature was reluctant to act on enforcement. Also, she felt that the emphasis on disclosure was a good first step. She pointed out that the people have enforcement power at the ballot box and in the press.

Waltermire then asked if she favored an individual or commission for ethics and Davis said a group for factual questions and an individual for hypothetical questions. Waltermire next asked for any preferences as to who should appoint the commission. Davis said that the Legislature could specify how it would be done but that it should be a bipartisan committee and added that she hadn't thought much about this. Robertson said that at one time Davis had testified for the League in favor of opinions dealing with real situations as opposed to just hypothetical situations. He asked if the League still favored them. Davis said that there are good arguments for public access, but she would have to see the proposed legislation.

Waltermire then asked if anyone else had any comments regarding who should appoint. King commented that it was difficult not to be political when talking about appointments. He felt that the Attorney General shouldn't make the appointments since he supervises the county attorneys. Steyaert suggested that the Supreme Court appoint the ethics commission. Robertson commented that in many states the Governor appoints the commission. He added that many other states have a mixed appointment process. Steyaert said that to him it didn't matter who appointed the commission as long as there was one. Hudson asked how the Campaign Commissioner is appointed, and Robertson responded that the Governor made that appointment.

Waltermire asked if there were any final comments. Hudson asked what happens if the Legislature doesn't act but leaves Montana stuck with no real ethics code. Waltermire pointed out that there was always the initiative process.

There were no further comments, so Waltermire concluded the meeting. He indicated his office would be looking at possible legislation and would mail whatever they came up with to interested parties. He thanked everyone for their comments and for attending.

STATE
OF
MONTANA
ATTORNEY GENERAL
DAKE CREELY

12 November 1982

Jim Waltermire, Secretary of State
Capitol Building
Helena, Montana 59620

I'm grateful for the opportunity to employ this forum to make a brief statement concerning the critical need for new ethics legislation in Montana.

There is no question in my mind that we need new legislation --strong legislation, with teeth in it--to ensure a high standard of ethical conduct among Montana's office holders and public employees. My staff and I have had discussions with several interested legislators on this subject, and we intend to propose a workable and effective law to the Legislature. We have not determined, however, whether we should ask the Legislature to enact such a law in the forthcoming session, quite simply because we recognize a need for comprehensive study and analysis in every aspect of the ethics issue. We have, however, arrived at some conclusions that we can make public today.

First of all, any new ethics legislation should have two parts--one that deals with the legislative branch exclusively, and another that deals with the executive branch exclusively. Because the judicial branch already operates according to a strict canon of ethics, we should concern ourselves only with the legislative and the executive.

The new law should establish an ethics committee of the Legislature--perhaps one for each house--to examine complaints about the ethical conduct of legislators. The committee or committees should have the authority to reprimand any member it has found to have violated the standards of ethical conduct. The legislative ethics committee should also have authority to submit resolutions of censure or expulsion of a member to one or both houses. Needed first, however, is a realistic and workable set of ethical standards for legislators; this is the area in which we need study and analysis.

Secondly, we need an ethics law that deals exclusively with members of the executive branch and public employees. The

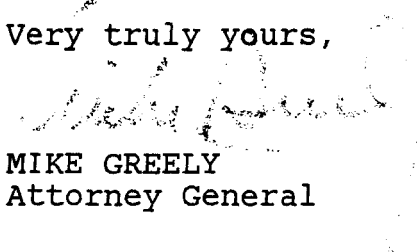
12 November 1982

cornerstone of that law should be mandatory disclosure of any conflict of interest. In other words, a public employee or executive should be required to disclose any conflict of interest to the state Commissioner of Political Practices. That disclosure would then be public record, available to the news media and all others. A citizen who suspects that an employee or executive has not disclosed a conflict could inquire of the Commissioner who would then make his or her own inquiry, all of which would be a matter of public record. If it becomes apparent that an employee or executive has misused his or her position in a non-criminal way in order to profit financially, the county attorney should have authority to sue that person for triple the amount of the profits he or she derived.

As one can readily see, the proposal for executive branch ethics emphasizes disclosure, the purifying light of public knowledge and opinion. It also emphasizes the ability of county attorneys to recover triple the amount of profits derived from unethical behavior. But needed now is a realistic set of ethical standards of conduct for executives and public employees. In this area we need study and analysis. In my view, the place for that study and analysis is the Legislature.

Past experience has taught us a painful lesson: an inadequate ethics law can be twisted and abused; it can be used as an excuse to smear honest and effective state employees and officers; it can be a device employed to shatter well-placed public trust in government. We don't need McCarthy-esque investigative commissions or tribunals to investigate and accuse. Rather, we need reasonableness, public disclosure and civil remedies for extreme abuse. But first we need study and analysis by the Legislature.

Very truly yours,


MIKE GREELY
Attorney General

Testimony Regarding House Bill 689
Before State Administration Com-
mittee, House of Representatives
Joe Brand, Chairman
February 15, 1983

Mr. Chairman and members of the Committee, my name is Jonathan Motl and I am a lobbyist for Common Cause of Montana. I speak in support of HB 689.

As members of this Committee may know, Montana's Constitution in Article XIII, Section 4 charges that:

The legislature shall provide a Code of Ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Following models used in many other states, Montana by legislative and initiative action has sought to define its Code of Ethics by 1) requiring disclosure of economic interests by legislators and other public officials; and 2) declaring public office a public trust and thereby prohibiting attempts by public officials to realize personal financial gain through their public office.

It is the second part -the public trust- of this approach to the Code of Ethics that is dealt with in HB 689. The bill seeks to better define "public trust" and it backs that definition with a system of advisory opinions and legal enforcement.

Common Cause believes that HB 689 is a good step forward for a stronger Montana Code of Ethics. Common Cause has long had a position in support of an independent and bipartisan ethics commission and we endorse that approach. Common Cause, however, believes that several provisions of HB 689 could be strengthened or clarified and we have attached several amendments to this testimony and we call those amendments to the Committee's attention.

In closing, Common Cause wishes to state that it understands that, because of the part-time nature of many elected and appointed positions in Montana government, it is inevitable that Montana officials will have private interests and sources of income that conflict with their public duties. Because of that situation Common Cause believes that a strong Code of Ethics is important to Montanans who, we believe, want to show faith and trust in their government. A Code of Ethics helps government be open and accountable by giving Montanans information on which to judge whether their representatives act in the public interest rather than for private gain. As Justice Brandeis wrote in 1931 : "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most effective policeman."

Amendments
House Bill 689
By: Jonathan Motl
Lobbyist
Common Cause/Montana

- 1) page 4, line 13
Following : "people"
Insert : "If the county attorney fails to act or
chooses not to act then any individual
residing in that county may bring ap-
propriate judicial proceedings on behalf
of the people."
- 2) page 9, lines 4-5
Following : "(1)"
Strike : "A public officer"
Insert : "Any public official"
- 3) page 9, line 17
Following : "(2)"
Strike : "A public officer"
Insert : "Any public official"
- 4) page 15, line 3
Following : "is"
Strike : "a"
Insert : "an autonomous"
- 5) page 23, line 16
Following : "shall"
Insert : "through a recruitment, selection and
appointment process open to the public"
- 6) page 23, line 19
Following : "appointed"
Insert : "in a like manner"

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House Bill 689
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- 1) page 4, line 13
Following : "people"
Insert : "If the county attorney fails to act or chooses not to act then any individual residing in that county may bring appropriate judicial proceedings on behalf of the people."
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Insert : "through a recruitment, selection and appointment process open to the public"
- 6) page 23, line 19
Following : "appointed"
Insert : "in a like manner"

*includes
legislative
or disclosure
section?*

STATEMENT OF INTENT

Bill No. 689

It is the intent of the legislature to create a Commission on Ethics and Political Practices to take the place of the Commissioner of Political Practices.

It is intended that the duties of the commission include those duties presently assigned to the commissioner. It is not the intent of this bill to expand the powers of the commission beyond those powers currently granted to the commissioner in the areas of lobbyist regulation and campaign finance.

It is intended that the duties of the commission include those duties presently assigned to the secretary of state in the administration of Title 2, Chapter 2, part 1 of MCA. It is intended that the powers of the commission in this area are limited to those specifically granted in this bill. It is intended that the commission not have the authority to hold hearings or conduct investigations of any kind regarding the behavior of any public official or employee.

It is intended that the duties of the commission include new duties, established in this bill in the areas of fair campaign practices and fair ballot issue practices. It is intended that the powers of the commission in these areas are limited to those specifically granted in this bill. It is not intended that anything in this bill be interpreted as making mandatory the Code of Fair Campaign Practices contained in 13-35-301 to which candidates may voluntarily subscribe.

It is intended that the penalties contained in this bill are applicable to all public officials and employees whether their function be legislative, judicial or executive.

It is intended that the portions of this bill revising the code of ethics in the areas of ethical standards, disclosure requirements and mechanics, and the advisory opinion function, apply only to executive branch officials and employees at the state and local level. This is intended because ethical provisions regarding the judiciary are already in place and because it is the intent of the legislature, after review, to implement its own conduct review and disclosure requirements and mechanics.

It is intended that the commission will study the laws given to it to administer, particularly the code of ethics, and report to the legislature at the next or subsequent sessions any changes it wishes to recommend.

It is intended that any study or review of the code of ethics and any legislation recommended by the commission be limited to those standards or mechanics which apply to executive branch officials and not include provisions which apply to members of the legislature.

It is intended that the authority given to the commission in section 26 of this bill to hire and fire all personnel under its supervision not be used to fire any of the personnel currently employed in the office of Commissioner of Political Practices, unless there be good and sufficient cause to do so.

A statement of intent is required for this bill because section 8 would grant the commission the authority to adopt rules for the conduct of its affairs under the code of ethics. It is intended that the authority to adopt rules is specifically limited to the areas provided for in section 8. Rules are to be adopted under the Montana Administrative Procedure Act. The rules regarding advisory opinions must be consistent with sections 9 through 14 of this bill. It is intended that the commission may not, by rule, provide for any hearing or investigation of any kind regarding the behavior of any individual.

A statement of intent is further required for this bill because section 39 would grant the commission authority to adopt rules to carry out the provisions of sections 31 through 38. Rules are to be adopted under the Montana Administrative Procedure Act. The rules must be consistent with the provisions of sections 31 through 38. The rules may not attempt to make mandatory the Code of Fair Campaign Practices contained in 13-35-301 which may be voluntarily subscribed to by candidates.

WITNESS STATEMENT

Name Ray Blehm Committee On _____
Address 623 Ave B Date _____
Representing Mt St Firemen's Assoc Support X
Bill No. HB 712 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2. The Firefighters in 2nd class cities have asked that this legislation be introduced by introduction of a resolution before our convention.

3. It will cause the contributions and benefits on the local economic conditions rather than on the average.

4.

There is no real cost because increases and decreases balance each other as per PERD letter from Mr Nachtsheim

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

DEPARTMENT OF ADMINISTRATION
PUBLIC EMPLOYEES RETIREMENT DIVISION



TED SCHWINDEN, GOVERNOR

1712 9TH AVENUE

STATE OF MONTANA

(406) 449-3154

HELENA, MONTANA 59620

December 3, 1982

Mr. Ray Blehm, Jr.
Legislative Chairman
Montana State Firefighters' Association
623 Avenue B
Billings, Montana 59102

Dear Ray:

This is to formally advise you of the information you requested relative to the cost of changing the language perfecting part-paid firefighters.

Change No. 1, is to calculate the part-paid firefighters' pension on a individual city basis rather than on an overall system basis. The actuary advised us that this cost is basically offsetting and where the averages would increase in one city, they would go down in another and there is no calculable actuarial cost.

The second change you asked us to consider was the prospect of extending the basic escalator benefits to two pre-system part-pays or providing a minimum benefit of \$75 dollars per month. Again, the actuary advised us the increases would not have an affect on the overall funding of the retirement system due to the small number of part-paid firefighters drawing retirement benefits.

As you are aware of the Board's position of not including any benefit enhancements in the PERD legislative proposals and if you would like some assistance in drafting the measure, I would be pleased to draft a proposal along any guidelines you want us to use.

Sincerely,

A handwritten signature in cursive script, appearing to read "Law", followed by a horizontal line.
LAWRENCE P. NACHTSHEIM
Administrator

VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL HB 718

DATE 2-15-83

SPONSOR Rem

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME W. L. Romaine BILL No. H.B. 718

ADDRESS Helena DATE 2-15-83

WHOM DO YOU REPRESENT Clerks & Recordars

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: *Any time a municipal or other election is held in conjunction with a county election, the political subdivision should bear its proportionate share of the election. It should make no difference whether the election is held in ~~an~~ even or odd numbered year.*



Montana Association Of Conservation Districts

7 Edwards
Helena, Montana 59601
Ph. 406-443-5711

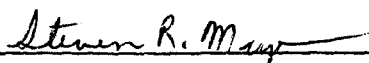
Mr. Chairman, Members of the Committee:

I am Steve Meyer representing the Montana Association of Conservation Districts.

The district supervisors would prefer not to be assessed for the cost of their elections because of the precarious situation their budgets are in. However, if the legislature feels that there is a sufficient burden placed on the counties by the addition of our elections, then perhaps we should pay our share. We feel that the most equitable way to assess the charges would be to determine what extra cost above the required ballots the subdivision places on the county, not a proportion set by commissioners.

Until we have some equitable way to divide the costs we must oppose HB 718.

Thank you.



Steve Meyer
Executive Vice President

SRM:dv

Not approved.

PROPOSED AMENDMENTS TO HB 668

1. Title, lines 4 and 5.

Following: "ACT" on line 4

Strike: "TO" through "FOR" on line 5

Insert: "PERMITTING"

2. Title, line 6.

Strike: "CERTAIN"

Insert: "ELECTED AND APPOINTED"

3. Title, line 7.

Following: "HEADQUARTERS"

Insert: "TO BE REIMBURSED FOR THE ACTUAL COST OF LODGING
AND MEALS; REQUIRING STATE EMPLOYEES AND CERTAIN
OFFICIALS TO DOCUMENT MEAL EXPENSES; INCREASING THE
AMOUNT AUTHORIZED FOR USE OF NONCOMMERCIAL LODGING;

4. Page 1, line 19.

Following: "within"

Insert: "or out of"

5. Page 1, lines 21 and 22.

Following: "authorized" on line 21

Insert: "the"

Following: "actual" on line 21

Strike: "and" through "day" on line 22

Insert: "cost of lodging and meals"

6. Page 2, lines 1 through 4.

Following: "lodging" on line 1

Strike: "not" through "meal" on line 4

Insert: "and meals"

Following: "lodging" on line 4

Insert: "and meal"

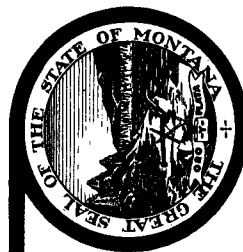
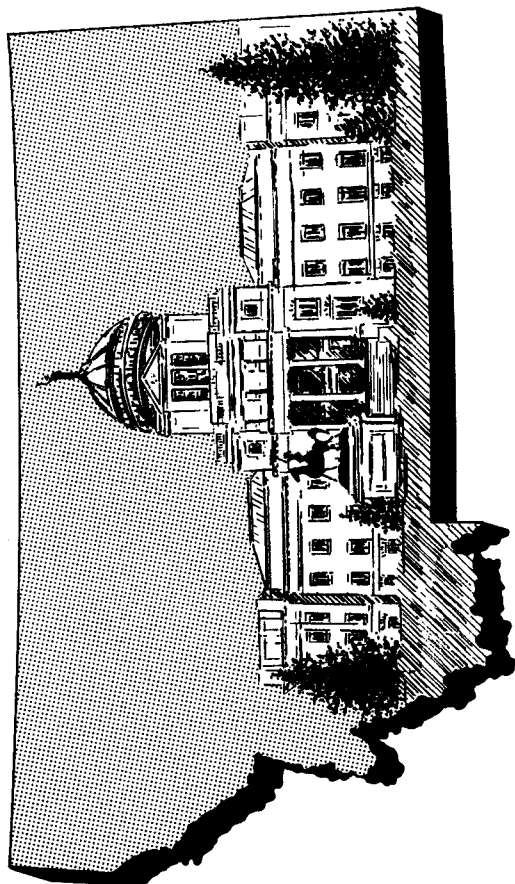
7. Page 2, line 7 through line 2 on page 3.

Strike: subsections (2) and (3) in their entirety

Renumber: subsequent subsections

MONTANA

PUBLIC EMPLOYEES' RETIREMENT SYSTEM HANDBOOK



APRIL 1982

DEPARTMENT OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT DIVISION

10,000 copies of this public document were published at an estimated cost of 18¢ per copy for a total cost of \$1,795.00, which includes \$1,795.00 for printing and \$.00 for distribution.

INTRODUCTION

The purpose of this handbook is to provide you with basic information about your retirement plan.

Related data noted herein is based on the Public Employees' Retirement System Act, Title 19, Chapter 3, M.C.A., and Board rules and regulations contained in the Administrative Rules of Montana.

The information in this brochure may not answer all your questions about your retirement plan or cover all aspects of your retirement. A letter of inquiry to the Public Employees' Retirement Division is encouraged for specific questions.

BOARD MEMBERS

Name	Occupation	Location	Termination Date
Robert L. Batista	Cascade County Surveyor	Great Falls	4/1/82
William N. Cocales	Businessman	Billings	4/1/83
Michael S. Muszkiewicz	Bureau Chief Dept. of Social & Rehabilitation Services	Helena	4/1/84
John L. Prebil	Deputy Director Department of Highways	Helena	4/1/85
E. J. McGreevey	Insurance Underwriter	Anaconda	4/1/86

ADMINISTRATIVE OFFICERS

Lawrence P. Nachtsheim.....Administrator
Dave Senn.....Operations Bureau Chief
Beverly Brinkley.....Benefits Bureau Chief
Tom Gleason.....Information Officer

LEGAL ADVISOR

M. Valencia Lane, Attorney.....Department of Administration

THESE BROCHURES ARE
AVAILABLE UPON REQUEST

from the

Department of Administration
Public Employees' Retirement Division
1712 Ninth Avenue
Helena, Montana 59620
406/449-3154

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NOTES OR CALCULATIONS

BRIEF HISTORY

The Montana Public Employees' Retirement System (P.E.R.S.) originated July 1, 1945, with an appropriation of \$35,000 as a result of an employee referendum. Prior to that date, Montana public employees had no retirement plan.

The first benefits were paid in 1947, and since that time P.E.R.S. has continued to grow from a membership of 3,230 to approximately 38,850 on July 1, 1981.

Annual benefit payments have increased from \$108,000 in the fiscal year 1947-48 to \$19,372,966 in the fiscal 1980-81, with an asset growth from the original \$35,000 appropriation to \$284,060,598. Improved employee benefits have occurred consistently through legislative amendments since 1945.

The year 1956 proved to be an eventful year when state employees became eligible for Social Security membership. The combination of P.E.R.S. retirement and Social Security benefits provided a better income for the state retiree. In both plans the years of service plus the average highest salary determine the benefit you will receive when you retire. (Different methods are used to calculate the average benefit for P.E.R.S. and Social Security.)

A five-member Board made up of three public employees and two non-public employees is appointed by the Governor for staggered five-year terms. The Board is responsible for establishing retirement policy, initiating necessary legislation for efficient retirement administration, and determining membership and retirement eligibility for the following eight other retirement programs in addition to P.E.R.S.

1. Judges' Retirement System
2. Game Wardens' Retirement System
3. Municipal Police Officers' Retirement System for First and Second Class Cities
4. Highway Patrolmen's Retirement System
5. Sheriffs' Retirement System
6. Pension Fund for Volunteer Firemen of Unincorporated Areas
7. Montana Firefighters' Unified Retirement System; and
8. Administrator of the Social Security Federal-State Agreement

I. MEMBERSHIP

A. ELIGIBILITY

1. Mandatory

(a) Any person that will be employed by any covered agency (state, county, city, school district, or other eligible public agency) for a period of 120 working days or 960 hours in any fiscal year, must become a member on the first day of employment.

(b) A retired member returning to work for an agency covered by P.E.R.S. for more than 60 working days in any fiscal year shall be reinstated as an active member.

2. Elective Membership

The following employees can elect to become members by filing an application for membership with the Public Employees' Retirement Board:

(a) Elected Official.

(b) Persons who are employed at age 60 or older, with no previous creditable service.

(c) Direct appointees of the Governor.

(d) Employees of county hospitals and county rest homes in 6th and 7th class counties.

(e) Persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session.

(f) Persons who are employees of an agency contracting coverage under P.E.R.S. and vote in the election for P.E.R.S. membership, may elect to be excluded at the time the contract is approved.

1. Persons employed by that agency after the system is in effect, do not have an option to be excluded.

2. Employees who elected to be excluded and later terminate, must become a member if re-employed by a covered agency.

(g) Employees whose positions are funded under the Federal Comprehensive Employment and Training Act (CETA) may elect to be excluded from P.E.R.S. membership by filing a written application with the Board.

(h) The chief administrative officer of any city or county may elect to be excluded from membership. Written ap-

plication must be made to the Board no later than 7/1/79, or, within 30 days after initial employment by a county or city.

3. Exclusions

(a) Persons receiving credit in other retirement or pension plans funded fully or partially by the United States Government, State Government, or political subdivisions, except as provided for in Section 19-3-403, M.C.A. (The purpose of this provision is to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds.)

(b) Inmates of state institutions who receive compensation from training or services performed within their capability.

(c) Independent contractors who do not possess a written contract that specifies an employer-employee agreement for the purpose of retirement coverage under the P.E.R.S.

(d) Employees not exceeding the equivalency of 120 working days (960 hours) in one fiscal year. A member so excluded from membership by this subsection may later become a member by otherwise becoming a full time employee or by written request after the initial date of exclusion.

(e) Court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and are paid on a per diem basis.

(f) Students employed by any public elementary school, high school, vocational-technical center or community college or any unit of the State University System. However, a student who at a later date, becomes employed by a covered agency has the option to qualify the time previously excluded providing they file an application with the Public Employees' Retirement Board.

(g) All former members receiving a retirement allowance, other than as a beneficiary serving in employment, if that employment does not exceed 60 working days in any fiscal year. These former members must be reinstated into membership on the 61st working day in any fiscal year unless they elect to return to membership prior to that day.

4. Eligibility of Federally Subsidized Employees-National Guardsmen

- (a) A person whose compensation is paid either fully or in part from federal funds, but is not subject to the federal retirement system, may choose to be a member of the P.E.R.S. entitling him to all benefits providing he makes all employee contributions to the retirement system based upon his salary, including the portion paid by the federal government.
- (b) A member of the Montana National Guard or Air National Guard may, while he is an employee of either unit, choose to apply for membership with the P.E.R.S. and receive credit for prior service as provided in Section 19-3-505 and 19-3-506, M.C.A.

B. SERVICE CREDITS

1. Creditable Service

Service credits are accumulated from the first day of employment for any person employed by an agency covered by P.E.R.S.

2. Prior Service

"Prior Service" means all service rendered as an employee of the State of Montana before July 1, 1945, and all service rendered as an employee of any contracting employer before July 1, 1947.

A member with 5 or more years of creditable service, of which not less than 3 years has been as a contributing member of the retirement system, can be granted credit for any **prior service** not previously granted, by:

- (a) Filing written notice of intent with the Board; and,
- (b) Furnishing the Board with proof of the prior service certified by the employer.

No remittance for contributions or interest is required for prior service credits.

3. Retroactive Service

- (a) An active member who has service with an employer which has not been credited, may convert all or a portion of it to membership service provided:
 1. He has filed written notice of intent with the Public Employees' Retirement Board.
 2. Payment to the Public Employees' Retirement Board has been made for the total employee and

employer contributions that would have been contributed plus the accrued interest. This interest is not tax deductible but is added to the contributions of the member. The employer contribution *may* be paid by the employer.

3. A person transferring from a CETA position to a membership status as an employee of a covered agency, files an application with the Public Employees' Retirement Board within 1 year of the transfer date.

(b) Conditions

1. To secure credit for service not previously credited, a member must submit to the Board, salary information certified by his employer or former employer. Eligibility of all service credit will be determined by the Board.
2. Payment of contributions and interest due may be paid in one lump sum at the time the request is filed; or,
3. Installment payments may be made in accordance with the provisions in Section 19-3-505(4), M.C.A.
4. Failure to make regular monthly payments in any month where the member receives his normal compensation, shall forfeit his right to make any further installment payments.

4. Disability Absence

- (a) A member who received worker's compensation for absences from service due to illness or injury, as provided for in the Retirement System Act, Title 19, Section 19-3-504, may qualify that service time during his absence upon reinstatement to his position, providing:

1. The absence does not exceed 5 years;
2. The illness or injury is determined within 1 year after the end of such absence;
3. The member files written notice of his intent with the Board within 6 months after returning to service.

(b) Provisions:

1. Employee contributions may be made in one

lump sum at the time of filing notice with the Board; or,

2. On an installment basis, not to exceed 24 monthly payments.
3. The amount of contributions due is determined by the amount the member would have paid had he not been absent from service, plus the interest it would have accrued had it been on deposit.

(c) Exclusions:

1. A member absent from service due to illness or injury loses the right to contribute, if all his normal contributions are refunded pursuant to Section 19-3-703.

5. **Military Service**

A member with 10 years or more of qualified creditable service may, at any time prior to retirement, make a request to qualify all or any portion of his active service with the United States Armed Forces for the purpose of calculating his retirement benefits.

(a) Restrictions

1. One year of military service may be qualified for each year of P.E.R.S. service in excess of 10 years. Service credits cannot exceed a maximum of 5 years.
2. A person receiving a normal military retirement benefit may not qualify his military service except as provided in Section 19-3-503, M.C.A. For clarification of this section, you may contact the P.E.R.D.

(b) Procedures for Qualifying Military Service

1. A copy of the member's military papers must be provided to the P.E.R.D. office, showing the active duty entry date and discharge from the armed services.
2. Submit a completed application form.
3. The member must contribute to the retirement fund the amount due. The amount due is based on the normal contribution rates of the eleventh year and succeeding years, plus the interest (not tax deductible) from the date he becomes eligible to qualify this service.

6. **Transfer of Service Credits**

(a) Teachers' Retirement System

1. When a member transfers from P.E.R.S. to the Teachers' Retirement System, or vice versa, both prior and membership service shall be transferred to the system under which he is currently employed, except those service credits that were forfeited by withdrawal and have not been reinstated.
2. Any person who is employed simultaneously by employers under both systems is entitled to establish credits or equities in each of the systems in accordance with, and to the extent, provided by the Public Employees' Retirement Act, Title 19, Chapter 3, M.C.A.
3. Eligibility of any such person for a retirement allowance, death benefit or refund of contributions is governed by the provisions of the system he last made contributions to and is based upon the entire length of service credited to his account.

(b) Highway Patrolmen's, Sheriffs', Game Wardens', and Municipal Police Officers' Retirement Systems

1. A member may, at any time before his retirement, make a written election with the Board to qualify all or any portion of his creditable service in the Highway Patrolmen, Sheriffs', Game Wardens', or Municipal Police Officers' Retirement System for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the Public Employees' Retirement System as determined by the Board.

(c) United States Government Service

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, providing he meets the qualifications and conditions as outlined in Section 19-3-510, M.C.A.

7. **Membership Application**

Each contributing employee must complete a membership card upon employment or upon name change. The employer must forward the completed card to the Public Employees' Retirement Division.

No benefit will be paid or a refund of contributions made unless the P.E.R.D. has a completed membership card in their files. Primary and contingent beneficiaries should be named and kept current by the member. Marriage, children, divorce, or death of a beneficiary, could all be reasons for change of beneficiaries.

II. CONTRIBUTIONS

A. MEMBER'S CONTRIBUTION

The employer shall deduct and remit to the P.E.R.S., 6% of the gross salary of each contributing employee. Each employee's contribution is deposited in their individual account and accrues interest at the rate of 7.5% compounded annually.

B. EMPLOYER'S CONTRIBUTION

Each month the employer shall contribute to the P.E.R.S., 6.32% of the total covered payroll. Employer contributions provide funds for retirement, disability and death benefits.

C. REFUND OF CONTRIBUTIONS ON TERMINATION OF SERVICE

Any member whose service has been discontinued for any reason other than death or retirement, may elect to withdraw his accumulated contributions, including the accrued interest, provided:

1. He notifies his employer of his intent and makes written request on an application furnished by the employer.
2. The application must bear the notarized signature of the employee and be submitted to the Board by the employer. It is **IMPORTANT** that the member making the request read the reverse side of the application and understands the waiting period that occurs before refunds can be made.

The waiting period is usually 45 to 60 days from the date of termination if the refund application is properly filed at the date of termination.

D. REINSTATEMENT OF MEMBERSHIP AFTER WITHDRAWAL OF CONTRIBUTIONS — REDEPOSIT OF CONTRIBUTIONS

1. Any person that has previously withdrawn their normal contributions upon termination is automatically reinstated as a member after re-employment by a contributing agency, without credit for any previous membership service.
2. A new membership card must be filed, complete with beneficiary information.
3. Upon reinstatement, a member may choose to buy back any previous service credit by redepositing the refunded contributions, plus the interest which would have accrued had the contributions remained on deposit. (Not tax deductible)

III. SERVICE AND EARLY RETIREMENT

A. SERVICE RETIREMENT: A member is eligible for retirement benefits if:

1. He has reached the age of 60 and completed a minimum of 5 years of creditable service.
2. He has reached the age of 65 regardless of the number of years of creditable service.
3. He has completed 30 years or more of creditable service, regardless of his age.

B. EARLY RETIREMENT

A member who has not reached age 60 or completed 30 years of service may retire as early as age 50 if he has completed at least 5 years of service. Early retirement is also available for those members who have a minimum of 25 years of service, regardless of age.

These early retirement benefits are reduced by the factor for the number of years before the member would reach age 60 or achieved 30 years of service. (See table on page 19.)

The benefit of a member who has completed 30 years of service before age 60 IS NOT REDUCED BY THE FACTORS AND RETIRES AT APPROXIMATELY ONE-HALF PAY.

C. APPLICATION FOR EARLY AND SERVICE RETIREMENT

1. Written notification should be submitted to the P.E.R.D. at least 3 months before the anticipated retirement date.
2. No estimate will be made more than 6 months in advance of an anticipated retirement date. For retirement anticipated beyond the 6 month limit, a member can estimate from Tables I and II of this brochure.
3. The following information must be provided when requesting an estimate:
 - (a) Anticipated retirement date
 - (b) Birthdate of member
 - (c) Birthdate of beneficiary
 - (d) Address where you wish the information to be mailed.
4. A retirement application will be sent with each estimate.
5. Upon receipt of the estimate, a member may contact the P.E.R.D. office if they wish clarification of their retirement options or have any relative question. Questions will be answered in writing or at a personal interview.
6. The retirement allowance commences on the first day following the month of termination of employment or the first day of the month in which a properly completed retirement application is received, whichever is later.
7. A retiree will receive his first retirement benefit 60 - 90 days after his termination date, depending on the date the final salary certification is received by the P.E.R.D. from his employer.
8. Any person receiving a service retirement allowance, not as a beneficiary, who is not eligible for membership may return to covered employment for a period not to exceed 60 working days in any fiscal year. The retirement allowance of a retiree so employed will be reduced by \$1 for each \$2 earned in excess of \$3,500 for each calendar year.

IV. DISABILITY RETIREMENT

A. DEFINITION

"Disability" means disability of permanent duration or disability of extended and uncertain duration as determined by the Board on the basis of competent medical opinion.

B. ELIGIBILITY

Any member with 5 or more years of service who is not otherwise eligible for a service retirement may apply for a disability.

C. APPLICATION FOR DISABILITY RETIREMENT

1. Submit a written request for an estimate of retirement benefits.
2. The following information must be provided when requesting an estimate:
 - (a) Last day of employment
 - (b) Birthdate of member
 - (c) Birthdate of beneficiary
 - (d) Brief description of disability
 - (e) Address where you wish the information to be mailed.
3. With this estimate, the member will receive:
 - (a) Disability claim form
 - (b) Attending physician's statement
 - (c) Election of retirement option form
4. This claim may be filed on a member's behalf by any other person, including the employer or the Board, upon its' own motion.
5. When the completed disability claim form and the attending physician's statement are returned to the P.E.R.D. office, the Board will determine whether or not the member will be granted a disability retirement allowance. The attending physician's statement must be completed and submitted **directly to the P.E.R.D. office by the medical doctor.**
6. Claim must be made within 4 months after the member's discontinuance of service, unless the member is continuously disabled from the last date of service to the date the application is filed.
7. The Board will consider a disability claim only after all accumulated sick leave has been used.
8. Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in Section 19-3-104, M.C.A., the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the com-

pensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement. Benefit adjustments granted by the legislature may not be included in calculations required under this section.

D. CANCELLATION OF DISABILITY RETIREMENT MAY OCCUR WHEN:

1. The Board determines the retiree is able to return to his original employment or a similar position, whichever is first open, but the retiree refuses to accept the position after it has been offered.
2. The disabled retiree is re-employed by a contributing agency.
3. The retiree refuses to submit to a medical examination.
4. If a disabled retiree should engage in a gainful occupation for an employer not covered by P.E.R.S., his retirement allowance shall be reduced to an amount which, when added to the outside earnings, shall not exceed the amount of his compensation at the time of his retirement.

V. VESTED RIGHT

Any member terminating employment after completing 5 years or more of creditable service may elect to leave his contributions on deposit and receive a retirement benefit commencing at age 50.

VI. RETIREMENT BENEFIT CALCULATIONS

A. BASIC FORMULA

$\frac{1}{60} \times \text{Number of years service} \times \text{F.A.S.} = \text{monthly allowance}$
 F.A.S. (Final Average Salary) means the 3 highest consecutive years' salary, divided by 36.

B. OPTIONS

1. **Regular Retirement Allowance** provides the maximum retirement allowance payable to the retiree for the remainder of his life. If, at the time of his death, any balance remains when the total retirement benefits paid are subtracted from the total amount of contributions and interest that was on deposit at the time of his retirement, that amount shall be paid to the beneficiary in a lump sum, ending all monthly payments.

*Estimate Table I. (Pg. 18 & 19)

2. **Option Two Retirement Allowance** provides a reduced monthly benefit payable as long as the member or his beneficiary lives.

*Option 2 is Regular Retirement \times Option 2 factor in Table II. (Pg. 20)

3. **Option Three Retirement Allowance** provides that the retiree would receive a lesser monthly allowance than the regular retirement allowance. In the event the retiree precedes the beneficiary in death, the beneficiary would receive $\frac{1}{2}$ of the retiree's monthly allowance.

*Option 3 is Regular Retirement \times Option 3 factor in Table II. (Pg. 20)

EXAMPLES

Male Member	Age 60
Female Beneficiary	Age 55
Service	20 years
Average Salary	\$1,200/month

Regular Retirement Option

20/60 (1,200) = \$400

This amount can also be determined from Table I. (Pg. 18 & 19)

Option #2

Regular Retirement \times Option 2 factor from Table II. (Pg. 20)
 Member 5 years older than beneficiary.

(400) (.8406) = \$336.24

Option #3

Regular Retirement \times Option 3 factor from Table II. (Pg. 20)
 Member 5 years older than beneficiary.

(400) (.9134) = \$365.36

Beneficiary would receive $\frac{1}{2}$ or \$182.68.

Early Retirement (Less than 60 years of age)

Assume member in above example was 57 years old at retirement and his beneficiary was 52.

Member 5 years older than beneficiary.

All amounts shown in above examples must be multiplied by .82. (See table on pg. 19)

Regular Retirement Option (400) (.82) = \$328.00

Option #2 (336.24) (.82) = \$275.72

Option #3 (365.36) (.82) = \$299.60/149.80

Early Retirement (Between 25 and 30 years of service)

The actuarial factors (pg. 19) must also be used when calculating these retirement benefits. The procedure would be the same as the preceding example.

C. COST OF LIVING INCREASES

Benefit increases are provided only through legislative action. The last six legislatures have granted cost of living increases.

VII. DEATH BENEFITS

A. ELIGIBILITY

The Board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following status:

1. While in service.
2. Within 4 months after discontinuance of service but before retirement.
3. While a recipient of a retirement allowance because of disability, if such allowance has been in effect less than 4 months.
4. While disabled, if he has been continuously so disabled from the discontinuance of his service but is not receiving a retirement allowance because of the disability.
5. After retirement and within 30 days from the date of his election of an optional retirement allowance. The election is then void and the death is considered as that of a member before retirement.

B. BENEFICIARY RIGHT TO CHOOSE AN OPTIONAL DEATH BENEFIT

The beneficiary is entitled to:

1. A lump sum death benefit which consists of 1 month's salary for each year of service to a maximum of 6 month's salary, plus the contributions and interest the member had on deposit, including the accumulated interest on these amounts figured to the first day of the month in which the benefit is paid.

OR

2. If a member had a minimum of 5 years of service, the beneficiary, if of legal age, may elect a monthly annuity based on the salary and service of the member.

ADVISE YOUR BENEFICIARY NOW TO CONTACT THE P.E.R.D. OFFICE IN THE EVENT OF YOUR DEATH FOR SURVIVORSHIP INFORMATION.

C. DESIGNATION OF BENEFICIARY

1. The beneficiary may be any living person selected by the member. A written designation of the beneficiary must be filed with the Board. The member has the right to change his beneficiary at any time providing it is in writing and in accordance with the rules of the Board.

2. If no living beneficiary is named, the estate of the member becomes the beneficiary.

3. If no probate of the estate is in order, except for the amount due from the retirement system, all amounts due, including allowances accrued but not received prior to death, shall be paid directly to the next of kin or guardian of the survivor's estate on a share and share alike basis in the following order:

- (a) Husband or wife; or,
- (b) Children; or,
- (c) Father and mother; or,
- (d) Grandchildren; or,
- (e) Brothers and sisters; or,
- (f) Nieces and nephews.

4. If any benefit from the system is payable to a minor, the benefit must be paid to one of the following:

- (a) A surviving parent, if any;
- (b) A parent awarded custody of the minor in a divorce proceeding;
- (c) A custodian designated under Title 72, chapter 26, MCA;
- (d) A guardian appointed pursuant to Title 72, chapter 5, part 2, MCA; or,
- (e) A conservator appointed pursuant to Title 72, chapter 5, part 4, MCA.

The payment shall be in full and complete discharge and acquittance of the Board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

5. Payments will be issued only after persons in any of the above-named groups have furnished the Board with an affidavit on a form supplied by the Board, stating there are no living persons in any groups preceding it and that the estate will not be probated. At the time of payment, the account shall be closed.

BE SURE YOUR DESIGNATED BENEFICIARIES ARE CORRECT.

VIII. TAXES AND CREDIT PROCESS

A. STATE TAXES

The retirement law provides that any benefits accrued or accruing under the provisions of the Retirement System are exempt from any state, county, or municipal tax of the State of Montana.

B. FEDERAL INCOME TAX

All benefits, except those provided by your personal contributions, are subject to federal income tax as ordinary income in the year received. Since your personal contributions have already been taxed, benefits provided by them are not subject to tax.

The Internal Revenue Service has two methods of determining the taxable benefits:

1. Three Year Cost Recovery Rule

If the benefits received in the first three years equal or exceed your cost (total personal contributions), all benefits until they equal your cost are excludable from gross income. All benefits received thereafter are fully taxable as ordinary income. Most members will recover their cost within three years and this method will apply.

2. Regular Annuity Rule

If the benefits received in the first three years are less than your cost, a portion of each benefit received during your lifetime will be excluded from your gross income. If this method applies, you should contact your local Internal Revenue office for their rules and schedules.

Additional tax exemptions may be available for disability benefits. Again, you should contact your local Internal Revenue office for this information.

C. GENERAL INFORMATION

On or before January 31 of each year, you will receive Form W-2P, which gives you the total benefit you have received during the preceding calendar year. This will provide you with the information necessary to calculate when and how much of your benefit will be subject to federal income tax. All retirement benefits should be reported in the first year.

Federal income tax is not automatically withheld from your retirement benefit. Upon authorization by the retired member on the proper form, a specified amount can be withheld from your retirement benefit. These forms are available from the Public Employees' Retirement System upon request.

The preceding information is general and may not apply in your individual case. You should contact your attorney, accountant, or local Internal Revenue office to obtain tax information regarding your benefits.

D. ALLOWANCES EXEMPT FROM EXECUTION

Any retirement allowance or any other benefit payable to a member or beneficiary, as provided by the Public Employees' Retirement System, shall be exempt from attachment, garnishment, execution, or any other process whatsoever and shall be unassignable, except as specifically provided by the Public Employees' Retirement System Act.

IX. WITHHOLDING OF GROUP INSURANCE PREMIUM FROM RETIREMENT BENEFIT

A retiree that belongs to an employee group insurance plan that provides for retirees to continue participation, may elect to have the premium withheld from their retirement allowance by contacting the payroll clerk at the place of their employment. This provision does not include an individual insurance policy.

TABLE I
ESTIMATED MONTHLY RETIREMENT ALLOWANCE
(Age 60 and Over)

REGULAR RETIREMENT OPTION

FINAL COMPENSATION (ESTIMATE AVERAGE OF 3 HIGHEST YEARS OF SALARY)

Years of Service	500	600	700	800	900	1000	1100	1200	1300	1400	1500	1600	1700	1800	1900	2000
-18- 5	\$ 41	\$ 50	\$ 58	\$ 66	\$ 75	\$ 83	\$ 91	\$100	\$108	\$116	\$125	\$133	\$141	\$150	\$158	\$ 166
6	50	60	70	80	90	100	110	120	130	140	150	160	170	180	190	200
7	58	70	81	93	105	116	128	140	151	163	175	186	198	210	221	233
8	66	80	93	106	120	133	146	160	173	186	200	213	226	240	253	266
9	75	90	105	120	135	150	165	180	195	210	225	240	255	270	285	300
10	83	100	116	133	150	166	183	200	216	233	250	266	283	300	316	333
11	91	110	128	146	165	183	201	220	238	256	275	293	311	330	348	366
12	100	120	140	160	180	200	220	240	260	280	300	320	340	360	380	400
13	108	130	151	173	195	216	238	260	281	303	325	346	368	390	411	433
14	116	140	163	186	210	233	256	280	303	326	350	373	396	420	443	466
15	125	150	175	200	225	250	275	300	325	350	375	400	425	450	475	500
16	133	160	186	213	240	266	293	320	346	373	400	426	453	480	506	533
17	141	170	198	226	255	283	311	340	368	396	425	453	481	510	538	566
18	150	180	210	240	270	300	330	360	390	420	450	480	510	540	570	600
19	158	190	221	253	285	316	348	380	411	443	475	506	538	570	601	633
<hr/>																
-19- 20	166	200	233	266	300	333	366	400	433	466	500	533	566	600	633	666
21	175	210	245	280	315	350	385	420	455	490	525	560	595	630	665	700
22	183	220	256	293	330	366	403	440	476	513	550	586	623	660	696	733
23	191	230	268	306	345	383	421	460	498	536	575	613	651	690	728	766
24	200	240	280	320	360	400	440	480	520	560	600	640	680	720	760	800
25	208	250	291	333	375	416	458	500	541	583	625	666	708	750	791	833
26	216	260	303	346	390	433	476	520	563	606	650	693	736	780	823	866
27	225	270	315	360	405	450	495	540	585	630	675	720	765	810	855	900
28	233	280	326	373	420	466	513	560	606	653	700	746	793	840	886	933
29	241	290	338	386	435	483	531	580	628	676	725	773	821	870	918	966
30	250	300	350	400	450	500	550	600	650	700	750	800	850	900	950	1000

For retirements between the ages of 50 and 60 or if a member has completed between 25 and 30 years service, apply the following factors to the appropriate monthly allowance shown above.

If eligible for early retirement in both age and service categories, use the factor which provides the larger benefit.

Age	Factors	Age	Factors	Years of Service	Factors
60	1.00	54	.664	30	1.00
59	.94	53	.628	29	.94
58	.88	52	.592	28	.88
57	.82	51	.556	27	.82
56	.76	50	.52	26	.76
55	.70			25	.70

TABLE II
MONTANA PUBLIC EMPLOYEES' RETIREMENT DIVISION
OPTION FACTORS — BASED ON RELATIVE AGES
EFFECTIVE — DECEMBER 7, 1979

Instructions: Multiply the Regular Retirement Benefit
by the applicable factor for Options 2 and 3.

	Age Difference in Years	Factors	
		Option 2	Option 3
Member Older Than Beneficiary	15	.7889	.8820
	14	.7934	.8848
	13	.7981	.8877
	12	.8029	.8907
	11	.8079	.8937
	10	.8130	.8969
	9	.8183	.9000
	8	.8237	.9033
	7	.8292	.9066
	6	.8348	.9100
	5	.8406	.9134
	4	.8464	.9168
	3	.8524	.9203
	2	.8584	.9238
	1	.8645	.9273
	0	.8705	.9308
Member Younger Than Beneficiary	1	.8766	.9343
	2	.8827	.9377
	3	.8888	.9411
	4	.8948	.9445
	5	.9007	.9477
	6	.9065	.9510
	7	.9122	.9541
	8	.9178	.9571
	9	.9232	.9601
	10	.9284	.9629
	11	.9334	.9656
	12	.9382	.9681
	13	.9428	.9705
	14	.9471	.9728
	15	.9513	.9750