

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

February 1, 1983

The twenty first meeting of the Senate State Administration Committee was called to order by Senator Pete Story, Chairman on January 1, 1983 in Room 331 of the State Capitol, Helena, Montana.

ROLL CALL: Roll was called and all present but SENATOR TOWE.

EXECUTIVE SESSION:

The meeting was called for executive action on SENATE BILL 4, APPORTIONMENTS.

SENATOR STORY stated that there's a couple of small things to consider.

1. The "WHEREAS" on line 12 duplicates the "WHEREAS" in the new proposal that the committee has adopted.

MOTION was made TO STRIKE THE ORIGINAL "WHEREAS" by Senator Hammond.

MOTION PASSED.

MOTION WAS MADE by SENATOR HAMMOND TO ACCEPT THE CHET BLAYLOCK OR N.E. PROPOSAL TO BE CONTINUED TO TAKE IN THE AREA SHOWN ON SAID MAP AS IT'S WESTERN EXTREMITY. This will be identified as the Hammond Proposal.

MOTION PASSED.

MOTION TO MOVE THE RESOLUTION AS AMENDED was made by SENATOR HAMMOND.

MOTION PASSED, with Senator Stimatz and Manning voting "no". Senator Towe is absent.

There being no further business on S.R.4 the committee closed on this resolution and instructed the secretary to submit the standing committee report with all attachments.

The meeting now opened for the HEARINGS OF S.B.304, 301, 137 & 148.

CONSIDERATION OF SENATE BILL NO. 304.

"AN ACT TO PROVIDE THAT A PERSON APPOINTED TO A PUBLIC OFFICE WHOSE APPOINTMENT IS SUBJECT TO CONFIRMATION BY THE SENATE MAY SERVE AS A DE JURE OFFICER UPON APPOINTMENT, NOTWITHSTANDING THAT THE APPOINTMENT HAS NOT YET BEEN CONFIRMED; AMENDING.."

SENATOR BLAYLOCK introduced this bill and submitted the attached amendments shown as EXHIBIT 1.

This bill does not in anyway lessen the powers of the Senate but it is intended that when the new governor takes over, whoever and whatever party, he or she will have the right to put these people in and they will serve in a de jure capacity until they are confirmed by the Senate in the next session.

PROPONENTS:

MONA JAMISON, Chief Legal Counsel, Office of the Governor, presented a summary of her testimony shown as EXHIBIT 2. She said what happens is, when a governor takes over, he still has a quasi-judicial board who were appointed at the beginning of this term and the statute says 'board members terms will run concurrently with his. She said that what is awkward about it is that even if the governor takes over at the beginning of his term, he has to appoint the majority of all these quasi-judicial board members and what happens under this case is incumbents from a prior administration have to hold over and continue to discharge the duties until their sucessor is appointed.

This bill guarantees that the encumbent will step down when the governor goes into office.

OPPONENTS: none

QUESTIONS OF THE COMMITTEE:

SENATOR TOWE said that 124 relates to all quasi-judicial boards but what does section 213 relate to.

MONA JAMISON said that section does not relate to quasi-judicial boards. The two provisions that you see there are existing law right now.

SENATOR MARBUT brought up the question that if the governor elect took office and did not make appointments until after the senate had met then that vacancy would in fact exist except for the hold-over.

MONA JAMISON said that what happens is a way of making sure you always have a full board but even with the problems that exist now, everyone is suppose to show up.

SENATOR MARBUT said, then therefore, the encumbent would have to hold over until the next legislature is that right.

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MONA JAMISON confirmed that they would hold over until day one of the next session when the senate met and confirmed the new board members or appointees.

SENATOR MARBUT stated his point by saying, that the way the law stands the appointee would not be confirmed until the next legislative session and would serve 18 months before being confirmed. He stated that maybe not now but years down the line if an appointee was decided against by the governor before he was confirmed he could be out.

MONA JAMISON said, if a term expires while the senate is still in session, the appointment must be made and presented to the senate for confirmation prior to their adjournment.

SENATOR BLAYLOCK stated there are so many appointments and there is a tremendous force to get people in place on time. He stated that his feeling is that the governor has his perfect right.

SENATOR STORY stated that there is a good reason for not putting the amendment in. He said that he would rather have a good appointment rather than a rushed appointment.

SENATOR BLAYLOCK asked the committee to hold S.B. 134.

The hearing closed on S.B.134.

CONSIDERATION OF SENATE BILL NO. 301.

"AN ACT INCREASING THE AMOUNT OF MONEY A DISABLED TEACHER MAY EARN WITHOUT RECEIVING A REDUCTION IN HIS PENSION UNDER THE TEACHERS' RETIREMENT SYSTEM: AMENDING SECTION..."

SENATOR HAMMOND introduced this bill by saying that this is a bill that allows a teacher who has had a medical retirement and now proving to be employable in some other area. At the present time they could only receive salary added to their medium salary that they received prior to their retirement.

PROPOSERS:

BOB JOHNSON, executive secretary of teachers retirement system presented a letter of testimony shown as EXHIBIT 3.

OPPOSERS: None

QUESTIONS OF THE COMMITTEE:

Question was asked about how this is applied for.

BOB JOHNSON said that they must be declared mentally or physically incapacitated for the further performance of their duties and they must submit to the annual disability review for the first five years of their retirement and then every three years thereafter until they reach the age of 60. Each year they have to send in an earnings statement of how much they have made and if they run in excess of their limit we are required to decrease their benefit dollar for dollar that is in excess of the vocation. They think this bill will allow them the greater of the difference of their annual benefit and their final average salary.

SENATOR TOWE ASKED for an example when quoting the figures \$6300 and \$2700 or something like that.

BOB JOHNSON said for an example a man retiring in 1973 with an average salary of \$10,600 and an annual benefit of \$2700, he therefore could earn \$7900. Seven years later he would still be limited to \$7900.

SENATOR TOWE SAID now lets go through this new bill and see how these things would change.

BOB JOHNSON said, let's assume a medium salary person retired during the preceeding year was \$18,000, his annual benefit was \$2700. He then would be able to earn the difference between the \$18,000 and \$2700.

SENATOR STORY confirmed the benefits were not higher but their earning capacity was.

SENATOR HAMMOND CLOSED by saying that he was aware of such a case where the teacher had had a nervous breakdown.

CONSIDERATION OF SENATE BILL 302:

"AN ACT TO PROVIDE THAT THE ACCUMULATED CONTRIBUTIONS OF A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM BE TRANSFERRED FROM THE ANNUITY SAVINGS FUND TO THE PENSION ACCUMULATION FUND, RATHER THAN THE ANNUITY RESERVE FUND, UPON HIS RETIREMENT; AMENDING SECTION...."

SENATOR HAMMOND introduced this bill and asked Mr. Johnson to explain.

BOB JOHNSON, executive secretary of the teachers retirement system, said that this is a house cleaning bill and is to correct what should have been done in the 1981 session.

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The meeting closed on the hearing of S.B.302.

EXECUTIVE SESSION:

SENATOR STIMATZ MOVED that SENATE BILL 302 DO PASS.
MOTION PASSED.

SENATOR MANNING MOVED SENATE BILL 301 DO PASS.
MOTION PASSED.

Time allowing, they worked on the Blaylock bill

SENATOR TOWE MOVED that S.B.304 DO PASS with an immediate effective date, both to the title and body.
MOTION PASSED.

SENATOR STIMATZ questioned the word "qualified" on page 4, line 6 although, on page 2 line 6 it says "acquainted".

DAVE COGLEY, staff attorney, stated that the word "qualified" means many things other than qualification.

SENATOR TOWE stated that there is an oath.

SENATOR STORY asked if they had a preference of S.B.304 over 134.

SENATOR TOWE MOVED TO TABLE 134.
MOTION PASSED..without action

Questions of the Committee:

SENATOR MARBUT asked why there were two bills and SENATOR STORY said that they are not responsible to each other.

SENATOR STORY selected SENATOR MARBUT AS A COMMITTEE OF ONE to work with the staff attorney, Dave Cogley on S.B.304 & 134 to compare the two.

SENATOR MARBUT said that he believes the regular session should appoint the board.

SENATOR STORY submitted SENATE BILL 137 to the committee as a bill that has been voted on but that he was not sure that it was right.

IT WAS MOVED and PASSED to accept the submitted language of the amendments as presented in EXHIBIT 4.

SENATOR TOWE MOVED that SENATE BILL 137 DO PASS AS AMENDED.
MOTION PASSED.


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SENATE BILL 148 has been passed and is out of committee but needs a statement of intent, EXHIBIT 5.

SENATOR TVEIT MOVED THE STATEMENT OF INTENT TO S.B.148.
MOTION PASSED.

Senator Towe remarked that there should have been a statement of intent attached to his S.B.118.

There being no further business the meeting adjourned at 11:30 a.m.



CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2-1-83

NAME	PRESENT	ABSENT	EXCUSED	SENATE SEAT #
SENATOR PETE STORY, Chairman	X			45
SENATOR H. W. HAMMOND, Vice Ch	X			34
SENATOR REED MARBUT	X			44
SENATOR LARRY TVEIT	X			33
SENATOR R. MANNING	X			48
SENATOR LAWRENCE STIMATZ	X			7
SENATOR THOMAS TOWE			X	26

Each day attach to minutes.

1. Title , line 10

Following : "MCA"

Insert : " ; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE "

2. Page 4

Following : line 13

Insert : " Section 3. Effective date. This
act is effective on passage and approval. "

3. Page 4 , line 8

Strike : "may"

Insert : "shall"

Senate-State Administration
S.B. 304, Summary of Testimony

1. Good Government Bill - Bill clears up confusion regarding when a new appointee can take office.
2. Bill covers appointees to quasi-judicial boards in Section 1 and appointees to other boards requiring Senate confirmation in Section 2. These "other" boards include the professional and occupational licensing boards.
3. Problem with current law is that an incumbent quasi-judicial board member must continue to discharge his duties (hold-over) until his successor is "qualified". Qualified has been interpreted by the Montana Supreme Court to mean confirmed.

The practical effect of this rule of law is that often times an incumbent who has been informed that he will not be reappointed, loses interest, and fails to attend the board meetings where a majority of the membership is necessary in order for the board to adopt any resolution, motion or other decision.

4. This bill would require an incumbent of any board to "hold-over" until his successor is appointed. Senate confirmation would still be required.

This bill would make certain that the philosophy behind Section 2-15-124, MCA (quasi-judicial board), is actually implemented. Since a governor is authorized to appoint a majority of board members to terms concurrent with his, this bill would allow his appointees to take office immediately upon appointment.

5. Simply stated, when a term expires, a new appointee to any board can serve.



MONA JAMISON
Chief Legal Counsel
Office of the Governor

EXHIBIT 3
State Administration
The Teachers' Retirement System 2/1-83



State of Montana
1500 Sixth Ave. Phone 406-449-3134
HELENA, MONTANA 59620

MEMBERS OF THE BOARD

HAROLD WENAAS, Great Falls, Chairman
JAMES E. BURKE, Livingston
J. THOMAS RYAN, Helena
J. WILLIAM KEARNS, Jr., Townsend
LEROY A. CORBIN, Butte
EDWARD F. ARGENBRIGHT
State Supt. of Public Instruction, Ex Officio

F. ROBERT JOHNSON, Executive Secretary
MARY L. ANDRIDGE, Ass't Executive Secretary

February 1, 1983

The Honorable Pete Story, Chairman
Senate State Administration Committee
Capitol Station
Helena, MT 59620

Dear Senator Story:

Senate Bill 301 is a bill to change the amount a disabled member can earn after his retirement from teaching. The problem with the current law is that it fails to take into account inflationary factors during the years a member is drawing disability benefits. In order to qualify for disability benefits, a member must be declared mentally or physically incapacitated for the further performance of his/her duties, and that such illness is likely to be permanent. A member must submit to an annual disability review for the first 5 years of his retirement and every 3 years thereafter until age 60.

Currently, a disabled member is allowed to earn the difference between their average final compensation at the time of retirement and their annual benefit. The average final compensation is the average of the 3 highest consecutive years of employment.

The inequity is with someone who may have retired 7 or 8 years ago at a salary much lower than current retirees. We had an example of a member who retired in 1973 at an average salary of \$10,600.00 and an annual benefit of \$2,700.00. He, therefore, could earn \$7,900.00. Seven years later he was still limited to earnings of \$7,900.00.

The proposed law would allow the member to earn the greater of the difference between his average final compensation and annual benefit or the median salary of those members retired during the preceding fiscal year and the annual benefit. The proposal would apply to earnings in employment outside the educational field. If he was able to return to teaching, his benefit would cease since he would no longer be considered disabled from teaching.

Sincerely,

Handwritten signature of F. Robert Johnson in cursive.

F. Robert Johnson

Executive Secretary

AMENDMENT TO SENATE BILL 137

Page 1, line 25

Following: "governor".

Insert: " suggestions from legislators and legislative committees, staff recommendations,"

20 Page 2, line 6

Following: "bill"

Insert: "and requiring ^{a performance audit} ~~reviews~~ of each agency and program under the provisions of Title 2, chapter 8 within the time specified and prior to the

STATEMENT OF INTENT

EXHIBIT 5
State Administration
Feb. 1, 1983

SENATE BILL 148

SENATE STATE ADMINISTRATION COMMITTEE

A statement of intent is required for Senate Bill 148 because it grants the Board of Oil and Gas Conservation authority to fix an assessment against each barrel of crude petroleum originally produced.

The Legislature intends that the amount assessed be sufficient to provide funds to defray the expenses of enforcing the oil and gas laws and the operations of the board. The assessment shall not be so high as to generate revenue in excess of expenses.

STANDING COMMITTEE REPORT

February 1

1983

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE Bill No. 137

Respectfully report as follows: That SENATE Bill No. 137

Introduced bill be amended as follows:

1. Page 1, line 25.
Following: "governor"
Insert: "suggestions from legislators and legislative committees, staff recommendations,"
2. Page 2, line 6.
Following: "bill"
Insert: "and requiring a performance audit of each agency and program under the provisions of the Title 2, chapter 8 within the time specified and prior to termination"

AND, AS SO AMENDED

DO PASS

J.C.

STANDING COMMITTEE REPORT

February 1 19 83

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE Bill No. 148

Respectfully report as follows: That SENATE Bill No. 148

Statement of Intent attached:

DO PASS

Handwritten initials

STANDING COMMITTEE REPORT

February 1 19 83

PRESIDENT

MR.

STATE ADMINISTRATION

We, your committee on

Statement of Intent, SENATE

having had under consideration Bill No. 148

Statement of Intent, SENATE

Respectfully report as follows: That Bill No. 148
be adopted.

STATEMENT OF INTENT RE: SB 148

A statement of intent is required for Senate Bill 148 because it grants the Board of Oil and Gas Conservation authority to fix an assessment against each barrel of crude petroleum originally produced.

The Legislature intends that the amount assessed be sufficient to provide funds to defray the expenses of enforcing the oil and gas laws and the operations of the board. The assessment shall not be so high as to generate revenue in excess of expenses.

X DGRASSE X

.....
Chairman.

11.6

STANDING COMMITTEE REPORT

FEBRUARY 2

83

19

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

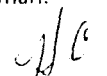
having had under consideration SENATE RESOLUTION ~~Bill~~ No. 4

Respectfully report as follows: That SENATE RESOLUTION ~~Bill~~ No. 4

Introduced bill, be amended as follows:

1. Page 1.
Following: line 11
Strike: lines 12 through 19 in
their entirety.
2. Page 1, line 24. (ITEMS A, B, C, D, & E
Strike: "." ATTACHED)
Insert: "; and"
3. Page 1
Following: line 24
Insert: attached preamble, A (1) through (3)
4. Page 2, line 3
Strike: lines 3 through 13 in
their entirety.
Insert: attached resolutions, A (4)

~~DO PASS~~ And, as so amended
DO PASS



ATTACHMENTS WITH STANDING COMMITTEE RPT

- A. PREAMBLE 1,2,3 pages
- " RESOLUTION 4th page
- B RECOMMENDATIONS 3 pages + maps (4)
- C ATTORNEY GENERAL OPINION TO
SENATOR STAN STEPHENS dated 21,1983
3 Pages
- D SENATE JOURNAL FOR 3rd LEG DAY
- E MINUTES OF MEETING OF STATE ADMIN.
COMMITTEE OF 1-20-83 at 10:30 a.m.