

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 9, 1983

The forty-third meeting of the Senate State Administration Committee was called to order by Senator Pete Story, Chairman, on March 9, 1983 in room 331 of the State Capitol Building, Helena, Montana at 10:00 a.m.

ROLL CALL: All members of the committee were present.

The meeting was called to hear House Bills 626, 140, 514, 873 and 721.

CONSIDERATION OF HOUSE BILL 626:

"AN ACT REVISING THE EXCESS UNFUNDED LIABILITY PROVISIONS OF THE MUNICIPAL POLICE OFFICERS; RETIREMENT ACT AND THE FIRE-FIGHTERS' UNIFIED RETIREMENT ACT; AMENDING..."

REPRESENTATIVE BARDANOUE, District 6, introduced this bill by saying that this is the first time they have brought in a firefighters' bill that is a relief bill. This actually provides relief to the cities that had large involved liability.

A few years ago when they put it under sound fiscal management and some of the cities had been balancing their budgets by shortchanging the payments into the retirement system therefore some of the cities were far in arrears as far as paying in their share for employees. Thus, they calculated the arrears and assessed the amount that was really back pay that was due the retirement system. EXHIBIT 1 was presented the committee which is the excess unfunded liability payments and credits of some cities and towns. He said that an annual assessment was put on the cities. It was hard for the cities that were really tight. Actually they had a couple of towns in good shape; Glasgow and Glendive put in more than their share. Livingston was right on line. Because of good earnings and management, the PERS felt the cities can be put on a lower base payment and all cities can be treated alike and they will all be on the same basis and will not have to pay a penalty after ten years. This is a substantial relief bill of \$222,000 a year.

PROPOSERS:

LARRY NACHTSHEIM, Department of Administration, submitted EXHIBIT 2 as his testimony. He said that this is a change of philosophy. This bill says lets change it and the extra money the state put in was the money for the cities that the state put in.

RAY BLEHM, Montana State Firemens' Association, asked to be recorded as a proponent of this bill.

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MIKE WALKER, Montana State Council of Professional Fire Fighters, is to be shown as a proponent.

GEORGE BOUSLEMAN, Urban Coalition and representing Montana League of Cities and Towns supported H.B.626.

OPPONENTS: None

QUESTIONS OF THE COMMITTEE:

SENATOR TOWE asked what section 3 does. It says the administrator shall pay a sum over a period of time...what period of time? Also, on page 6, lines 7 and 8 we have determined what the unfunded liability is.

LARRY NACHTSHEIM said that at the current time they do not have one, that is why there is different numbers in different savings.

SENATOR TOWE questioned the policemen now in existence and the minimum amount that was required was the amount of the interest, now when you cut it down here it looks like we are saying they have to pay the interest plus the 25%.

LARRY NACHTSHEIM said "no". When they took them over they saved the unfunded liability of about \$11 million, that was in 1976 and by 1980 the excess unfunded liability was down to \$26 million. Last year it was down to \$560,000.

SENATOR TOWE said we got it down from \$11 million to \$500,000, why are we making anything? What does the 25% relate to and what is the interest on?

The answer is that it is 25% of the 1983 unfunded liability spread out over 10 years.

REPRESENTATIVE BARDANOUVE, closed by saying that Senator Towe's question may have brought out what you are confused about. The liability is there and this bill gives them the ability to build up their reserve and wipe out their deficiency.

CONSIDERATION OF HOUSE BILL 140:

"AN ACT ELIMINATING THE MANDATORY RETIREMENT AGE FOR A MEMBER OF TEACHERS' RETIREMENT SYSTEM AND REQUIRING A TEACHER INITIALLY EMPLOYED BY THE MONTANA UNIVERSITY SYSTEM AFTER AGE 70 TO BECOME A MEMBER OF THE RETIREMENT SYSTEM; AMENDING SECTION..."

REPRESENTATIVE EUDAILY, District 100, introduced this bill saying that this is a housekeeping bill that is an important piece of legislation. It appears that two sections of the

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codes dealing with mandatory retirement age could possibly invite law suits if corrective legislation is not passed. H.B.140 will correct this. SEE EXHIBIT 3.

PROPOSERS:

BOB JOHNSON with the teachers' retirement system said that the law says that a teacher at the age of 70 must be retired September 1st following his 70th birthday. This has been on the books since the system was constructed in 1937 because they could not be certified after the age 70. Opinion No. 54 under the attorney general dated February 25, 1982 rules because of the human rights act prohibiting age discrimination, this would have the same effect. This bill adds no cost to the system.

OPPOSERS: None

QUESTIONS OF THE COMMITTEE:

SENATOR MANNING asked how many teachers are over 70.

BOB JOHNSON said that he does not know.

ACTION ON HOUSE BILL 140:

SENATOR TOWE MOVED H.B.140 BE CONCURRED IN.

MOTION PASSED. Senator Manning will carry the bill.

CONSIDERATION OF HOUSE BILL 514:

"AN ACT PROHIBITING A PUBLIC EMPLOYEE FROM ACCRUING ANNUAL LEAVE OR SICK LEAVE DURING ANY PERIOD OF LEAVE WITHOUT PAY; AMENDING SECTIONS ..."

REPRESENTATIVE GARY SPAETH, District 71, introduced H.B.140 and said that it does what it says, it eliminates the opportunity of a person who takes leave without pay for less than 15 days to continue to accrue sick and vacation time. There are two reasons for this introduction, one is fairness and the other is administrative. He said when he first looked at this he was a state employee and his theory was, "leave without pay with no benefits". He had no problem in introducing this bill but found it to be a little more controversial than he thought it would be. Some look at it as an anti-state employee bill.

PROPOSERS

MARK CRESS, Department of Administration and representing personnel network, a group that meets regarding problem areas.

He said that 15 days without pay language has caused some

problems as to who is eligible for annual leave and sick leave. The language has left the rule fuzzy. There is no effective limit as to the amount you receive, 15 1/2 days off would meet the language. It is also for a person who takes their 15 days off, comes back to work and takes off again. Some feel this language is permissive. He stated that there are not many that take leave without pay. The majority take a day or less; 50% are women and 40% are men. In a full 15 days they can earn 7 days of annual leave and 5 1/2 hours of sick leave. He said that the problem is, even if there is no one that does take it, it still creates a problem as to the rules and how to deal with it.

OPPONENTS:

TOM SCHNEIDER, Executive Director of Montana Employment Association, said that the persons most affected are the young fathers and mothers that are normally single. He said that there are many union contracts that determine this and some states. He said that he feels the biggest problem and the reason the law was written in the first place and things have not changed that much, is that it was written for the ease of the payroll clerks. SEE EXHIBIT 4.

EILEEN ROBBINS, Montana Nurses' Association, stated that they oppose this bill for the reasons mentioned in the testimony submitted in EXHIBIT 5. She submitted that all unpaid leave must have the approval of the employer.

BOB WAHLMARK, Columbia Falls, presented a question. The sponsor of the bill said that these people were not employees when they are not working. Does that affect their hospital insurance and their life insurance, if so they will come in and raise all kinds of cane.

REPRESENTATIVE SPAETH said that this would not affect insurance.

MARK CRESS said that they get an entirely different view of the bill. He said that the impact of the bill is not to ease putting it on the computer. The decision is to decide whether this person accrues benefits or not. The person that has to make that decision is the payroll clerk.

SENATOR MARBUT questioned the union contracts and are they the result of the law or is the law the result of the contract.

MR. SCHNEIDER said he supposed it was the result of the law. He said that most of the contracts for the next two years have been negotiated.

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REPRESENTATIVE SPAETH stated this law is not permissive, it is mandatory. He said when it was brought up in the House an opponent stated that "it is hard to argue about something for nothing" and that is true. He said regarding the statement about hours of work..there are two kinds, overtime and those that receive comp time. Regarding the nurses feelings, he said that he has talked to several nurses, one being a relative that works for the county who said that she could see the fairness of this bill. He urged the passage of H.B.514.

The hearing closed on H.B.514.

CONSIDERATION OF HOUSE BILL 873:

"AN ACT CREATING, WITHIN THE GOVERNOR'S OFFICE, AN OFFICE OF AGING."

REPRESENTATIVE JAN BROWN, District 32, presented this bill and offered the floor to Mr. Wilkison.

PROPOSERS:

WADE WILKISON, LISCA, testified to the committee and presented written testimony for the record shown as EXHIBIT 6. It was also his proposal to amend section 1, line 22 shown as EXHIBIT 7.

BOB WAHLMARK of Columbia Falls and representing LISCA, testified in support of H.B.873.

DOM RYAN, Montana Senior Citizens Association, presented testimony as shown in EXHIBIT 8.

WALTER TAYLOR stated his support for H.B.873.

ROBERTA NUTTING, representing senior citizens, Eureka, Montana, went on record as supporting H.B.873. She said that it is an important step in helping coordination of this jigsaw. Senior citizens should be heard. She said that she feels if senior citizens have a hand in choosing who will be in control then the people up here will hear less complaining from them.

JUDITH CARLSON, Deputy Director of SRS testified in favor of H.B.873.

LENORE F. TALIAFERRO, Long Term Care Ombudsman submitted testimony, EXHIBIT 9, in support of this bill.

JANE ANDERSON of Anaconda also stated her support.

DOUG OLSON, attorney for the Senior Citizens Advocacy stated his support of H.B.873 and said that the bill as it exists does have some problems that can be resolved. See EXHIBIT 9b.

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OPPONENTS: None

QUESTIONS OF THE COMMITTEE:

SENATOR MARBUT presented amendments to this bill as EXHIBIT 10.

SENATOR TOWE questioned the language of the 7 members, none of whom may be less than 60 years of age.

CHAIRMAN STORY stated that he would put this bill in subcommittee consisting of Senators Towe and Marbut.

MR. WILKINSON stated this is not a new issue and there is a broad concern that limiting it to 7 members might be detrimental. The thrust of this is to look at other methods in the U.S. Some under 60 could provide the best job for this.

JANE ANDERSON said that the area agencies were badly affected and feel this would be the first step.

The hearing closed on H.B.873. (EXHIBIT 11 submits amendments presented from Charlie Briggs to Senator Marbut)

CONSIDERATION OF HOUSE BILL 721:

"AN ACT TO CREATE A MONTANA HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH INSTITUTIONS TO CONSTRUCT OR RENOVATE HEALTH FACILITIES; AND EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

REPRESENTATIVE WALLIN, District 76, presented H.B.721 and walked the committee through the bill by sections. His testimony was taken from EXHIBIT 12.

PROPONENTS:

KEN RUTLEDGE of the Montana Hospital Association handed the committee material to read, EXHIBIT 13. Mr. Rutledge presented an amendment to the bill shown as EXHIBIT 14. He stated that the first amendment was for the bonding benefit. He also stated that expertise is very important in this bill. He said that they modeled their legislation after Idaho and Colorado and they had to make some modification to make it fit our statutes. He called attention to the second amendment they are proposing on page 21, line 5, they will see they want to change it from health facility to health institution being financed. The definition of health facility is any of the projects that can be undertaken, health institution is defined as that health care institution that helps in sponsoring the facility projects. The problem is the bonding interpretation.

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QUESTIONS OF THE COMMITTEE:

SENATOR TOWE questioned KEN RUTLEDGE regarding his amendments, and asked him to look at page 14, section 13 and section 12. and questioned the change facility to institution on page 21 and on page 14 it says facility.

KEN RUTLEDGE said that they looked at that this morning and did not feel the change was necessary.

DOUG MITCHELL with the Colorado Health Facility, said that the problem on page 14 is covered by the explicitness of the definition on page 21 in that it is shown in upper case and page 14 language is in the lower case.

SENATOR TOWE stated that is not the rule in Montana.

It was the opinion that this then should be corrected.

SENATOR TOWE asked who put in the amendment.

It was said that Representative Rameriz had some concern and they felt it would not take away from the bill.

SENATOR TOWE asked why the definition of health facility is being changed so dramatically.

KEN RUTLEDGE said that it is not dramatic. He said that the original bill was about three times larger and they reduced it. The original bill was drafted by bonding attorneys.

SENATOR MARBUT questioned page 8 and 9, investment of funds, bonds and notes.

SENATOR STIMATZ said that when they are talking authority they are talking institutions.

SENATOR MARBUT questioned the limitation of investments.

MR. MITCHELL says that there are laws that speak to this.

SENATOR MARBUT questioned page 10, line 5 through 17 and the broad area of authority of assets, then it says without public bidding.

MR. MITCHELL said it speaks to nature of security.

SENATOR MARBUT said, then on page 12 you have confusing language.

MR. MITCHELL said it is the intent to elaborate on different

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mechanisms to fit the different types of hospitals. It is to provide that when the board makes its last payment the said property will be released back to the owner.

The flexibility in the bill was discussed and it was stated that the bonding committee likes to have as much flexibility as possible.

SENATOR MARBUT questioned the "effective date".

The committee was told that this was directed to the Bozeman project.

The hearing closed on H.B.721.

The meeting adjourned at 11:55 a.m.

A handwritten signature in cursive script, appearing to read "Pete Story", is written over a horizontal line. The signature is fluid and stylized, with a large initial "P" and "S".

CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/9/83

| ----- | | | | SENATE |
|--------------------------------|---------|--------|---------|--------|
| | | | | SEAT # |
| NAME | PRESENT | ABSENT | EXCUSED | |
| 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 |
| SENATOR GARY LEE | X | | | |
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Each day attach to minutes.

DATE March 9, 1983

COMMITTEE ON

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One | |
|-------------------|--|--------|-----------|--------|
| | | | Support | Oppose |
| Larry Nachtsheim | PRAD | AB26 | ✓ | |
| George Boushman | Urban Coalition | HB626 | ✓ | |
| Walter J. Lofgren | Senior Citizens | 873 | ✓ | |
| Roberta Matthews | Senior Citizens | 873 | ✓ | |
| FRANK JOHNSON | Teachers Retirement | 140 | ✓ | |
| Ray Blehm | MT St Firemen's Assoc | HB 626 | X | |
| Dorey Oloren | Int Seniors' Assoc. Inst | 873 | ✓ | |
| Spaith | HP 71 | 514 | X | |
| Mark Crum | Dept. of Admin | 514 | ✓ | |
| WADE WILKINSON | LISCA | 873 | ✓ | |
| Lenore Talarfeno | Long Term Care Institutions | 873 | ✓ | |
| Tom Ryan | MT Senior Citizens | 873 | ✓ | |
| Mike Warden | MT State Council of Professional Fire Fighters | HB 626 | ✓ | |

(Please leave prepared statement with Secretary)

EXCESS UNFUNDED LIABILITY PAYMENTS & CREDITS HB 626

EXHIBIT 1
State Admin.
3/9/83

February 9, 1983 -- Larry Nachtsheim

| | <u>Current Annual Payments</u> | <u>Proposed 10 Annual Payments</u> |
|-------------|------------------------------------|--|
| Anaconda | \$14,809 | \$ 2,864 |
| Billings | 43,435 | 18,135 |
| Bozeman | -0- | -0- |
| Butte | 60,608 | 42,454 |
| Glasgow | 12% CR | 12% -0- |
| Glendive | 11% CR | 11% -0- |
| Great Falls | 48,792 | 10,880 |
| Havre | 17,343 | -0- |
| Helena | 30,964 | 5,625 |
| Kalispell | 7,783 | -0- |
| Lewistown | 11,894 | -0- |
| Livingston | 1% | 1% -0- |
| Miles City | 23,086 | 9,743 |
| Missoula | 58,320 | 5,666 |
| Plains | 8% | -0- |
| TOTALS | <u>\$317,034</u> | <u>\$95,367</u> |

RESUME OF PROPOSED LEGISLATION

EXCESS UNFUNDED LIABILITY

MUNICIPAL POLICE OFFICERS RETIREMENT SYSTEM

EXHIBIT 2
State Admin.

1-4-83 3/9/83

Larry Nachtsheim



CURRENTLY

The purpose of this bill is to change the philosophy currently in operation in the police officers system. While the administration of the system has been consolidated there remains in effect 15 separate retirement systems. All actuarial valuations are prepared showing the assets and liabilities of each city creating high volatility on a city by city basis which is really not apparent if the system is viewed as a whole.

While the 1982 valuation shows the total system excess unfunded liability of \$560,000, the system is still assessing by law excess unfunded liability payments based on the 1980 valuation when the total excess unfunded liability was \$4,610,803.

While the overall funding of the system has improved, ten cities are making large unfunded liability payments, four (4) cities are receiving credits and one (1) city has neither.

There are different agreements between the cities making unfunded liability payments. In 1980 each of these cities were given the option of making level payments over 20 or 40 years or a percentage of payroll over 40 years. At least one city elected each option. The cities with the largest unfunded liabilities chose a percentage of payroll because in most instances they could not afford level payments. They simply pushed the problem off to future years and their payments have been slowly increasing with the payroll and by 1990 will become possibly unfundable.

PROPOSED LEGISLATION

This suggested change in philosophy is primarily the concept that the increased state funding was not granted on a city by city basis but rather to the system as a whole to assist those cities with the greatest funding problems while also recognizing the funding situation of adequately funded cities.

Under the proposed legislation there would be a discontinuance of separate city valuations; the system would only be valued as a whole. This proposal includes a ten year period of amortizing credits and debits. Credits would be reduced over ten years. One city that was in a positive position in 1977 would receive approximately its total credits with two others receiving slightly more.

The excess unfunded liability payments would be made over a ten year period based on 25% of the unfunded liability for each city as of July 1, 1982 and would be level. Each of these cities would receive a reduction in their current payments; the cities with the larger payments receiving smaller reductions but all these cities would receive the security of 10 years of level payments.

At the end of ten years this system should be operating on the same basis as PERS with the larger group providing insurance for individual cities. A disability in a city with ten (10) police officers would not cause a gyrations in the valuation of that city as the entire system would have the required funding to absorb the additional cost and the individual city would not be valued indepen-

dently from the group.

This proposal was based on recommendations of the consulting actuary who has reviewed the proposal in the various stages of development.

FIREFIGHTERS AMENDMENT

The delay of two years in implementing a city by city valuation of this system is recommended primarily to take advantage of the new employer rates that go into effect on July 1, 1983 of 18% of salary by city and state and resulting in an increase in investment earnings, with the anticipation that the two additional years will provide some of the positive results that occurred in the police system and provide the PERD additional time to avoid the excess unfunded liability problems of the police system. The funding position of this system has improved without the additional contribution rates in effect and the delay of two years will not create any major funding problems in this system.

GENERAL

This proposal while not a bonanza will relieve some of the current funding problems apparent in our cities and permit them to use anticipated revenues for other required expenditures during these difficult economic times. At the same time this proposal will reduce some of the PERD administrative problems inherent in individual city valuations. In the long run this will stabilize the police and fire systems. The PERD will continue to monitor all proposed benefit enhancements to ascertain the additional funding requirements and advise the legislation accordingly.

EXHIBIT 4
State Admin

NAME

BILL NO.

HB 514^{3/9/83}

ADDRESS

DATE

WHOM DO YOU REPRESENT

SUPPORT

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Major effect will be on single mothers - Leave mainly for children illness.

2. Some employees will still have vacation - S.S. accrued through Contract provisions

3. Cost of payroll changes for non computerized payroll systems will offset any savings. Covers Local Government.

1 day - 1st Month - 7.955

1 day - 2nd Month - 7.01

Re Calculate

H - Fed - FICA

MCA, and include the following: "Any person may be certified as a teacher when he satisfies the following qualifications: (a) He is 18 years of age or older but is not more than 70 years of age." It is clear that under the law the superintendent may not issue or renew a certificate for a teacher who has reached the age of 70.

The decision in Dolan involved statutes prohibiting discrimination based on age by a school district as a public employer. The Supreme Court held that the provisions of the Human Rights Act prohibiting discrimination in employment, section 49-2-303, MCA, and discrimination by a public employer, section 49-3-201, MCA, repeal by implication any prior legislation establishing or authorizing mandatory teacher retirement policies based solely on age as an arbitrary limitation. Your inquiry is somewhat different than the one decided by the court in Dolan. Section 20-4-104(1), MCA, does not deal directly with employment. Rather, it provides the qualifications for a teaching certificate, which is a privilege or license granted by the State. The hiring practice statutes relied on by the court in Dolan therefore do not control. However, analogous statutes prohibit the State from denying any person "advantages, or privileges because of...age,...unless based on reasonable grounds." § 49-2-308(1), MCA. Further, section 49-3-204, MCA, provides that "[n]o state or local governmental agency may grant, deny, or revoke the license or charter of a person on the grounds of...age..." Under Dolan, these enactments must be held to supersede prior inconsistent legislation.

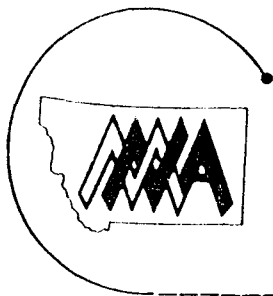
Dolan held that age alone is not a valid predictor of job performance for teachers. 636 P.2d at 830. It follows that age alone may not serve as "reasonable grounds" under section 49-2-308, MCA, to deny a teacher the certificate needed to secure a teaching job. This is especially true in light of the legislative finding in section 20-4-101, MCA, that certification is required to assure "quality education" and "maintenance of professional standards." The court's conclusion in Dolan was apparently one of fact based on the expert testimony presented in that case. 636 P.2d at 827. I express no opinion as to the factual issue of the validity of age as a predictor of performance in any other job or profession.

THEREFORE, IT IS MY OPINION:

The age limitation established in section 20-4-104(1)(a), MCA, as a qualification for certification to teach is repealed by implication by sections 49-2-308 and 49-3-204, MCA.

Very truly yours,

MARK GREENLY



Montana Nurses' Association

EXHIBIT 5
State Admin
3/9/83

2001 ELEVENTH AVENUE

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

TESTIMONY HB 514

The Montana Nurses' Association opposes HB 514 which prohibit a public employee from accruing annual leave or sick leave during any period of leave without pay.

HB 514 could adversely affect a number of employees who might at some time in their employment history with the State of Montana need to take a day or two off without pay. If an employee has used all accumulated sick leave and annual leave, and takes a leave without pay, their accrual of sick leave and annual leave will be decreased.

A leave without pay is not a one-sided option of an employee. All unpaid leaves must have prior approval of the State of Montana, through its management personnel. If an employer wishes to grant an unpaid leave to an employee, based on the individual needs of the employee and employer, then I feel that should continue to be allowed, at no disadvantage to the employee in terms of the accrual of annual leave and sick leave. If there is a financial burden to a department of state government, that department may wish to deny particular requests for unpaid leaves. The judgement for such a decision lies with the management.

It has been argued that the accrual of sick time and annual leave should be based only upon hours actually worked. I agree with that if you would amend this bill to allow for the accrual of sick time and annual leave for all hours worked in excess of forty in a work week. To make this law fair, that amendment is necessary.

Respectfully submitted,
Eileen C. Robbins
3/9/83

NAME Eileen Robbins BILL NO. HB 514
ADDRESS Helena DATE 3/9/83
WHOM DO YOU REPRESENT MONTANA LUXES @SSOL
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I HANDED in written testimony & gave
oral presentation.

AFTER EXHIBIT 5
STATE ADMIN
3/9/83

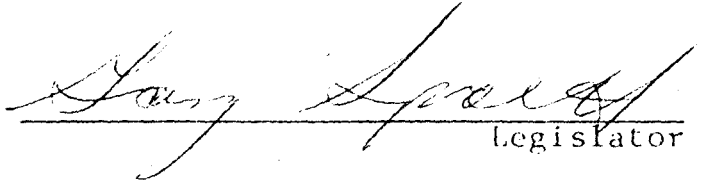
By notice of my signature, I am requesting that _____
(name)

MARK CRESS appear before the STATE ADMINISTRATION
(name of Committee)

Committee on 3/9/83 to present information to this
(date)

Committee on HB 514
(bill #)

Signed,


legislator

Mr. Chairman, members of the committee, my name is Wade Wilkison and I am the Director of LISCA, Low Income Senior Citizens Advocates.

HB 873 is by itself short, direct and straightforward, in many ways self-explanatory. It establishes a specific focus for public input for planning, coordination and operation of senior citizens programs. It institutionalizes this focus within the office of the Governor and mandates the creation of an advisory council on aging to assist the Coordinator of Aging. And costs associated with the position are already included in both the LFA and Executive budgets.

THE STATE CONSENSUS THAT A CHANGE MUST BE MADE

HB 873 grows out of administrative changes made within the Department of Social and Rehabilitation Services (SRS) about two years ago. As a part of the functional reorganization of SRS, the then Aging Services Bureau was eliminated, and the focus for aging programs in the state was consequently lost. The senior citizens of the state of Montana are reasonable and patient, and waited for some time to see if the administrative changes within SRS would still allow them to have effective public access to programs operated by SRS that effect their lives.

Within nine months there was a clear consensus among senior citizens in the state that SRS, confronting so many other pressing human needs in other programs, had lost the ability to provide a clear focus for program issues relating specifically to senior citizens. At every public meeting involving senior citizens I have attended since about that time, the question has invariably arisen "what are we going to do to get our Aging Office back again?"

Every senior citizen group in the state that I have been in contact with has endorsed the concept of re-establishing a true focus for public input for planning and coordinating senior citizen programs; certainly LISCA, MSCA, AARP, and NRTA have made this matter a priority concern over the last year.

This senior citizen concern has been manifested in several ways politically as well. First, Legacy Legislature, held last fall in Helena, voted this issue as one of the top three priorities among the state's senior citizens. Second, affirmation of the need for a new aging office became a part of the state's political parties' political platforms. Third, many legislative candidates made a strong and affirmative senior citizens stand, including the re-establishment of an aging office, a key part of their own campaign statements. And finally the Governor, responding to the cards, letters, personal visits and telephone calls of Montana's senior citizens, promised to appoint a coordinator of aging operating out of his office in September of 1982, first at the meeting of Legacy Legislature and subsequently at the annual Governor's Conference on Aging.

With both public and political consensus that a new state aging focus must be created, the only remaining question has been what form this new aging focus should take.

HB 873 AND AN INTERIM STUDY ON AGING NEEDS

HB 873 provides an interim focus and forum by which public discussion can take place on aging issues. In a legislative session very conscious of funding questions, I am pleased to report that in discussions I have held with the Governor's staff there is clear indication that both the Executive Budget and the LFA'S budget already include the costs for this position, so no additional staff salary will be required.

In addition to assuring Montana's senior citizens that there is a single office and person who can respond to their inquiries, we also propose an interim study designed to fully analyze Montana's aging needs as reflected in administrative changes to make Montana's aging programs operate as effectively as possible. In addition to his other responsibilities, the person occupying the Coordinator of Aging Office position would be a primary participant in this study, along with the Advisory Council also established by this bill. Draft language for this interim study resolution is now being prepared. The interim study would investigate at least the following range of options, options that leaders within the senior citizen community of the state have been discussing as alternatives to the current aging administrative structure in Montana.

OPTION ONE: A DEPARTMENT OF AGING

Senior citizens desire a Department on Aging fully separate and apart from SRS, so that attention to senior citizen programs is not eclipsed by other program concerns at SRS. The federal Older Americans Act(OAA) generally assumes a separate set of program officers and staff, and OAA funding is regularly used to fund totally separate aging offices, so if this option were ultimately selected then this new Department would be funded with federal rather than state dollars. Good models exist for the creation of a Montana Department on Aging. Federal documents outlining the philosophy and need for certain specific responsibilities associated with a state aging office are readily available. According to these and other documents, states with highly successful and well-organized aging programs tend to have administrative structures patterned after either Departments on Aging or Commissions on Aging.

We chose not to recommend such a major administrative change to this session, however, because you are already dealing with the continuance of another state department, the Department of Institutions, and we felt you should have the right to judge that matter on its own merits without us complicating things by requesting a department on aging in the middle of your Institutions debate.

OPTION TWO: A COMMISSION OR BUREAU ON AGING

EXHIBIT 6

gp 3

Senior citizens would also accept a mid-range option, the creation of a Commission on Aging or Board or Bureau on Aging. Once again, good and successful models exist for this range of alternatives to our current aging programs administrative structure. Administrative variations include having the Commission and/or Commissioner on Aging appointed by the Governor, with varying degrees of administrative autonomy from the Governor. As in the case of the Department on Aging, the Commission or Bureau would have actual administrative responsibility for day-to-day decisions on senior citizen programs, including state utilization of Older Americans Act funding, so these options would again guarantee to the state's senior citizens that their programs would be removed from SRS control. At the same time these structures would also meet OAA requirements for funding, so federal dollars rather than state dollars could be utilized to operate this range of administrative structures.

As senior organizations discussed which of these various options to present to this legislature, most felt that a Commission or Bureau was an immediate need, but that we should be responsive to the heavy burden you as legislators face and not ask you to make decisions about significant changes such as establishing new state commissions without full and proper time to make a reasoned and informed decision.

For these reasons, then, senior citizens support HB 873 as the first step in a series of steps that will, along with the interim aging administrative structure study resolution now being drafted, make Montana's aging programs as effective and open to public input as in other states. Montana's 120,000 senior citizens deserve no less.

Amendment to hb 573

EXHIBIT 7

Section 1. line 22.

after "include" strike " Area on..." and all of line 23.

State Admin..

3/9/83

Insert on line 22 after "include"

~~"a representative of:~~

the House Select Committee on Aging; the Area Agencies on Aging; Low Income Senior Citizens Advocates; Montana Senior Citizens Association; American Association of Retired Persons or National Retired Teachers Association; Legacy Legislature; Area Aging Advocacy Task Force; Department of Social and Rehabilitation Services; Human Resource Development Council Association; Montana ACTION programs (RSVP, Foster Grandparents); Green Thumb or Senior Companion Employment Program; a member of a Board of Directors of an Area Agency on Aging; Montana's minority groups; and two at-large members."

NAME Tom Ryan ^{NR}
BILL NO. 873
ADDRESS Box 1943 Helena DATE 3/9/83
WHOM DO YOU REPRESENT Montana Senior Citizens Assn
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Montana Senior Citizens Assn
supports the establishment of
this office.
we do not oppose the adoption
of the amendment.
we need an established permanent
office that does not necessarily
serve one segment of the
senior citizen populace but
~~can~~ can address all senior problems

NAME LENORE F. TALIAFERRO BILL NO. 873
ADDRESS 1026 9th Ave. Helena DATE 3/9/83
WHOM DO YOU REPRESENT Long Term Care Ombudsman
SUPPORT ☒ OPPOSE ☐ AMEND ☒

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support Bill #873.

& Amendment to HB 873 submitted by Wade Wilkinson to change bill by insert on line 22.

I further amend the amendment to include the LONG TERM CARE OMBUDSMAN in the list of representatives.

The Ombudsman services must be provided to long term care facility ~~for~~ residents in each state & will continue to do so as required by the Older Americans Act & should be represented to voice needs of these persons, regardless of income & represent approximately 6,000 Montana citizens who are elderly.

NAME Douglas B. Olson

Bill No. 873

ADDRESS P.O. Box 232 Capitol Station Helena 59620 DATE 3-9-83

WHOM DO YOU REPRESENT Mt. Senior's Advocacy Assistance

SUPPORT ☒

OPPOSE ☐

AMEND ☒

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Since establishment of Aging Services Bureau by SRS in 1981, senior citizens have lost a focal point for their programs. HB 873 would ^{statutorily} recognize as a coordinator of aging programs within the Governor's office to provide better planning and advocacy for senior programs. HB 873 was passed by the House on 3rd reading needs to be amended to clarify whether the "coordinator" or "advisory council" is appointed first in time. The present bill requires the coordinator to appoint an advisory council but the "coordinator" is to be appointed by Governor from a list of recommendations from the "advisory council."

In addition, ~~the~~ ^{do} lines 22-23 mean that all area agency on aging & planning and service area directors shall be members of the advisory council or just some directors?

Finally, recommend line 22, page 1, following, "area", insert "agency" as modifier of that term.

HB 873

EXHIBIT 10
State Admin
3/9/83

Amend HB 873, third reading copy, as follows:

1. Title, line 11.
Following: "AGING"
Insert: "AND REQUIRING THE GOVERNOR TO APPOINT AN ADVISORY COUNCIL ON AGING AND A COORDINATOR ON AGING"
2. Page 1, line 17.
Following: line 16
Insert: "(2) The governor shall appoint an advisory council on aging. The council is composed of 7 members, none of whom may be less than 60 years of age. Members shall serve for 3-year terms. Vacancies shall be filled by appointment for the unexpired term. The council is allocated to the governor's office for administrative purposes only."
Renumber: subsequent subsections
3. Page 1, line 18.
Strike: "FROM RECOMMENDATIONS FROM"
Insert: "after consultation with"
4. Page 1, line 20.
Following: line 19
Strike: subsection (3) in its entirety
Insert: "(4) The advisory council on aging shall act as the advisory board to the coordinator on aging."
5. Page 1, line 25.
Following: "shall"
Insert: ", with the advice and consent of the advisory council on aging,"

March 4, 1983

TO: Reed Marbut
FROM: Charlie Briggs
RE: Amendments to H.B. 873

As you know, I shared with Walt Taylor statutory problems in the present amended version of H.B. 873, creating an Aging Coordinator in the Office of the Governor. Today I discussed further amendments with Mona Jameson, the Governor's Legal Counsel. Out of our discussion I'd like to run the following minute language changes by you for consideration as to most appropriate format consistent with existing statutes for function/operation of advisory bodies (eg. 2-15-122 and 2-15-102(7)). After you look at them, if you want to discuss them further before the State Administration Committee meeting on the 9th, I'd be happy to be available to you at your leisure.

The amendatory language I ask for your consideration is as follows:

1.) Section 1, line 18:

STRIKE: "recommendations from"

INSERT: "consultation with"

2.) Section 1, subsection (3):

STRIKE: after (3) lines 20 through 23

INSERT: "The Governor's Advisory Council on Aging may advise the coordinator in the duties of the office."

By statute, it is invalid for anyone other than the Governor or a department director to create or appoint advisory bodies. Their creation is governed by 2-15-122, as noted above.

Thank you for your time and consideration of this matter.

Simply put, House Bill 721 is a hospital cost containment bill. The purpose of the bill is to establish a statewide health financing authority similar to those which have been established in 18 other states, including Idaho and Colorado.

A health facility authority provides a means by which non-profit health care facilities can seek tax-exempt bond financing for capital expenditures through the authorization of a statewide political subdivision, as an alternative to the current practice of authorizing such bonds through the counties. The advantages of this statewide authorization mechanism are many, including:

1. By authorizing bonds through a centralized mechanism and charging a fee for such service, sufficient funds can be generated to provide expertise and assistance to health care facilities in obtaining the least costly form of financing for their capital projects.
2. By providing a mechanism for pooling of financing for medical equipment for a group of hospitals, tax-exempt financing with its lower interest rates can become a cost effective means of financing capital equipment for hospitals. Because of the numerous fees associated with tax-exempt financing, a single hospital's capital equipment needs are not great enough in dollars to make tax-exempt financing cost effective. By spreading these fees over a number of hospitals such financing can be cost effective.
3. By pooling the resources of a large number of health care facilities, educational programs aimed at improving health care facilities capital planning programs can be provided. By improving a hospital's capital planning activities large numbers of dollars can be saved over the years.

It should be stressed that health care facilities already have the ability to utilize tax-exempt financing through the authorization of the county in which they are located. HB 721 would merely provide a method of making such tax-exempt financing even less costly.

Use of the health financing authority would be voluntary and financing could only proceed after a health care facility had been granted approval for its capital expenditure through the Montana certificate of need process.

a clearing house for federal and state guarantee and funding levels available for assistance.

This bill is patterned after the Idaho bill which enacted legislation in 1972 to establish its authority. Their financings have been for hospitals and nursing homes.

Section 1 - Designates the number of members in the authority, their makeup, and that they are appointed by the governor.

Section 2 - Names this bill as Montana Health Facility Authority Act.

Section 3 - Defines authority, costs, health facility, health institution, participating health institution, refinancing of outstanding obligations and revenues.

Section 4 - ^{DEFINES} ~~Lists~~ eligible health facilities under this act.

Section 5 - Those costs which would be funded and you will note it excludes operating costs.

Section 6 - The quorum for any meeting of the authority is at least four and any affirmative action must be by vote of at least four of its members. Meetings are public. They receive no pay except for necessary expenses in attending meetings.

Section 7 - Defines the powers of the authority. Collects its costs from participating institutions.

Section 8 - Restricts the authority from operating a health facility as a business other than as a lessee or lessor.

^{IN CONSULTATION WITH ACTING COMPTROLLER}
Section 9 - Authorizes a staff and fixes their compensation.

Section 10 - Limits the loan to no more than the total cost of the health facility being financed.

Section 11 - It may make a participating health institution its agent for the purpose of acquiring improving, maintaining, repairing, operating and

leasing the facility.

Section 12 - The authority may issue notes in the same manner as bonds.

Section 13 - It has authority to borrow money and issue bonds. No bond may mature more than 40 years from date of its issue.

Section 14 - Describes the security of the bondholders. The bill spells out on lines 15 through 17 that no breach of any mortgage or other security instrument may impose any pecuniary liability upon the Montana Health Facility Authority.

Section 15 - Provides authority for the Authority to purchase its bonds or notes.

Section 16 - Restrains any financings until it has been determined that such facility will enable or assist a health institution to fulfill its obligation to provide health facilities; and that it has been reviewed and approved by appropriate regional and state health planning boards.

Section 17 - Authorizes it to secure any bonds issued, by a trust agreement between the Authority and a corporation trustee located in Montana.

Section 18 - Spells out again in very specific language that the obligation is not a debt of the state and bonds issued must so state on their face.

Section 19 - All bonds, notes, or other obligations issued and income from them are exempt at all times from all taxation.

Section 20 - Authorizes a start-up borrowing ability but that borrowed money must be repaid within a reasonable time and such expenses are to be reimbursed from fees charged against the borrowing authority.

Section 21 - Provides for promptly conveying its interest in the facilities back to the facilities as soon as all indebtedness has been repaid.

Section 22 - All moneys received towards repayment are trust funds to be held and applied solely as proved in the foregoing sections.

Section 23 - Is a list of entities authorized to invest in the bonds issued by the Authority.

Section 24 - Pledges that the state of Montana and the United States will not impair any obligations which have been entered into with holders of bonds and notes.

Section 25 - Promises that all assets pledged would be surrendered without any physical delivery or further act in the event of default.

Sec. 26 Annual Report of the Authority
Authority on the Authority of the
Authority

Sec. 27 Board of Directors of the Authority
2 MEMBERS TERM 1984
" " " " 1985
" " " " 1986
" " " " 1987
" " " " 1988

Sec. 28 SEVERABILITY

Sec. 29 EFFECTIVE on Passage & Approval

THE NATIONAL HEALTH LAWYERS ASSOCIATION

THE SECOND ANNUAL INSTITUTE ON
CAPITAL FINANCE FOR HEALTH CARE FACILITIES

The Fairmont Hotel
New Orleans, Louisiana
January 12-14, 1983

THE PLANS OF THE STATE BOND ISSUING AGENCIES AND
WHAT THEY NEED FROM THE PROVIDER

Lee Fetter
Executive Director
Missouri Health and Educational
Facilities Authority
St. Louis, Missouri
January 13, 1983

THE ROLE OF HOSPITAL FINANCING AUTHORITIES

I. Where to find authorities and what to expect.

- A. Tax exempt financing for hospitals originated with the Connecticut Hospital and Higher Education Facilities Authority in 1966, deriving their public interest status from similar financings for public and private higher education by the New York State Dormitory Authority in the late 1950's.
- B. Statewide and local (municipal or county) authority vehicles for tax exempt "conduit" financing exist in every state but one. Currently, states with authorities number approximately 22 statewide and 36 local, of which 9 states have both.
- C. The conduct of business varies from authority to authority, depending on the amount of services offered to hospitals and the degree of coordination established over the financing.

II. How to use the authorities.

- A. Understand the role that the authority perceives itself assuming and their rationale for conducting business in that manner.
- B. Generally, the authority, which is in itself a political subdivision, will assume either an "active" or "passive" role in acting on behalf of the hospital and public interest.
 - 1. A "passive" authority will provide minimal review and consultation to initiate the financing, minimal organization or direction to structure the financing and minimal assistance in marketing the bonds and closing the financing.
 - 2. An "active" authority will provide all or a combination of the activities listed above.

3. Consider the divergent interests that often need to be addressed in each public financing: the hospital, the bondholder, the patients supporting the debt service and the public, in general, indirectly subsidizing the financing.
 4. The "active" authority should attempt to strike a healthy and reasonable balance amongst these interests when they appear to conflict in the financing process.
- C. The financing process, from the Authority's and hospital's perspective, will encompass the following framework:
1. Determination of eligibility: Brief description of borrower and project, including estimated sources/uses of funds and timing, By Laws, Articles of Incorporation, Deed of Trust, existing loan restrictions, prior audited statements, utilization statistics and available CON/feasibility material.
 2. Assembly of Financing Team and Timetable: Method of selecting Managing Underwriters, Bond Counsel, Feasibility Consultant, and Trustee varies by Authority. Consult early to determine procedure.
 3. Structure and Sale of Securities: The Authority will review with the Hospital various advantages and disadvantages of the method, amount and terms of the proposed transaction. They will also assign responsibilities and organize appropriate drafting sessions to consider the structure of the loan, balancing the Hospital's interests and desire for flexibility with credit and security considerations.
 4. Ongoing Review: The Authority will review with the Trustee monthly income/disbursements reports, and the timely investment and payment of construction

funds. They will also review periodical hospital financial and operating statistics and construction reports to ensure the bondholders of timely project completion and financial stability. They should be available for assistance to interpret and fairly implement legal conditions required by bond documents.

III. Getting the Most From your Tax-Exempt Dollars -
The Authority's Edge

A. Independent Consultation

1. Evaluation of every financing strategy available to the hospital and the appropriate dollar amount under the circumstances, including full disclosure of the risks and costs associated with short term and multiple financings.
2. Evaluation of current market conditions and their effect on the plan of financing. This evaluation should be considered supplemental to the hospital's primary source of advice.
3. Evaluation of the underwriting strategy to be employed by the investment banker, including a sufficient distribution of risk and sales incentive with the syndication group.
4. Negotiation of favorable interest rates and an equitable underwriting discount, such that the Hospital receives the best deal possible under current market conditions.

B. Ongoing Representations with the Investment Community

1. Rating Agencies: Although an Authority, in and of itself, will not be a factor in the hospital's credit rating, a good Authority will contribute positively to the context in which the financing is analyzed.

2. Underwriters: The Authority is viewed by the investment banking community as a focal point for ongoing business. If properly exploited, this can be used by the hospital community to stimulate interest in weaker credits, generate broad support for all credits during difficult markets, and enforce working relationships with underwriters that result in the timely completion of financings.
3. Investors: A good Authority is visible and well known to potential buyers of hospital bonds and maintains their confidence through its source of information and ongoing review. Because of the volume of business it transacts, the Authority should have numerous potential sources of funding, public or private.

IV. The Full Service Authority

While tax exempt financing increases as a percentage of total capital funding for hospitals and as the volatile conditions of the capital markets persist, hospitals should take advantage of additional services available from an "active" Authority.

A. Banking

1. Authorities are now issuing bonds on behalf of a "blind" pool of hospitals and making the proceeds available for equipment financing to any hospital qualifying for credit. The attractive rates and minimal processing complications merit every hospital's consideration.
2. Several commercial paper financings have been completed by authorities, involving short term notes rolled over continuously to yield the lowest current interest costs available to hospitals.

3. Short, intermediate and long term financings pegged to a floating rate index periodically established with the Authority and hospital provide another low interest option to the hospital.

B. Clearinghouse

Capital financing decisions by hospitals can be made in a more informed manner upon consideration of the many external factors affecting their capital funding. The Authority should be knowledgeable about most of these factors including the following:

1. Status of potentially adverse tax legislation restricting the use of tax exempt financing.
2. Comparative financial ratio statistics on comparable hospitals in the state.
3. Impact of potential reorganization/reimbursement trends on the capital financing strategy.
4. Rating agency considerations and recently adopted policies.
5. Federal and state guarantee and funding levels available for assistance.

HOUSE BILL 721

141
EXHIBIT 14
State Admin.
3/9/83

MR. CHAIRMAN:

I move to amend House Bill 721 by making the following changes:

1. Page 4, Section 3(6), strike the entire subsection (6) beginning on line 4 and ending on line 11. Renumber subsection (7) to (6).
2. Page 21, Section 18, line 5, following "Health", change "Facility" to "Institution".

NAME Ed Dahlberg

BILL No. HB 721

ADDRESS Bozeman

DATE 3-9-83

WHOM DO YOU REPRESENT Admin. Bozeman Hospital

SUPPORT ☒

OPPOSE ☐

AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*intended to testify in person
but had to work with Dr. [unclear] Kip [unclear]
He is not a hospital [unclear] [unclear]
support of this bill*

by [unclear] sec.

STANDING COMMITTEE REPORT

MARCH 9 1983

PRESIDENT

MR.

STATE ADMINISTRATION

We, your committee on

HOUSE

140

having had under consideration Bill No.

Eudaily (Manning)

HOUSE

140

Respectfully report as follows: That Bill No.

BE CONCURRED IN:

~~XXXXXX~~

4/2