

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 24, 1985

The tenth meeting of the State Administration Committee was called to order at 10 a.m. on January 24, 1985 by Chairman Jack Haffey, in Room 331 of the Capitol Building.

ROLL CALL: All the members were present with the exception of Senator Mohar who was excused.

CONSIDERATION OF SENATE BILL 115: Senator Manning is the sponsor of SENATE BILL 115 entitled, "AN ACT REMOVING THE MANDATORY AND COMPULSORY RETIREMENT AGE PROVISIONS FROM THE PUBLIC LAW ENFORCEMENT AND THE MONTANA FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; changing the appropriate statutes AND REPEALING other statutes, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Senator Manning said that the issue of mandatory retirement was tried in the case of a Warden vs. Fish, Wildlife & Parks, in '84, and the mandatory retirement law was found to be unconstitutional. This is a simple little bill that simply changes the statute to reflect this, and to remove any mention of mandatory retirement. This bill does not have any costs and will probably save the state money, Senator Manning said.

PROPOSERS: Larry Nachtsheim of the Public Employees Retirement System, supports this bill. He said that Senator Manning did a good job of presenting this bill. This bill will simply clear the statutes of mandatory retirement references. He further stated that they recommend that this bill pass.

Tom Schneider, Montana Public Employees Association, support this bill. He said that the Fish and Game and the Highway Department were actually not following the statutes as written because of the Court case mentioned above, because the language cannot be adhered to so they are simply ignoring it. Mr. Schneider felt that it should not be this way. Mr. Schneider said they were not opposed to a mandatory retirement age, but they should follow the law.

Ray Blehm, Firemen's Association, supports this bill. He felt that retirement age should be linked to physical condition not age.

OPPOSERS: There were no opponents.

Senator Haffey then asked if there were any Committee questions. Senator Tveit asked that the new language on page 13 be explained. Mr. Nachtsheim said that with this paragraph, they were eliminating the language but they still had to give them the right to retire. There is no mandatory age, so we had to create a right for them to retire. A worker must be at least 50 years of age and have 20 years of service, or he gets a limited retirement.

Senator Manning said that he was closed, so SENATE BILL 115 is closed.

EXECUTIVE ACTION ON SENATE BILL 115: Senator Farrell moved that this bill do pass. Valencia Lane, staff Attorney, explained that the case Senator Manning was referring to was COURTNEY TAYLOR v. FISH, WILDLIFE & PARKS. Mr. Taylor was forced to retire and he sued and won the case. No-one may discriminate on the basis of age. Senator Lynch called question and the Committee voted unanimously that SENATE BILL 115 DO PASS.

CONSIDERATION OF HOUSE BILL 37: Representative Joe Quilici, District 71, is the sponsor of this bill entitled, "AN ACT TO ALLOW THE DEPARTMENT OF MILITARY AFFAIRS TO AUTHORIZE THE CONSTRUCTION OF FEDERAL FACILITIES TO BE USED BY THE STATE; TO ALLOW THE DEPARTMENT OF MILITARY AFFAIRS OR THE DEPARTMENT OF ADMINISTRATION TO ACT AS CONTRACTING AGENCY FOR THE CONSTRUCTION OF SUCH FACILITIES; AMENDING the appropriate sections; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Representative Quilici said that this bill was at the request of Military Affairs. Representative Quilici said that sometimes the National Guard will be offered money from the federal government which does not fund its programs until October 1st, after the Legislature has gone out of session and they have to turn the money down as they cannot obligate the state. This bill would allow them to accept the money and build the buildings with the money and the Department of Administration would act as contracting agent. This bill would give the state the chance to administer federal funds for repair and maintenance of federal facilities on state lands. Representative Quilici further said that many of these buildings need repair and maintenance. He said that this bill would help our economy.

PROPONENTS: General Duffy, Director of the Department of Military Affairs, supports this bill, because it would allow us to get federal dollars to spend on federal lands. He said that in 1983 they were offered \$200,000 but they could not accept it because the Legislature was out of session, and it was money that they really could have used. General Duffy said that this would take the responsibility off his shoulders and put it on the state's shoulders. General Duffy went on to say that if they receive the offer of some money in December, 1985, they will have to wait two years for the Legislature to go back into session.

Barbara Martin, Staff Researcher for Governor's Construction Advisory Council, supports this bill. She said that this bill would allow the Department of Administration to contract on these projects and it would allow architects and engineers to act as the contracting officer.

OPPONENTS: There were no opponents.

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Senator Haffey asked for Committee questions. Senator Harding asked Ms. Martin if on line 11, page 3 ("The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys on federal land for the use or benefit of the state") her committee felt that this was a good thing for the Governor to be the only authority in dealing with military affairs. Barbara Martin replied that she did and that the Department of Administration would be acting as contracting agent. General Duffy explained further that the Legislature does approve all spending on repairs and maintenance and building, and that they need someone to watch that they don't have to forfeit the money that they would receive. He further said that the military paid 75% of repair and maintenance and the state paid 25%. Major Cottrell said that at the present time there is no amendment process proposal for long range building. It is frozen until the next legislative session. However, if the funds are earmarked for a certain job then the state will be expected to put in 25% of the maintenance costs. Senator Haffey explained that it allows them to spend money between legislative sessions. If that happens, there might be a cost for operating that the legislature will not approve, and they will have to eat those costs. You understand that? Major Cottrell replied yes.

Representative Quilici said that he was closed and he asked one of the Committee members to carry the bill onto the floor. HOUSE BILL 87 is closed.

EXECUTIVE ACTION ON HOUSE BILL 87: Senator Lynch moved that HOUSE BILL 87 BE CONCURRED IN. Senator Farrell asked if they still have to come to the legislature for approval. Senator Haffey explained if money comes in within the next two years, they will go ahead with building, and when the legislature meets they will have to say we did this and it cost "x" amount and we thought it prudent to do this. Legislature could tell them to eat the costs. Question was called by Senator Conover, it was voted and unanimously passed that HOUSE BILL 87 BE CONCURRED IN. Senator Haffey will carry the bill on the floor.

CONSIDERATION OF SENATE BILL 124: Senator Hims1, District 3 Kalispell, is the sponsor of this bill entitled, "AN ACT TO REVISE AND CLARIFY THE REVIEW AND PROCESSING OF UNLIQUIDATED CLAIMS AGAINST THE STATE; AMENDING SECTION 17-8-202, MCA; AND REPEALING SECTIONS 17-8-221 THROUGH 17-8-226, MCA." Senator Hims1 said that this bill proposes to remove the Board of Examiners from the responsibility of reviewing unliquidated claims and instead treat all such claims as ordinary claims submitted to and reviewed by the Department of Administration. The Board has to meet following the legislative session to review these claims and act on them. In the past ten years, only two unliquidated claims have been brought before them.

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Senator Himsl further stated that this bill proposes to eliminate the distinction between liquidated and unliquidated claims, and require the Department to review and process all claims. Therefore, the bill will repeal each of the sections referring to the review process by the Board, and amend just one section to require the Department of Administration to transmit valid claims with no appropriation directly to the governor for submission to the Governor for submission to the Legislature. Furthermore, removing this function from the Board of Examiners by referring the claims directly to the legislature does not in any way affect an aggrieved citizen's avenue to recourse. Contract and tort claims, which constituted the majority of unliquidated claims against the state, can now go directly to court, unlike the days of 1891. (For more of Senator Himsl's testimony see Exhibit "A" attached hereto and by this reference made a part hereof.)

PROPONENTS: Ellen Feaver, Director of the Department of Revenue, supports this bill. She said the Board does not object to this and that they support doing away with these laws.

OPPONENTS: There were no opponents.

Himsl closed by thanking the committee. SENATE BILL 124 is closed.

EXECUTIVE ACTION ON SENATE BILL 124: Senator Farrell moved that SENATE BILL 124 do pass. Question was called by Senator Tveit and the Committee voted unanimously that SENATE BILL 124 DO PASS.

The meeting was adjourned at 11:00 a.m.



SENATOR JACK HAFFEEY, CHAIRMAN

DATE January 24, 1985

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ellen Feaver	Dept of Administration	HB 124	<input checked="" type="checkbox"/>	
Carl Sorensen	Min. Affairs	HB 87	<input checked="" type="checkbox"/>	
Kenneth Cottrell	Dept of Mil Aff	HB 87	<input checked="" type="checkbox"/>	
P. L. L. Hurst	Helen's Int	HB 87	<input checked="" type="checkbox"/>	
J. W. Duff	Helen's Int	HB 87		
Randy Seem	BLP			
Larry Nachtstein	PERD	SB 115	<input checked="" type="checkbox"/>	
James Schindler	WIPEH	SB 115	<input checked="" type="checkbox"/>	
James Schindler		HB 87		
Rory Bledsoe	MT ST FIREMAN'S ASSOC	SB 115		
Michael Hunt	" " "	"		
Barbara Matton	Dept of Admin Building	HB 87	<input checked="" type="checkbox"/>	

(Please leave prepared statement with Secretary)

(Exhibit "A"
SB 124
1-24-85

BACKGROUND FOR UNLIQUIDATED CLAIMS BILL (SB 124)

This bill proposes to remove the Board of Examiners from the responsibility of reviewing unliquidated claims and instead treat all such claims as ordinary claims submitted to and reviewed by the Department of Administration.

The particular sections of law affected by this bill have been on Montana law books since 1891. At the time these laws were passed, the Board was responsible for examining all claims, with minor exceptions, against the state. In 1961 the legislature shifted this claims review function to the state controller, with the requirement that authorization for the expenditure be given by the concerned department. As a result, the Board was left with the responsibility of reviewing only unliquidated claims--claims in which either the liability and/or the amount of the claim is in dispute.

Historically, all such unliquidated claims could not be pursued in court because suit was barred by sovereign immunity. Since immunity on contracts was waived in 1955, and the complete waiver of immunity in torts occurred in 1973, all such claims have become anachronistic.

The current statutes require that the Board meet the first Monday of November preceding the meeting of each Legislature for the purpose of examining the claims presented to them over the course of the two year period. The Board is also required to hear evidence in support or against the claims and report to the legislature the facts and recommendations. The legislature in turn, follows the normal legislative process and concludes by either taking no action or appropriating funds for the claim. Under the proposed bill, any claim not covered by another law, such as the Tort Claims Act, will be likewise forwarded to the Legislature via the Governor's proposed budget.

In the past ten years, the Board has only had two unliquidated claims brought before them. The first case occurred in 1977 when a private consultant was contesting payment for services provided beyond what was agreed to in a contract. A hearing was held by the Board and the matter referred to the legislature without recommendation. The legislature took no action and the

claim was eventually dropped. The second instance occurred following the 1982 Helena hail storm in which a state employee's personal car was damaged during the time it was parked in the state motor pool lot. A hearing was held by the Board and the matter referred to the legislature without recommendation. The legislature took no action on the claim.

This bill proposes to eliminate the distinction between liquidated and unliquidated claims, and require the department to review and process all claims. Therefore, the bill will repeal each of the sections referring to the review process by the Board, and amend just one section to require the Department of Administration to transmit valid claims with no appropriation directly to the governor for submission to the Governor for submission to the Legislature.

Furthermore, removing this function from the Board of Examiners by referring the claims directly to the legislature does not in any way affect an aggrieved citizen's avenue to recourse. Since the new Constitution was adopted in 1972, and sovereign immunity was abolished, citizens have been able to sue the state directly. Contract and tort claims, which constituted the majority of unliquidated claims against the state, can now go directly to court, unlike the days of 1891. Today, providing the Board of Examiners as a forum for hearing, when they can only refer the matter on to the Legislature, is no longer necessary to pursue claims against the state.

STANDING COMMITTEE REPORT

January 24, 1985

19.....

MR. PRESIDENT

STATE ADMINISTRATION

We, your committee on.....

having had under consideration..... **SENATE BILL** No. **124**

first reading copy (white)
color

REVISE PROCEDURES RELATING TO UNLIQUIDATED CLAIMS AGAINST THE STATE

Respectfully report as follows: That..... **SENATE BILL** No. **124**

DO PASS

~~DO NOT PASS~~

.....
Chairman.

STANDING COMMITTEE REPORT

January 24 19 85

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE BILL** No. **87**

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color

(Senator Haffey will carry this bill to the floor)

ALLOW MILITARY AFFAIRS TO AUTHORIZE FED BLDGS.--ALLOW DOA TO DO CONTRACTING

Respectfully report as follows: That **HOUSE BILL** No. **87**

BE CONCURRED IN

DEPBY

DEPBY

Chairman.

STANDING COMMITTEE REPORT

.....January 24 1985.....

MR. PRESIDENT

We, your committee on**STATE ADMINISTRATION**.....

having had under consideration.....**SENATE BILL**..... No....**115**.....

first reading copy (white)
color

REMOVAL OF MANDATORY RETIREMENT AGES FROM CERTAIN RETIREMENT ACTS

Respectfully report as follows: That.....**SENATE BILL**..... No....**115**.....

DO PASS

~~SENATE BILL~~

.....
Chairman.