

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 15, 1987

The meeting of the State Administration Committee was called to order by Chairman Sales on January 15, 1987, at 9:00 a.m. in Room 437 of the State Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 144: Rep. Thomas, House District #62, sponsor of the bill, stated the bill would require the clerk of the district court to process passport applications and deposit passport execution fees in the county general fund. The bill was brought to his attention by people from western Montana regarding the change in attitude in the courthouses in Montana and because funds that should be going to the county treasurer, in some cases, might be used for other purposes. Under the current law, it is permissible for the clerks of the courts to retain passport fees and use them at their own discretion. He submitted a printed handout to each committee member (Exhibit #1). Section 7-4-2511, MCA, deals with collection and disposal of fees and requires all fees to be deposited with the county treasurer, except in the case of the clerks of court dealing with passport fees. Passport application processing is a federal service and should be performed by Class I post offices; however, not all communities in Montana have Class I post offices. In these cases, the clerk of court has been performing this duty as a public service and convenience to citizens. Rep. Thomas is concerned that certain fees are being collected by the clerks of courts that are not being properly deposited. The Clerks of Court Association contacted him and stated they would not provide passport services if the funds have to be deposited in the county treasury.

PROPOSERS: Gordon Morris, Montana Association of Counties, stated he was not exactly a proponent nor was he an opponent. He pointed out that in this particular case, there is a service being performed in our district court offices during working hours which is generating a fee that is going for personal uses. He feels Rep. Thomas' bill is appropriate for consideration but would like to suggest a simple amendment to the bill adding on page 1, line 15 following county, "unless the county has a district court fund in which case the amount must be paid into such fund".

OPPOSITION: Opposition testimony was phoned in by Greta Ross, Clerk of Court, Lewistown; Patricia McDonnell, Clerk of Court, Daniels County; Lucille King, Clerk of Court, Plentywood; Laurene Knudson, Clerk of Court, Roosevelt County and Marian Estrem, Clerk of Court, Glasgow (Exhibit #2).

Tom Harrison, on behalf of the Clerks of Court Association of Montana, spoke in opposition to HB 144. He stated this matter has been subject to two attorney generals' opinions and went to the Montana Supreme Court in 1982. The Supreme Court decision read that "the execution of passport applications is not an official duty imposed upon the clerk since the legislature has not enacted a specific statute regarding the disposition of the fees and the clerk has no duty to submit the fees to the general fund". If HB 144 passes, additional staffing would be necessary. He stated that the clerks in the larger counties do not want the additional function of processing passport applications, and the clerks in the smaller counties do not process enough applications in a year's time to warrant the expense and inconvenience of accounting for the fees. Rather than confuse this issue and impose accounting responsibilities in the smaller counties, and more job responsibilities in the larger counties, the Clerks of Court Association feels the bill should not pass.

DISCUSSION OF HOUSE BILL NO. 144: Rep. Pistoria stated he was skeptical of the bill. Rep. Cody asked if there were possibly other fees from county offices that were not going to the general fund and Rep. Thomas responded that "yes" he was under that impression and this has created a bad situation. Rep. Peterson asked Rep. Thomas why the passport application fees could not be used for actual business expenses, i.e. stamps, and he responded that the disbursement of those fees is presently left to the discretion of the clerk. Rep. Moore asked Rep. Thomas if he had any objection to changing "shall" to "may" on line 10 and he responded "yes" because the clerks of court have indicated that they would not provide this service if the fees go to the treasury. Rep. Phillips asked how the additional job responsibility would be funded, i.e. in the larger counties, and he responded that the fee would take care of whatever additional expenses would be involved. Rep. Peterson asked Rep. Thomas if he was in agreement with Gordon Morris' suggested amendment, and he replied that he was. Rep. Peterson then asked Rep. Thomas if he would object to exempting counties that had first class post offices, and he said he did.

Rep. Thomas closed discussion on HB 144 reemphasizing that since the service is being performed during normal working hours, the accounting procedure should not cause any problems as there are other fees that have to be accounted for.

CONSIDERATION OF HOUSE BILL NO. 140: Rep. Bardanouve, House District #16, sponsor of the bill, introduced this bill at the request of the Public Employees' Retirement Board to remove the mandatory retirement age from the Judges' Retirement System. The bill is necessary to comply with federal law. He stated it is clearly unconstitutional to impose an age limitation on employment. Currently Montana law stipulates that

a judge must retire at age 70. Rep. Bardanouve stated that federal law requires a retirement system to be a "qualified" plan; if a retirement system is not qualified, it is subject to assessment on its investments by the Internal Revenue System, thus reducing the amount of retirement funds available. Contributions by a member to an unqualified retirement system are also subject to IRS assessment. Passage of HB 140 will make the Judges' Retirement System a qualified plan, will reduce the possibility of litigation in the future, and will prevent the IRS from assessing fees on the judges or their retirement system.

PROPOSERS: Linda King, representing the Public Employees' Retirement Division, stated HB 140 is needed to bring the Judges' Retirement System into compliance with federal law. She further stated that the last legislature had removed the mandatory retirement age from all the other retirement systems, and this is the only system at present that still contains a mandatory retirement age.

OPPOSERS: None

Rep. Bardanouve closed discussion on HB 140 by stating this mandatory age requirement should have been eliminated in prior legislative sessions but was overlooked.

CONSIDERATION OF HOUSE BILL NO. 153: Rep. Bardanouve, House District #16, sponsor of the bill, stated this bill would extend the vesting of retirement allowances upon termination of the systems to members of the Municipal Police Officers' and Firefighters' Unified Retirement Systems and is introduced to comply with federal law. Without this provision, the plan would not be "qualified" and would be subject to IRS assessment on its investments.

PROPOSERS: Linda King, representing the Public Employees' Retirement Division, stated that this same language is in all of the other state's pension plans. It is basically a housekeeping bill that was overlooked previously.

Tim Bergstrom, representing the Montana State Firemen's Association, rendered support for this legislation.

Ed Flies, Montana State Council of Professional Firefighters, stood in support of HB 153.

Nadlean Jensen, AFL-CIO, spoke in support of HB 153 which would bring the Police Officers' Pension Plan in compliance with other pension programs.

OPPOSERS: None

DISCUSSION OF HOUSE BILL NO. 153: Rep. Cody asked Rep. Bardanouve if this bill would permit the state to borrow money from the retirement systems for fiscal balancing, and he responded that it would not. Rep. Sales asked Rep. Bardanouve how this bill would effect the liability of the state in the event of poor investment of the vested retirement funds. He responded that he felt sure Montana law would cover such a situation, and that many lawsuits would result if there were insufficient funds to cover the pension system. Rep. Sales then asked Linda King what the liability would be if funds from retirement systems were poorly invested. She responded that if a retirement plan terminated, members would receive their accrued benefits. She further explained that if there would be a funding problem due to poor investing or any other reason, the biannual actuarial valuations would preclude that situation in ample time for requesting more contributions. Rep. Sales then asked Linda King for an example of a terminated retirement system and her response was that there had never been a terminated retirement system in Montana. If current membership would be terminated in a particular system, the current members would be vested to the extent of that proportion of benefits and would be able to receive benefits based on their years of service.

Rep. Bardanouve closed discussion on HB 153 stating he has received calls from several concerned firefighters asking support for this legislation. It is very important that the IRS not get into pension money.

The committee recessed at 10:10 a.m. and reconvened for executive action at 10:20 a.m.

DISPOSITION OF HOUSE BILL NO. 153: Rep. O'Connell moved DO PASS; seconded by Rep. Pistoria. The vote was unanimous.

DISPOSITION OF HOUSE BILL NO. 140: Rep. Pistoria moved DO PASS; seconded by Rep. O'Connell. The motion passed by unanimous vote.

DISPOSITION OF HOUSE BILL NO. 144: Rep. O'Connell moved DO NOT PASS; seconded by Rep. Fritz. The vote was 16-2 with Reps. Sales and Peterson voting no.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 10:27 a.m.


Walter Sales, Chairman

DAILY ROLL CALL

State Administration COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date June 15, 1987

NAME	PRESENT	ABSENT	EXCUSED
Walt Sales	✓		
John Phillips	✓		
Bud Campbell	✓		
Dorothy Cody	✓		
Duane Compton	✓		
Gene DeMars	✓		
Harry Fritz	✓		
Harriet Hayne	✓		
Gay Holliday	✓		
Loren Jenkins	✓		
Janet Moore	✓		
Richard Nelson	✓		
Helen O'Connell	✓		
Mary Lou Peterson	✓		
Paul Pistoria	✓		
Rande Roth	✓		
Tonia Stratford	✓		
Timothy Whalen	✓		

7-4-2509

LOCAL GOVERNMENT

260

15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (a) according to a rank structure in the department.

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.

History: En. Sec. 2, Ch. 603, L. 1981.

7-4-2509. Sheriff's department — work period in lieu of workweek — overtime compensation. (1) (a) A sheriff's department may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.

History: En. Secs. 3, 4, Ch. 603, L. 1981.

Amd. Ch. 12, Sp. L. June 1986
7-4-2510. Sheriff's department — longevity payments. Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department. This payment shall be made in equal monthly installments.

History: En. Sec. 5, Ch. 603, L. 1981.

7-4-2511. Collection and disposal of fees. (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury on the first Monday in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection applies to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

History: (1)En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R.C.M. 1921; re-en. Sec. 4887, R.C.M. 1935; Sec. 25-203, R.C.M. 1947; (2)En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R.C.M. 1921; amd. Sec. 3, Ch. 141, L. 1925; re-en. Sec. 4864, R.C.M. 1935; Sec. 25-201, R.C.M. 1947; R.C.M. 1947, 25-201, 25-203; amd. Sec. 11, Ch. 443, L. 1979.

EXHIBIT #2
DATE 1/15/87
HB 144

January 15, 1987

The following individuals phoned in their opposition to HB 144.

Greta Ross, Clerk of Court, Lewistown & Chairman of District #5 Clerks
of Court

Patricia McDonnell, Clerk of Court, Daniels County

Lucille King, Clerk of Court, Plentywood

Laurene Knudson, Clerk of Court, Roosevelt County

Marian Estrem, Clerk of Court, Glasgow

Betty DeYoung
Secretary
State Administration Committee

STANDING COMMITTEE REPORT

January 15

19 87

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report HB 140

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

FIRST

reading copy (WHITE)
color

ROLL CALL VOTE

Unanimous

State Administration

COMMITTEE

DATE 1/15/87 BILL NO. 140 NUMBER _____

NAME	AYE	NAY
Walt Sales		
John Phillips		
Bud Campbell		
Dorothy Cody		
Duane Compton		
Gene DeMars		
Harry Fritz		
Harriet Hayne		
Gay Holliday		
Loren Jenkins		
Janet Moore		
Richard Nelson		
Helen O'Connell		
Mary Lou Peterson		
Paul Pistoria		
Rande Roth		
Tonia Stratford		
Timothy Whalen		

TALLY

Secretary

Chairman

MOTION: _____

STANDING COMMITTEE REPORT

January 15

19 37

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report EB 144

do pass

do not pass

be concurred in

be not concurred in

as amended

statement of intent attached

Chairman

FIRST

WHITE

reading copy (_____)
color

ROLL CALL VOTE

State Administration

COMMITTEE

DATE 1/15/87 BILL NO. 144 NUMBER _____

NAME	AYE	NAY
Walt Sales		✓
John Phillips		
Bud Campbell	✓	
Dorothy Cody	✓	
Duane Compton	✓	
Gene DeMars	✓	
Harry Fritz	✓	
Harriet Hayne	✓	
Gay Holliday	✓	
Loren Jenkins	✓	
Janet Moore	✓	
Richard Nelson	✓	
Helen O'Connell	✓	
Mary Lou Peterson		✓
Paul Pistoria	✓	
Rande Roth	✓	
Tonia Stratford	✓	
Timothy Whalen	✓	

TALLY

16 2

Secretary

Chairman

MOTION: _____

STANDING COMMITTEE REPORT

January 15

19 87

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report HB 153

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

FIRST

WHITE

_____ reading copy (_____)
color

ROLL CALL VOTE

State Administration

COMMITTEE

DATE 1/15/87 BILL NO. 153 NUMBER _____

NAME	AYE	NAY
Walt Sales		
John Phillips		
Bud Campbell		
Dorothy Cody		
Duane Compton		
Gene DeMars		
Harry Fritz		
Harriet Hayne		
Gay Holliday		
Loren Jenkins		
Janet Moore		
Richard Nelson		
Helen O'Connell		
Mary Lou Peterson		
Paul Pistoria		
Rande Roth		
Tonia Stratford		
Timothy Whalen		

TALLY _____

Secretary _____

Chairman _____

MOTION: _____

