

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

March 11, 1987

The meeting of the State Administration Committee was called to order by Chairman Sales on March 11, 1987 in Room 437 of the State Capitol at 9:00 a.m.

ROLL CALL: Rep. Moore was excused. All other committee members were present.

CONSIDERATION OF SENATE BILL NO. 279: Senator Keating, Senate District #44 and sponsor of the bill, stated that the purpose of the bill is to give administrators authority and direction to develop a security policy for accessing mainframe computer information. An audit report revealed that administration management for use of the mainframe computer was not as tight as it could be. The bill was amended in the Senate to alleviate concerns that additional personnel may be necessary. The bill entails common sense establishment of authority and responsibility.

PROPOSERS: None.

OPPOSERS: None.

DISCUSSION OF SENATE BILL NO. 279: Chairman Sales asked to have the fiscal note explained. Sen. Keating replied that the amendments deleted specific requirements such as conducting and updating a risk analysis that would have required a study. The fiscal note no longer applies, and implementation can be carried out without additional personnel or expense.

Rep. Cody asked if instances have occurred where someone broke into the computer getting "classified" information. Sen. Keating replied that the auditors found invasion into the system very easy, which brought up the security question. Jim Pellegrini, Office of the Legislative Auditor (OLA) replied that in 47 out of 127 samples, access was gained easily in various agencies such as the Secretary of State, Department of Livestock, Workers' Compensation, Department of Highways, and Department of Revenue.

Rep. Cody asked how establishing and maintaining written standards and policies for the supreme court will be handled without extra personnel. Sen. Keating replied that he was not privy to the conference, but the various departments worked out the amendments and reported the bill could be implemented without additional staff.

Sen. Keating closed discussion on Senate Bill No. 279 stating that the bill allows agencies the authority to tighten security access.

CONSIDERATION OF SENATE BILL NO. 260: Senator Harding, Senate District # 25 and sponsor of the bill, stated that the bill is an act to generally revise, clarify, and update election laws:

1. Section 1:
 - A. allows a notary public to act as a deputy registrar without being appointed by the county governing body;
 - B. directs the election administrator to provide training in registration procedures at the request of an unappointed notary public;
 - C. moves the deadline for appointments from March 15 to March 1;
 - D. specifies that registration procedures training must be completed by March 15; and
 - E. clarifies the appointment process to allow county governing bodies to make appointments in some precincts when recommendations have not been received from the party;
2. Section 2 conforms with the 1985 law allowing deputy registrars to register anywhere in the state;
3. Section 3 allows the Secretary of State to prescribe mailing procedures to conform to postal regulations;
4. Section 4 prescribes procedures for filing a declaration of acceptance for those who are elected by a write-in vote;
5. Section 5 provides for counties to combine nonpartisan offices and ballot issues on the same ballot with partisan offices as long as each section is clearly identified and separate;

6. Section 6 allows the election judge to stamp the face of the ballot;
7. Section 7 removes the provision to allow write-in votes by affixing pre-printed labels, and adds instructions for marking optical scan ballots;
8. Section 8 allows voting assistance from anyone except an employer, agent of his employer, or an officer or agent of the elector's union;
9. Section 9 allows an individual who requested an absentee ballot but did not receive it to vote in person on the election date;
10. Section 10 changes the length of time ballots must be available for absentee voting, from 45 to 20 days;
11. Section 11 allows election judges to deposit absentee ballots in the ballot box during the day rather than wait until the polls have closed;
12. Section 12 allows challenges by vote, deleting the requirement for a paper ballot to recognize that not every county still uses paper ballots;
13. Section 13 deletes the requirement that election results must be posted at the polling place;
14. Section 15 provides a time frame for withdrawing signatures from ballot issue petitions and allows the Secretary of State to prescribe the form used by an elector desiring to withdraw his signature;
15. Section 16 allows a constitutional amendment approved by the people to provide its own effective date;
16. Section 17 allows the people to know how many signatures they have received and provides a procedure to eliminate duplicate signatures;
17. Section 18 requires a person or persons making appointments to committees for the purpose of writing ballot issues, to have written approval of appointments from the appointees; and

18. Section 19:

- A. changes the time frame for making appointments to committees advocating approval or rejection of ballot issues, from 4 to 6 months; and
- B. simplifies the appointment process for both the appointees and officials.

PROPOSERS: Larry Akey, Office of the Secretary of State, Greg Jackson, Montana Association of Clerks and Recorders, and Margaret Davis, League of Women Voters, all spoke in favor of the bill.

OPPOSERS: None.

DISCUSSION OF SENATE BILL NO. 260: Rep. Cody asked if the bill eliminates candidates from registering voters if they are not a notary. Sue Bartlett, Lewis and Clark County Clerk and Recorder, replied that it does not.

Chairman Sales asked why the March 15th to March 1st change has been made (p. 3, l. 24). Sue Bartlett answered that the process is to allow a two-week period to make sure that training has been completed.

Rep. Whalen asked if there is a way to verify that an individual voted absentee. Sue Bartlett replied that a number is written on the ballot in addition to the affidavit, and if a second ballot is used to vote, the signature is verified.

Rep. Sales asked what happens if an individual elected on a write-in ballot fails to file a notice of acceptance. Sue Bartlett replied that if an elected official doesn't appear to take the oath of office, the office is declared vacant, but language could be inserted to cover what happens if an elected official neglects to file a notice of acceptance within the stipulated time frame.

Sen. Harding closed discussion on Senate Bill No. 260 by stating the bill has been approved by the clerks and recorders, Secretary of State, and League of Women Voters. Rep. Fritz will carry the bill.

CONSIDERATION OF SENATE BILL NO. 149: Senator Manning, Senate District 18 and sponsor of the bill, stated that the bill is an act reducing the number of years that a member of the Public Employees' Retirement System (PERS) must serve before becoming eligible for retirement benefits regardless of age, and increasing employee contributions to fund the change. The bill differs from the 1985 Senate Bill 195 by increasing the employee contribution approximately 1% to fund the change. A possibility of savings exists because new employees will be hired at a lower salary. Employees may retire and receive monthly benefits rather than being laid-off. The private sector uses early retirement and we should too.

PROPOSERS: Dave Milot, PERS member, Missoula, stated that public employee morale is at an all-time low due to the bad economy, the administrative freeze, and the possibility of wage cut-backs while increasing the workload. Employees in the 40 to 55 year age range that may lose their jobs will not be able to retire and are facing a very bleak job market. The possibility of being laid-off after having worked faithfully for 15 or even 25 years is extremely depressing. Employers are willing to hire older workers when the job market is glutted with younger people able to work for lower wages because they are not strapped with the financial burdens of an older person.

All other state retirement systems have better retirement programs than PERS, and PERS members are willing to pay for the change in benefits. Employee contributions remain in the individual's own retirement account until the employee retires, quits, or is terminated.

I am a member of the negotiating committee and have tried to change the state contract to protect experienced employees from being laid-off. Mr. Milot distributed letters from people supporting the bill even though it will not help them personally (Exhibit # 1).

Tom Schneider, Montana Public Employees Association (MPEA), distributed Exhibits # 2, # 3, and # 4, and stated that the bill is not a mystery, nor is the opposition, which is primarily the Governor. Under current law, the schedule of benefits for a person 49 years of age with an average salary of \$1,200 per month is projected as follows:

1. benefits for 30 years of service are still 50% of salary (30/60, or \$600 per month) projected for a lifetime value of \$180,000;

2. benefits for 29 years of service are 48.33% (29/60, or \$545.16 per month), plus a 6% penalty for having retired with less than 30 years of service with a lifetime value of \$163,000;
3. with between 20 and 25 years of service, the early retirement penalty is 3.6% per year; and
4. the retirement penalty is 48% for 20 years of service.

The bill simply moves everything 5 years back; a 30% penalty for 20 to 25 years of service, and 48% for 15 years of service. A person under 50 years of age cannot draw benefits. The Teachers' Retirement System implemented the change in 1983, and it works well. It is not a new idea.

The opponents will say the bill isn't fair to the employees, but if this bill had a fiscal note it wouldn't even be considered. The opposition will say the majority of PERS members don't want the bill and that the employees were not informed when they voted. That is not true. The resolution passed unanimously at our convention after I explained it. We then polled our membership, giving the same explanation, and 81% supported the resolution.

The teachers have the same benefits; and the highway patrol, and game wardens can retire with 20 years of service with no reduced benefits. When the teachers passed their law in 1983, the employee contribution rate rose from 6.187% to 7.044% to fund the change. When the highway patrol bill passed last session, benefits were granted that not everyone would receive, and their employee contribution rate rose from 6.5% to 7.59%, and also stipulated that future employees had to be 50 years of age in order to retire. In 1971 when we went to the full formula system, the rate for a person 18 years of age went from 2.1% to 5.75%.

At least five people in the last six months have been laid-off who would have qualified for retirement under this bill. Unemployment will run out the first of April, and they will not qualify for retirement benefits until reaching 50 years of age. Government cut-backs are probably not finished; another 500 to 600 jobs may be lost. People are of the opinion if the bill passes, that they may be able to keep their jobs.

Terry Minow, Montana Federation of Teachers and Montana Federation of State Employees, stated that this bill is a humane way to deal with budget shortfalls. When the Teachers'

Retirement System changed, the need for layoffs decreased. If you want to do something positive for state employees, give the bill a be concurred in recommendation.

OPPONENTS: Ellen Feaver, Department of Administration, opposed the bill because: 1) the bill will cost state agencies money at a time when they are least able to afford it; 2) some of the best employees will leave; 3) the bill has inequities; 4) the bill reduces employees take home pay; and 5) will bring significant pressure in the future for the employer contribution to equal the employee contribution.

The initial cost for the bill will be \$420,000, and local governments will pay an additional \$350,000 for sick leave and vacation payout over the savings incurred. The bill will also effect working units requiring specialized skills by impairing services.

The bill will create an additional \$22 million in unfunded liability. Five percent of the current employees would be able to take advantage of the bill during the next biennium. Most of these employees will not take advantage of the bill, because they will either leave the system and withdraw their funds, or continue to work. They will be losers under the bill.

Also, 47% will never meet the eligibility requirements for benefits under the bill. She gave several examples of how this bill will affect PERS members:

1. a person 48 years of age with 26 years of service would receive \$855 per month currently, and \$1,115 under the bill, which is a difference of \$260 per month, and \$84,000 a lifetime;
2. a person 44 years of age with 21 years of service cannot retire until 1992 currently, and under the bill could receive \$570 per month, and receive an immediate windfall of over \$31,000;
3. a person who begins work at 35 years of age, who works for 20 years will pay \$200 a year and contribute \$4,000 by age 55, and never receive any benefits from the bill; and
4. a person 60 years of age, or with at least 30 years of service at a \$26,000 yearly salary will have contributed \$1,300 and receive no additional benefits.

The third and fourth examples represent 47% of our workers. In addition, some of our best employees will leave because they have the most marketable skills. The private sector uses retirement to reduce the work force and we are talking about people who will need to be replaced. Approximately 130 people will take advantage of the bill, which will create a \$22 million unfunded liability on the system for 40 years or more. I suggest considering amendments to make the situation more equitable or less costly.

Larry Nachtsheim, DA, opposed the bill and submitted written testimony (Exhibit # 5).

Don Harriett, state employee, with 10 years of service stated that the bill is special interest legislation for a small number of employees. The bill is a 1% pay cut for PERS participants who will have to contribute at no choice. Only 22 PERS members are expected to take advantage of the 20-year provision, and 108 are expected to take advantage of the 25-year provision. The 25-year provision could be accomplished in other ways such as changing the denominator to 55 instead of using the 60 years of service, or have the employer share in the cost of the benefit.

Dick Nisbet, state employee, opposed the bill stating that he doesn't want to be paying for the benefit of a few and felt that the bill is not in the best interest of most employees.

Letters were received from Pearl Mart, proponent, (Exhibit # 6), and Bruce Russell, opponent (Exhibit # 7).

DISCUSSION OF SENATE BILL NO. 149: Rep. Cody asked about the statement that the bill creates a \$22 million unfunded liability. Tom Schneider replied that the figures in the bill were received from the PERS actuary. This is an employee contribution that is refunded plus interest when a person leaves the system. Ellen Feaver replied that the additional liability is funded by a 1% increase in the employee contribution.

Rep. O'Connell asked how the bill will cost agencies and local governments money, as stated by Ellen Feaver. Tom Schneider replied that costs to the retirement system are separated from auxiliary costs. The costs Ellen Feaver referred to are pay-offs for vacation and sick leave, which have to be paid whether the bill passes or not.

Sen. Manning closed discussion on Senate Bill No. 149 by stating that the PERS is the only retirement system to penalize employees who do not complete full retirement requirements. Both the

highway patrol and game wardens allow 40% retirement with 20 years of service even though the full retirement benefit is 50% after 25 years of service. Over the years all retirement systems have changed benefits and rates of contribution to the benefit of some and detriment of others. In 1983 the teachers' system was changed to allow early retirement without penalty, and it was advantageous to the young teachers who kept their jobs. The contribution rate increased from 6.1% to 7.04% to cover the cost. Senate Bill No. 149 is not talking about a benefit increase; it simply takes away a penalty that no other system has. Representative Spaeth has volunteered to carry the bill.

CONSIDERATION OF SENATE BILL 23: Mike Halligan, Senate District #29 and sponsor of the bill, stated that the bill is developed to deal with the constitutional provisions concerning the right to know with respect to open meetings, as government ought to be open to public meetings. The question is whether an association, specifically the Montana High School Association (MHSA), is considered a public body and subject to open meetings. The bill states:

All meetings of associations that are composed of public or governmental bodies . . . who regulate the rights, duties, or privileges of any individual must be open to the public.

PROPOSERS: Kim Wilson, Common Cause, stated that the controversy that brought up the issue concerns the MHSA, which claimed that the open meeting law does not apply to the Association. Mr. Wilson distributed a suggested amendment (Exhibit # 8) changing the word "agency" to "body" (p. 3, l. 3).

Nancy Newcomer, League of Women Voters, distributed Chapter 3 of the statutes, and MHSA's response that it does not have to comply with the open meeting law (Exhibit #9). She suggested that giving notice be specified, such as using local newspapers for local notice, and state bodies using the three top circulating newspapers, i.e. the "Billings Gazette", "Great Falls Tribune", and "Missoulian".

Sandy Chaney, Women's Lobbyist Fund, supported the bill, and distributed written testimony (Exhibit #10).

OPPONENTS: Mike Colbrese, MESA, explained that the Association, due to a recent lawsuit, is following the open meeting law. The out-of-state meetings are held in conjunction with the national organization meeting for economic purposes.

DISCUSSION OF SENATE BILL NO. 23: Rep. Cody asked if the Association does not establish policy as far as sports are concerned. Mike Colbrese replied that policy is made by member schools. Suggested policy changes are submitted by member schools and voted on by the entire membership.

Rep. Cody asked Marty Onishouk whether she agreed with Mr. Colbrese. Marty Onishouk disagreed stating that policies are set at the annual meeting but made many times during the year by the executive director or the Board. A friend called to verify a Monday morning meeting in Helena on Friday afternoon, but was told when she arrived at the meeting place that the meeting was moved to Great Falls. The organization has dragged its feet every step of the way on educational equity. Its rules and regulations dictate \$20 million dollars of state and school district money to join its activities; twenty percent of the high school budgets are spent on extra curricular activities. This private organization spends foundation money as well as local and voted mill levies. Athletics are very important to the schools, and the whole process should be open to the public.

Sen. Halligan closed discussion on Senate Bill No. 23 by stating that the constitutional convention notes voice strong support for open meetings for agencies that have control over public dollars. There is no notice required in the open meeting law, but the Supreme Court states that unspecified but reasonable notice must be given. The legislature ought to stipulate guidance.

DISPOSITION OF SENATE BILL NO. 23: Rep. Phillips moved the bill BE CONCURRED IN, seconded by Rep. Cody.

Rep. Whalen moved a DO PASS ON THE AMENDMENTS submitted by Kim Wilson. After a brief discussion, Lois Menzies stated that 2-3-203 refers to:

All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or political subdivisions of the state.

State Administration Committee
March 11, 1987
Page - 11 -

In order to make the language parallel in 2-3-202 and 203, the committee may want to insert "agency, body, bureau, or commission".

Rep. Nelson stated that agencies and bodies are used in several places and the wording is only a semantic difference. The motion to pass on the amendments was not seconded.

Rep. Whalen moved a DO PASS ON THE AMENDMENTS submitted by Nancy Newcomer. The motion was not seconded.

The BE CONCURRED IN motion passed (13-5) with Reps. Haynes, Peterson, Compton, Jenkins, and Sales voting no. Rep. Cody will carry the bill.

DISPOSITION OF SENATE BILL NO. 260: Rep. Campbell moved the bill BE CONCURRED IN, seconded by Rep. Cody. Chairman Sales stated that write-in electors should give notice of acceptance or be disqualified. Rep. Cody asked if notification is made to an individual who is elected on a write-in ballot.

Lois Menzies stated that 13-15-406 states:

The election administrator shall deliver a certificate of nomination or election to each individual declared elected by the board.

Committee consensus was to postpone the vote until Lois Menzies has an opportunity to advise the committee if further clarification may be necessary.

DISPOSITION OF SENATE BILL NO. 279: Rep. Campbell moved the bill BE CONCURRED IN, seconded by Rep. Compton. The motion passed (13-5) with Reps. Cody, Jenkins, Holliday, Whalen, and Peterson voting no.

DISPOSITION OF SENATE BILL NO. 149: Rep. Campbell moved the bill BE CONCURRED IN, seconded by Rep. Compton.

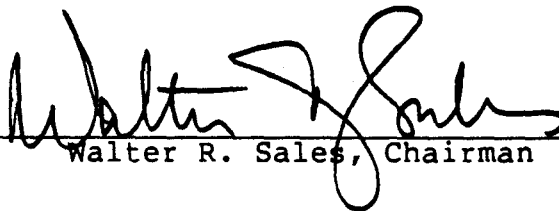
Rep. Jenkins made a substitute motion that the BE TABLED. Rep. O'Connell opposed the motion. Rep. Jenkins withdrew the motion to table the bill.

State Administration Committee
March 11, 1987
Page - 12 -

Rep. Whalen stated that the arguments made by the DA are essentially arguments that can be made against any public employee retirement system or the social security system. With a contracting economy, it is difficult to find work.

The **BE CONCURRED IN** motion passed (11-7) with Reps. Sales, Phillips, Compton, Hayne, Holliday, Jenkins, and Roth voting no.

ADJOURNMENT: There being no further business to come before the committee, the meeting adjourned at 12:20 p.m.



Walter R. Sales, Chairman

7096b/C:JEANNE\WP:jj

DAILY ROLL CALL

State Administration

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-11-87

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	✓		

STANDING COMMITTEE REPORT

March 11

19 87

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SB 279

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Walter R. Sales

Chairman

ENACT THE SECURITY OF DATA AND INFORMATION TECHNOLOGY RESOURCES ACT

REP. FRITZ WILL CARRY THE BILL

third

reading copy (blue)

color

STANDING COMMITTEE REPORT

March 13

19³⁷

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SB 149

☐ do pass

☐ do not pass

☒ be concurred in

☐ be not concurred in

☐ as amended

☐ statement of intent attached

Walter R. Sales

Chairman

REDUCE YEARS PERS MEMBER MUST SERVE BEFORE BEING ELIGIBLE FOR RETIREMENT

Rep. Spaeth will carry the bill.

third

blue

reading copy ()

color

STANDING COMMITTEE REPORT

March 11

1987

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SB 23

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Walter R. Sales

Chairman

EXPAND OPEN MEETING LAW

Rep. Copy to carry the bill.

third reading copy (blue)
color

ROLL CALL VOTE

State Administration

COMMITTEE

DATE 3-11-87

BILL NO. SB 149

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

11 7

Shanne Johns

Secretary

Chairman

MOTION: SB 149 BE CONCURRED IN

2-3-87

To: House State Administration Committee Members

From: Marvin D. Ross, Engr. Tech. III, Mont. Dept. of Highways
P.E.R.S. Tenure 31 years

I am strongly in favor of Senate Bill 149 even though it will not effect me when I retire.

I think that it is only fair and equitable that this change be made in benefit for the members of P.E.R.S. to bring them more in line with all the other public retirement systems.

Thank you,



Marvin D. Ross
2641 Gleason St.
Missoula, Mont. 59801

EXHIBIT # 1
DATE 3-11-87
HB SB 149

2-3-87

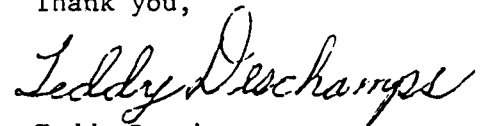
To: House State Administration Committee Members

From: Teddy Deschamps, Engr. Tech. III, Mont Dept. of Highways
P.E.R.S. Tenure: 29 years 6 months.

I am strongly in favor of Senate Bill 149 even though it will not effect me when I retire.

I think it is only fair and equitable that this change be made in benefit for the members of P.E.R.S. to bring them more in line with all the other public retirement systems.

Thank you,

A handwritten signature in cursive script that reads "Teddy Deschamps". The signature is written in dark ink and is positioned above the typed name and address.

Teddy Deschamps
P.O. BOX 224
Alberton, Mont. 59820

2-3-87

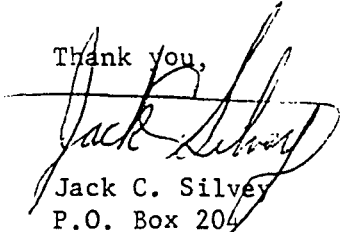
To: House State Administration Committee Members.

From: Jack C. Silvey, Field project Manager, Mont Dept. Of Highways
P.E.R.S. Tenure: 30 years 9 months.

I am strongly in favor of Senate Bill 149 even though it will not effect me when I retire.

I think that it is only fair and equitable that this change be made in benefit for the members of the P.E.R.S. to bring them more in line with all the other public retirement systems.

Thank you,



Jack C. Silvey
P.O. Box 20
St. Regis, Mont. 59366

2-3-87

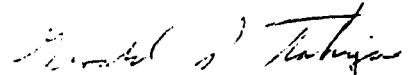
To: House State Administration Committee Members.

From: Gerald Tahija, Field Project Manager, Mont. Dept. Of Highways
P.E.R.S. Tenure: 29 years 6 months

I am strongly in favor of Senate Bill 149 even though it will not effect me when I retire.

I think that it is only fair and equitable that this change be made in benefit for the members of the P.E.R.S. to bring them more in line with all the other public retirement systems.

Thank you,



Gerald P. Tahija
1821 So. 13th St. W.
Missoula, Montana 59801



THOMAS E. SCHNEIDER — EXECUTIVE DIRECTOR
PHONE (406) 442-4600
P. O. BOX 5800
HELENA, MONTANA 59601

SENATE BILL 149

The number one priority, as determined by the 7000 members of the Montana Public Employees Association, is the 25 year retirement without penalty. Senate Bill 149 is the same bill as was introduced last session, except that it is totally funded by the employees. Our membership was polled and 81% supported funding it themselves. We are respectfully requesting that you vote "YES" on Senate Bill 149.

SB 149 is a bill to remove the penalty placed on members of the Public Employees Retirement System for retiring with 25 years of service instead of 30. In addition, it decreases the penalty for retiring with 20 to 25 years of service. This would change the PERD law to correspond with the current TRD law.

SB 149 is different from SB 195 of last session, in that it is totally funded by EMPLOYEE CONTRIBUTION. This means that in these days of tight budgets there will be no cost to the state or the local governments of Montana. There will be the possibility of savings because of the hiring of employees at lower salaries to replace those retired and in times of layoffs there is the chance of employees leaving with monthly benefits instead of unemployment and welfare payments.

Contrary to the statement by opponents that this bill will provide a windfall increase in benefits of thousands of dollars to some employees, I want to impress upon you, again, that all this bill does is remove the penalty for early retirement. A person with 25 years of service will still only receive 41.666% of salary instead of the 50% the person would have received with 30 years, but the person with 25 years of service WILL NOT be penalized 30% of the benefit for retiring. There is no increase under this bill...It is just that there is not a decrease...

According to the PERD Actuary, Mr. Hendricksen, the current valuation determines that 14,297 PERD members could benefit from passage of this bill, with 1401 being eligible during the next two years. He, further, calculated the cost necessary to properly fund the bill at 1% of salary. This means that the employees' contribution will increase from 6% to 7%.

2
3-11-87
SB 149

In these days of tight budgets, it only makes sense to look at the methods used by the private sector to reduce costs while not hurting the employees any more than necessary. The private sector has used early retirement to great advantage for both the employer and employee, and we should too.

WHAT DOES THIS BILL DO?

1. It does not change the formula of 1/60. Currently, if you complete 30 years of service you receive 30/60 or 50% of your final average salary (three year average). However, if you complete 25 years you may receive 25/60 or 41.66% but that benefit is reduced 6% each year for each year under 30 years. This means that a person who retires with 25 years of service will get 41.66% of salary reduced by 30%. EXAMPLE: $41.66\% \times \$1000.00$ (average salary) = \$416.66 monthly benefit reduced by 30% so the final benefit is \$291.66.
The change of language on page 3, Section 4 (2)(a) removes the 30% penalty shown above.
2. If you work 20 years and retire under the present law your benefit is reduced by 6% each year down to the 25th year and then an additional 3.6% for each year from 25 to 20 years. This bill removes the penalty down to 25 years and provides that your benefit with 20 years would be reduced by 30% instead of 48%.
EXAMPLE: $33.33\% (20/60) \times \$1000.00 = \333.33 per month. Current reduction is $\$333.33 \times 48\% = \173.33 per month. SB 149 changes to: $\$333.33 \times 30\% = \233.33 per month. The change of language on page 3, Section 4(2)(b) does the above.
3. The benefit change is funded by an increase in the employee contribution of 1% (from 6% to 7%). This change is not excessive when you consider that the contribution rate for the other state systems are in the same general area.

Teachers RD	- 7.044%
Sheriff's	- 7%
Game Warden	- 7.9%
Police	- 7.5%
Highway Pat.	- 7.59%

QUESTIONS

1. What about the young people who will not stay to retire, should they pay more? Anyone who leaves receives the contribution paid plus interest.
2. When the Teachers Retirement System added this benefit not too many teachers took advantage of it. The average number of years of members who retired from the teachers system was 26.5 while PERD is only 18.5 so this shows that many

more teachers are closer or above the 30 years when they can retire without penalty. In addition, teachers have also gone through the dramatic reductions that public employees have faced for the past year and will continue to face.

3. Do the employees support this method of financing? The MPEA polled its members and 80% voted in favor of financing the bill this way.
4. Can we really save money this way? Last session during the arguments on SB 195 the claim was made that it would save money. That bill had an employer cost and the claim was made that it would save as much as it cost. People were skeptical of the figures. The nice thing about SB 149 is that it doesn't cost the state or local governments any money so any money saved is to our advantage but we don't have to say it does to sell the bill. The answer is that it probably does, but only time will tell.
5. Why should we allow the employees to retire after 25 years? The state has 8 retirement systems and currently PERD is the only one that penalizes employees for retiring with 25 years of service. This will make them equal, not ahead of the other systems.

Is Senate Bill 149 Fair and Equitable?

1. PERD is the only state retirement system which penalizes employees who do not complete full retirement requirements.
 - a. TRD was amended in 1983 to provide the same early retirement structure that SB 149 would amend into the PERD law. At that time the members' contribution was increased from 6.187% to 7.044%.
 - b. Both Highway Patrol and Fish and Game Warden Retirement Systems allow a full 40% retirement with 20 years of service even though the full retirement benefit is 50% with 25 years of service.
2. Over the years all of the retirement systems have changed benefits and rates of contributions to the advantage of some and the detriment of others because of the needs of the employees and the systems.
 - a. Again, in 1983, the TRD was changed to allow early retirement without penalty because of the reducing needs of the districts. Those teachers who could take advantage immediately certainly had the advantage but it also was advantageous to the young teachers who kept their jobs. The contribution rate was increased from 6.187% to 7.044% to cover the cost.
 - b. Last session many changes were made to the Highway Patrol System some of which were to the advantage of those who could retire immediately. In this case not only was the members' contribution increased from 6 1/2% to 7.59% but new employees now have to wait to draw a benefit.
 - c. In 1971, when the PERD went from a matching annuity system of benefits to a flat formula, employees who were pay as little as 2.1% per month for PERS were increased to 5.75%. Those who retired immediately received benefit increases of major amounts. SB 149 is not talking about a benefit increase. It simply takes away a penalty that not other state system has. Remember the formula is not being changed, an employee will still receive 25/60 or 41.666% of salary. That hasn't been changed by SB 149.

3

3-11-87

= SB 149

EXAMPLE: Age 49 - \$1200 A Salary SENATE BILL 149

YEARS OF SERVICE	RETIREMENT PERCENTAGE	CURRENT LAW			SENATE BILL 149			CURRENT LOSS OF LIFETIME BENEFITS
		PERCENT OF PENALTY	MONTHLY BENEFIT	LIFETIME VALUE OF BENEFIT	PERCENT OF PENALTY	MONTHLY BENEFIT	LIFETIME VALUE OF BENEFIT	
30	30/60	50%	\$600.00	\$180,000		\$600.00	\$180,000	0
29	29/60	48.33	545.16	163,548		579.96	173,988	10,440
28	28/60	46.67	492.83	147,849		560.04	168,012	20,163
27	27/60	45.00	442.80	132,840		540.00	162,000	29,160
26	26/60	43.34	395.26	115,578		520.08	156,024	40,446
25	25/60	41.67	350.03	105,009		500.04	150,012	45,003
24	24/60	40.00	318.72	95,616	6%	451.20	135,360	39,744
23	23/60	38.34	288.93	86,679	12%	404.87	121,461	34,782
22	22/60	36.67	260.50	78,150	18%	360.83	108,249	30,099
21	21/60	35.00	233.52	70,056	24%	319.20	95,760	25,704
20	20/60	33.34	208.00	62,400	30%	280.06	84,018	21,618
19	19/60	31.67	*197.62	59,286	33.6%	252.35	75,705	*16,419
18	18/60	30.01	*187.26	56,178	37.2%	226.15	67,845	*11,667
17	17/60	28.34	*176.84	53,052	40.8%	201.32	60,396	* 7,344
16	16/60	26.68	*166.48	49,944	44.4%	178.00	53,400	* 3,456
15	15/60	25.01	*156.00	46,818	48.0%	156.00	46,800	* -0-

* - Wait and retire at age 50
Reduction at age 50 = 48%

PENALTY LOSS WOULD BE PROPORTIONATELY GREATER FOR PERSON OF YOUNGER AGE OR HIGHER MONTHLY BENEFIT

4

3-11-82

50149

DEPARTMENT OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT DIVISION



TED SCHWINDEN, GOVERNOR

(406) 444-3154

STATE OF MONTANA

1712 9TH AVENUE
HELENA, MONTANA 59620-0131

TESTIMONY ON SB 149

Larry Nachtsheim, Administrator
March 11, 1987

Senate Bill 149 is a rehash of the bill introduced in 1985, and again in 1986, during the special session. It is properly titled as a bill to reduce the number of years necessary to become eligible for service retirement benefits, regardless of age. However, the major change from the previous bill is the funding--no longer employer, but employee.

Under current law, members electing to retire early, receive a smaller benefit simply due to the fact that they will receive that benefit for a longer period of time. Proponents of this bill calls this reduction a penalty. It is not. It is a simple recognition that someone who retires 5 years earlier will receive the benefits an average of 5 years longer.

If this reduction can be considered a penalty, the bill before you simply shifts the "penalty" to a different group.

This proposal now would provide a retirement eligibility after 20 years of service. This would permit members with 20 years of service, who can now retire at age 50, to retire at any age, possibly as early as 38 years of age and receive the same benefit they would have received under the current statute at age 55.

In shifting this "early retirement" reduction, the bill does create a penalty. This penalty is placed on every member who has over 30 years of service and all individuals who began or will enter public service after age 35.

Everyone of these individuals will see their take home pay decreased by 1% of salary and receive nothing in return.

Unlike the early retirement provision, that in many instances will be optional to those choosing to retire early, this is a penalty to PERS members who will receive no other enhancements from the bill other than the right to pay for it.

This bill also effects the state as a whole. If enacted, this bill will remove over \$4.3 million from the state income tax rolls in each of the next two years. At the same time, it will remove this \$4.3 million of spendable income from the state economy in each of the next two years.

Granted, there will be some offset for additional benefits that will be paid, but the 130 anticipated retirees would each have to receive over \$33,000 a year to offset the loss of \$4.3 million. In addition, there is also no assurance that all of these individuals would continue to reside in Montana after their retirement.

Testimony before the Senate State Administration Committee stated that 81% of the respondents to the MPEA survey favor this measure. It is important to note that about 25% of the MPEA/PERS membership responded. The positive responses represents about 4 1/2% of the total PERS membership.

Many of the members calling the PERS inquiring as to the status and effects of this bill are of the impression that somehow, this is a formula change, which would provide 50% of salary after 25 years of service. It is not. It provides 41.5% of salary after 25 years of service and only 23.3% of salary after 20 years.

From the number of calls we are receiving and the questions that are being asked, it is obvious that employees do not understand the implication of this bill. They are, in fact, simply attracted by the "appealing" concept of "early retirement."

Some interesting statistical information on the PERS, that may assist the committee in deliberating on this bill, is shown by the following:

Of the 26,000 PERS members, 45% are males and 55% are females, 11,700 and 14,300 respectively. Of the 1,400 additional eligible retirees under this bill, about 81% are male and 19% are female. Of the totally ineligible, who will pay the penalty to provide funding but not be eligible for any enhancement, 41% are male, 59% are female. The average annual salary for a male is \$20,446, for a female \$14,462, which, translated into benefits, would mean the average male would receive approximately 41% more benefits than the average female.

Applying the statistics to this bill, four out of five current members receiving an enhancement from this bill would be males who would receive, on the average, 141% of the benefits of the average female retiring under the same provisions.

Six out of ten current members who would pay the penalty to provide funding, but would not be eligible to use the provisions, are female.

There was testimony in the Senate hearing on this bill that it is "equitable" to provide the same benefits in the PERS that are available in the Teachers' Retirement System. Since there are eight state administered retirement systems, how is this provision more equitable than a formula change similar to the judges with half pay after 15 years, or the police and firefighters with half pay in 20 years and regular retirement at age 50, or an increase in the employer and employee contributions equal to that of the Teachers' system, of 7.428% and 7.044% of salary respectively? To paraphrase an old maxim "beauty is in the eyes of the beholder," equity is in the judgement of the beneficiary.

Recently, the federal government enacted changes in the social security system which makes normal retirement age 67 rather than age 65. Tax changes have been made that do away with early retirement incentives, like the elimination of the three year recovery rule, tax penalties for withdrawals before age 59 1/2, repeal of income averaging, and capital gains treatment for lump sum retirement payments. These changes reflect, in part, the federal recognition and concern that the normal life expectancy has increased significantly in the last 20 years to almost double that of 100 years ago. Obviously, with greater life expectancy, there is the anticipated longer duration for social security and retirement benefits and the associated costs.

There is also a very basic question as to whether retirement benefits are deferred income or actually for people who are retiring. In the first category you have individuals who, under the provisions of this bill, would be leaving Montana public service at 40 to 50 years of age, to seek employment elsewhere, be it the private sector within the state or employment in some other state. This is contrary to the legislative intent cited in 19-3-102, MCA, that states the Public Employees' Retirement System is to provide retirement compensation and death benefits. By implication, retirement benefits are provided for those public employees who leave the labor market and actually retire.

This is not a good retirement bill. If enacted, it will create penalties, not alleviate them; it is not equitable, as it creates classes of employees within a single retirement system; it will provide significant benefit enhancements for a few at the expense of many; it enhances discrimination by virtue of sex and it provides early retirement payments for non-retirement reasons.

In closing, I want the committee to know that it is difficult to oppose a measure that my old friend, Tom Schneider, has worked on so diligently.

But recognizing that legislative changes to the retirement systems are essentially in perpetuity, not for just the biennium, I honestly believe that there are more equitable ways to increase the retirement benefits for a greater number of the PERS membership at a comparative cost to the members. For example, a formula change for everyone.

Therefore, I must respectfully request that you do not concur in this proposal.

Thank you.

SB 149, the "25-year retirement bill" for the Public Employees' Retirement System, has been touted as a bill which will end the "penalty" on PERS retirements. While it can be argued that an actuarial adjustment is not a penalty, this bill does not remove the "penalty." It does, however, create a penalty. Who pays the new penalty?

The Average PERS Employee. Since the average PERS employee retires with 18 years of service at age 63, they will pay an additional 1% of their salary as contributions into the PERS without one cent in increased benefits when they retire.

Women. Women historically and currently have less service in PERS than do men. Because this bill gives an enhanced benefit only to those members with between 20 and 30 years of service, only 19% of those receiving the enhancement would be women. On the other hand, since women represent 55% of the PERS labor force, they would pay a disproportionate share of the new penalty.

Long-Time PERS Employees. PERS members with 30 years or more service will not receive any increase in their retirement benefits under this bill. They will pay an additional 1% of their salaries beginning July 1 as their penalty.

Older Workers. PERS members who are 55 or older but do not have 20 years of service, or those age 60 or older (regardless of their service), will pay an additional 1% penalty under this bill and not receive any additional benefits. This is because they are already eligible for those same benefits based upon their age.

Middle-Aged Workers. Persons going to work for state or local government agencies at age 35 or later will never be eligible for a benefit enhancement under this bill, but they will have to pay a penalty of 1% of their salary for as long as they work in PERS-covered employment.

Young Workers. PERS turn-over is greatest among younger workers (below age 30). When these people quit, they take a refund of their contributions. The new federal tax reform law imposes an additional 10% penalty on the withdrawal of tax-deferred contributions and interest before age 59-1/2. These PERS members will have to pay larger penalties to the IRS because of their greater required contributions.

Local Businesses. This bill will reduce the spendable income of PERS members by approximately \$8.6 Million during the next two years. The affect of this decrease will be felt not only by affected employees but by local retail businesses in the form of reduced sales. Approximately 20% of this impact will occur in Lewis & Clark County; however, significant impacts will occur in every county because PERS members are employees of county and local governments, school districts, weed districts, irrigation districts, the university system, and state government.

State Revenues. This bill will reduce the taxable income in Montana by over \$8.6 Million during the next biennium because the additional 1% employee contribution will be tax-deferred.

State and Local Government Employers. Because an additional 130 people are expected to terminate to take advantage of this bill during the next biennium, employers will be required to make lump-sum payments of sick and annual leave to those people. If the positions are refilled, there will be a small salary savings but a net cost of \$350,000 to the state, \$67,500 to the universities, and \$355,000 to local governments. If positions remain open to fund the lump-sum pay-outs, there will simply be fewer people to do the jobs.

Who will benefit from this bill? An estimated 2.5% of the PERS membership in any given year.

Big Winners. Members in professional, technical or management positions, age 38 to 49 with 20 to 24 years of service, who leave the state to take another job. Since these people are not eligible to "retire" under current state law, their monthly benefits (paid up to 5 years earlier under this bill) will be a complete "windfall" and will allow them to seek other employment at the time of their choosing.

Little Winners. Persons age 50-59 who were planning to retire anyway and who will receive from 1% to 20% more in monthly retirement benefits under this bill. Those who retire immediately will receive this enhancement without having to pay the additional 1% of their salary to help pay for the increase. Those who retire under these provisions 20 years from now will pay an additional 20% of their annual salaries and, therefore, may not "win" at all; they may, however, "break even." Again, since these people won't be eligible for Social Security until age 67, we expect they will also seek other employment and will not actually "retire."

QUESTIONS AND ANSWERS

SB 149

Q. What is the early retirement "penalty" I've heard about?

A. There is no "penalty" for retiring early. However, there is an adjustment made to benefits paid to members who retire early because they are expected to receive their retirement benefits over a longer period of time, as is shown by the following example:

Fred Smith, age 60, 25 years of service, and final average salary of \$2,400.

$$1/60 \times 25 \times \$2,400 = \$1,000/\text{month}$$

After 23 years, by age 83, Fred could expect to receive a total of \$276,000.

If Fred's friend, Ralph Jones, age 50, 25 years of service, and final average salary of \$2,400 decided to retire at the same time, he would receive:

$$1/60 \times 25 \times \$2,400 \times .7 = \$700/\text{month}$$

After 33 years, by age 83, Ralph could expect to receive a total of \$277,200.

As you can see, even though Fred and Ralph worked for the same number of years and had the same final average salary, Ralph will still receive more in benefits than will Fred until they both reach age 84 which is the normal life expectancy. The actuarial adjustment is applied in order to provide substantially equal benefits to persons with the same work histories.

Without such an adjustment, Ralph would receive \$1,000/month and, by age 83, he could expect to receive \$396,000 -- \$120,000 more than Fred, even though he paid no more in contributions.

Q. Will this bill eliminate the early retirement "penalty?"

A. No. The actuarial reduction for an early retirement will remain in law; this bill proposes to change the service requirements for a regular or early retirement. Therefore, the early retirement adjustment would be applied to the retirement benefits of PERS members retiring with between 20 and 25 years of service and/or between 50 and 60 years of age.

Q. Will people be eligible for "full retirement" after 25 years of service if this bill becomes law?

A. A member retiring with 25 years of service would receive $25/60 \times \text{FAS}$ (Final Average Salary). This proposal does not provide "half pay" to persons with 25 years of service.

(OVER)

Q. Which PERS members would be eligible for increased benefits under this bill?

A. During the next biennium, 1,401 (5%) of the 26,757 current PERS members could elect to take advantage of the benefit enhancements proposed here. Of the 1,401, 19% are women and 81% are men. If currently eligible members delay their retirements until they have 30 or more years of service, they will receive no increase because of this bill when they do retire.

Q. What will this benefit enhancement cost?

A. If the same percentage of eligible PERS members "retire" under the provisions of this benefit enhancement as did eligible members of the Teachers' Retirement System, 130 (.4%) PERS members will retire during the next biennium. Therefore, if an average of .4% of the membership will retire with this enhancement in any given biennium, the cost of funding this proposal will be an additional 1% of employees' salaries each year. If more take advantage of this enhancement, the cost will increase proportionately and the resulting unfunded liability will become the responsibility of PERS employers.

Q. Who will pay for these increased benefits?

A. Every PERS-covered employee will contribute an additional 1% of their salary each payday. For an employee with an annual salary of \$20,000, this would amount to an additional \$200/year, regardless of whether or not they could ever expect to receive increase benefits because of this bill.

Q. What will this benefit enhancement amount to?

A. This will differ depending upon the individual member's salary and service. In the example on page 1, Ralph Jones would receive an increased benefit of \$300/month -- or an increase of \$118,800 by the time he reaches age 83.

Others, however, may receive only a very slight increase because they previously would have had to take only a slight reduction as shown in the following example:

Marie Smith is age 59, has 25 years of service, and a final average salary of \$900. Under current law she would be eligible for the following benefit:

$$1/60 \times 25 \times \$900 \times .94 = \$342.50$$

After 24 years, by age 83, Marie could expect to receive \$98,640

Under the proposed law, Marie would receive \$375/month -- or an increase of \$9,360 by the time she reaches age 83.

Q. Who do you expect to retire under this proposal?

A. In order to benefit from this proposal, individuals must have 20 years of service prior to reaching age 55 or have 25 years of service before reaching age 60. Since most people can not afford to actually retire before age 60, we expect that the majority of people taking advantage of this proposal will be those who accept another job or quit to go into business for themselves. Because of the current depressed state of the Montana economy and the fact that 81% of those eligible are men, we expect the majority of members "retiring" under this proposal will be men, between the ages of 40 and 50, who will quit professional, technical, or management level positions to take another job, out-of-state.

RE: Senate Bill 149

As a member of the Montana Public Employees Association for the past twenty-eight and one-half years, I wish to express my support and desire to have SB 149 pass.

Although I am sixty years old, and wouldn't be able to retire until reaching age sixty-two, I am still in complete favor of having this bill pass, even though it wouldn't benefit me personally. Being employee funded it wouldn't constitute any burden to the state government.

Thanking you for your support,

Pearl H. Matt
313 O'Connell
Lolo, Montana

Page 6
Date 3-11-87
SB149

7

3-11-87

Z 58149

March 4, 1987

202 Jumper FP
Glendine, Mt 59330

Dear Representative Sales:

Senate Bill No 149 provides that public employees with twenty five years of Public Employee Retirement System coverage may draw a full retirement. In my opinion this is a bad bill for several reasons.

To me a 25 year full retirement option should not be offered to employees in taxpayer supported employment. The employee who retires after 25 years will generally have to continue work to maintain his life style. He will simply join the workforce with a built in advantage over his job seeking neighbor. Extremely short retirement options become a form of deferred compensation rather than retirement programs.

These short retirement programs are not beneficial to either the public employee image or to the image of state or county governments.

Virtually all employees undergo on the job training and education paid for by the employer during their work life.

This cost of training and education is returned by productive and effective employees. However when the employee resigns the training cost and decrease in productivity is repeated with new employees. Generally these long time employees are the backbone of the organization because of their experience, training and job know how.

A February 1 article in the Billings Gazette indicated that only a very few employees would exercise the 25 year option. However, all employees, including those with over 30 years service would pay a 16.7% increase in retirement contribution under Senate Bill 149. This is unreasonable, unfair and inequitable.

My recommendation is to kill the bill out right as it is bad legislation and is not needed to reasonably compensate ~~and~~ public employees.

If the bill is passed it should be amended to retain the present retirement contribution for those employees with over 30 years of service. No employee should be forced to provide so large a contribution for absolutely no benefit.

Sincerely yours,
Drew Russell

PROPOSED AMENDMENT TO SB23

1. Page 3, line 3
Following: "public"
Delete: "agency"
Insert: "body"

SENATE #8
DATE 3-11-87
SB 23

Tim Wilson

2-2-304. Penalty for violation of nepotism law. Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than \$50 or more than \$1,000 or by imprisonment in the county jail for not less than 6 months or by both such fine and imprisonment. History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520.

CHAPTER 3

PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1 — Notice and Opportunity to Be Heard

- Section
- 2-3-101. Legislative intent.
 - 2-3-102. Definitions.
 - 2-3-103. Public participation — governor to insure guidelines adopted.
 - 2-3-104. Requirements for compliance with notice provisions.
 - 2-3-105. Supplemental notice by radio or television.
 - 2-3-106. Period for which copy retained.
 - 2-3-107. Proof of publication by broadcast.
 - 2-3-108 through 2-3-110 reserved.
 - 2-3-111. Opportunity to submit views.
 - 2-3-112. Exceptions.
 - 2-3-113. Declaratory rulings to be published.
 - 2-3-114. Enforcement.

Part 2 — Open Meetings

- 2-3-201. Legislative intent — liberal construction.
- 2-3-202. Meeting defined.
- 2-3-203. Meetings of public agencies to be open to public — exceptions.
- 2-3-204 through 2-3-210 reserved.
- 2-3-211. Recording.
- 2-3-212. Minutes of meetings — public inspection.
- 2-3-213. Voidability.
- 2-3-214 through 2-3-220 reserved.
- 2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know.

Part 1

Notice and Opportunity to Be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to Article II, section 8, of the 1972 Montana constitution that

legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency. History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

- (1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:
 - (a) the legislature and any branch, committee, or officer thereof;
 - (b) the judicial branches and any committee or officer thereof;
 - (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
 - (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.
- (2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:
 - (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
 - (b) declaratory rulings as to the applicability of any statutory provision or of any rule.
- (3) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof. History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; and, Sec. 23, Ch. 285, L. 1977; and, Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); and, Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation — governor to insure guidelines adopted. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(2) The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request. History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; and, Sec. 24, Ch. 285, L. 1977; and, Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5).

Cross-References
Right of public participation in government.
Art. II, sec. 8, Mont. Const.
Adoption of rules, 2-4-302.
Publication of rules — availability, 2-4-312.

Cross-References
Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.
History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3-404.

2-3-203. Meetings of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds shall be open to the public.

(2) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demand of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.

(3) However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.

(4) Any committee or subcommittee appointed by a public body for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; and Sec. 1, Ch. 474, L. 1975; and Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3-402; and Sec. 1, Ch. 380, L. 1979.

Cross-References
Right of public to observe deliberations of all public bodies, Art. II, sec. 9, Mont. Const.
Right of individual privacy, Art. II, sec. 10, Mont. Const.
Notice of agency action required, 2-3-103.
Deliberations of medical legal panel to be secret, 27-6-603.
Criminal penalty for closed meeting — official misconduct, 43-7-401.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3-405.

2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

- (a) date, time, and place of meeting;
- (b) a list of the individual members of the public body, agency, or organization in attendance;
- (c) the substance of all matters proposed, discussed, or decided; and
- (d) at the request of any member, a record by individual members of any votes taken.

History: En. Sec. 3, Ch. 159, L. 1963; and Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3-403.

Cross-References
Citizens entitled to inspect and copy records, 2-6-102.
Records open to public inspection, 2-6-104.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.
History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3-406.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, section 9, of the Montana constitution may be awarded his costs and reasonable attorneys' fees.
History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632.

CHAPTER 4

ADMINISTRATIVE PROCEDURE ACT

Part 1 — General Provisions

- Section
- 2-4-101. Short title.
- 2-4-102. Definitions.
- 2-4-103. Rules and statements to be made available to public.
- 2-4-104. Subpoenas and enforcement — compelling testimony.
- 2-4-105. Representation by counsel.
- 2-4-106. Service.
- 2-4-107. Construction and effect.

Part 2 — Organizational and Procedural Rules

- 2-4-201. Rules describing agency organization and procedures.
- 2-4-202. Model rules.

Part 3 — Adoption and Publication of Rules

- 2-4-301. Authority to adopt not conferred.
- 2-4-302. Notice, hearing, and submission of views.
- 2-4-303. Emergency rules.
- 2-4-304. Informal conferences and committees.
- 2-4-305. Requisites for validity — authority and statement of reasons.
- 2-4-306. Filing, format, and effective date — dissemination of emergency rules.
- 2-4-307. Omissions from ARMI or register.
- 2-4-308. Adjective or interpretive rule — statement of implied autho and legal effect.
- 2-4-309 and 2-4-310 reserved.
- 2-4-311. Publication and arrangement of ARMI.

2-3-108 through 2-3-110 reserved.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

- (1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;
- (2) a proceeding is held as required by the Montana Administrative Procedure Act;
- (3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or
- (4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-428 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

Cross-References
Montana Administrative Procedure Act — notices, 7-1-2121.
proceedings, 2-4-302, 2-4-306, 2-4-601.

2-3-105. Supplemental notice by radio or television. (1) Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice or by both of such broadcasts when in his judgment the public interest will be served.

(2) The summary of such notice shall only be read with no reference to any person by name then a candidate for political office.

(3) Such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

Cross-Reference
Affidavits — generally, Title 26, ch. 1, part. Affidavit defined, 26-1-1001.

2-3-111. Opportunity to submit views. Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

History: En. 82-428 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3).

Cross-References
Right of public participation in government, Art. II, sec. 8, Mont. Const.

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

- (1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
- (2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
- (3) a decision involving no more than a ministerial act.

History: En. 82-428 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

Cross-References
Emergency rules, 2-4-303.
Disaster and emergency services, Title 10, ch. 3.

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-427 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition made within 30 days of the date of the decision of any person whose rights have been prejudiced.

History: En. 82-429 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229.

Part 2**Open Meetings**

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It shall be the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 1, L. 1963; R.C.M. 1947, 82-3401.



Montana High School Association

1 South Dakota Avenue Helena, MT 59601 (406) 442-6010

EXECUTIVE STAFF

Dan L. Freund
Executive Secretary
James C. Haugen
Assistant Executive Secretary
Mike A. Colbresi
Assistant to the
Executive Secretary

BOARD OF DIRECTORS

Supt. Richard Backman, Pres
Valer
Prin. Bill Vogt, Vice Pres
Fairhead (Kalspell)
Supt. Tom Warwick
Ernis
Prin. James Wood
Salney
Lanny Hall
Bozeman
(Mont. School Boards Assoc.)

June 25, 1986

Nancy Newcomer, Director
12 Parsons Drive
Missoula, MT 59802

Dear Ms. Newcomer:

Please be advised that the answer to your letter received in this office on June 14, 1986, asking for copies of the public notice that was given prior to the March 5 and 17, 1986 MHSA conference call meetings, I would advise you as follows.

Under the conditions set forth we do not believe that it was necessary to give public notice prior to the conference phone calls on March 5th and 17th. The business was conducted as per the open meeting law with all access to telephone speakers available and all interested parties.

Sincerely,

MONTANA HIGH SCHOOL ASSOCIATION

Dan L. Freund
Executive Secretary

DLF:rcw
cc: Ron Waterman

COPY



TO: SENATOR MIKE HALLIGAN
FROM: NANCY NEWCOMER, MONTANA LEAGUE OF WOMEN VOTERS
RE: SENATE BILL 23, PROPOSED NOTICE PROVISION
DATE: MARCH 2, 1987

NOTICE

1. A public body must provide public notice of all meetings
2. The notice must include:
 - a. a statement of the time, place, nature of meeting and the name of the public body.
 - b. a statement of the purpose of the meeting and any proposed decisions to be made.
2. Notice will be provided in the following manner:
 - a. Local public bodies are public bodies whose sphere of authority is within one county. Local public bodies will publish a minimum of 24 hours of notice in the local newspaper with the largest circulation as of January 1, 1987. Circulation will be reviewed yearly. Only on yearly review of circulation can the newspaper serving notice be changed.
 - b. State public bodies are public bodies whose sphere of authority is within two or more counties. State public bodies will provide a minimum of seven days notice. Individuals may request written notice of all meetings of a public body. State public bodies will publish all meeting notices in a newspaper as defined below. The newspaper will be one of the three major daily newspapers in Montana. The three daily newspapers will be determined by circulation as of January 1, 1987 and reviewed every five years. Only on the five year review can the newspaper of notice change.

RESEARCH NOTE

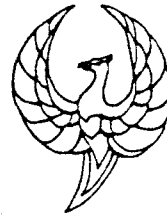
From the December 12, 1986 Standard Rate and Data Service.
Sunday circulation of Montana newspapers

Billings	60,394
Bozeman	13,190
Butte	17,627
Great Falls	41,520
Helena	13,797
Kalispell	13,863
Missoula	30,800

c.c. Representative Earl Lory
Kim Wilson, Common Cause Lobbyist

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



11 March 1987

Mr. Chairman and members of the committee:

My name is Sandy Chaney. I am representing the Women's Lobbyist Fund. We support Senate Bill 23.

The Montana High School Association has remarked frequently that it conducts its meeting according to the open meeting law, even though it is not required to do so. In the past, however, MHSA has discouraged rather than encouraged public attendance at its meetings. Senate Bill 23 requires the MHSA to abide by the open meeting law. This bill is a measure of clarification that will alleviate the discrepancy between reports voiced by the public and claims made by the MHSA.

The MHSA receives public dollars and must account for the important decisions it makes—decisions about finances and funding, decisions about the organization and development of high school extracurricular activities and athletic programs.

The Women's Lobbyist Fund is particularly concerned about the decisions of MHSA with regards to educational equity. MHSA has resisted our efforts to promote sex equity in education. Since 1983 the Lobbyist Fund has worked to promote equality of opportunity for young women and men. The MHSA also has a responsibility to work for equality of opportunity in the activities of young adults.

The MHSA has important responsibilities; it must be responsible in meeting its obligations. Requiring the MHSA to hold open meetings ensures that it will be held more accountable for its decisions.

The Women's Lobbyist Fund favors this bill. It received the support of the Senate. We ask that you, too, support this bill. Thank you.

EXHIBIT # 10
DATE 3-11-87
HB 513 23

WITNESS STATEMENT

NAME Nancy Newcomer BILL NO. Senate Bill 23
ADDRESS 12 Parsons Drive DATE 3/11/87
WHOM DO YOU REPRESENT? Montana League of Women Voters
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Sandy Chaney BILL NO. SB23
ADDRESS Helena DATE 11 March 198
WHOM DO YOU REPRESENT? Women's Lobbyist Fund
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO. SB 23

DATE March 11-87

SPONSOR SENATOR HALLIGAN

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STATE ADMINISTRATION COMMITTEE

DATE 3-11-87

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO. SB 260

DATE March 11, 1987

SPONSOR Senator Harding

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO. SB 279

DATE March 11, 1987

SPONSOR SENATOR KEATING

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.