

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Jan Brown, on January 18, 1989,  
at 9:00 a.m.

#### ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Judy Burggraff, Secretary; Lois Menzies,  
Staff Researcher

Announcements/Discussion: Chairman Brown thanked Rep. DeBruycker who brought treats. She said that HB 78 is still pending before the committee and she is giving Rep. Hanson more time on it. Rep. Cocchiarella said that the subcommittee on HB 26 is still waiting for the fiscal note.

#### HEARING ON HB 106

Presentation and Opening Statement by Sponsor: Rep. Gary Spaeth, House District 84, said that the bill is being introduced at the request of several people. Currently, city and municipal judges are elected during city or municipal general elections, which are held in odd-numbered years. This bill provides that these judges will be elected during state general elections, which are held in even-numbered years. The reason for introducing this bill is that for a judge to be qualified for office, he or she must attend a training course conducted by the Supreme Court Administrator's Office of several days. This bill would help reduce the cost by only having to hold one training course. The arguments against the bill are that the election should be held concurrently with the municipal election because that is when local issues are in the minds of people and they're more cognizant of the city judge question as opposed to the other issues that appear on the general ballot. The other argument is that there would be costs associated with holding a city election at the time of the general election. An example of this is that in the city of Missoula it would cost from

\$1,200 to \$2,000 to have that election concurrently. Rep. Spaeth said this bill is being introduced as primarily a cost-saving device, but discovered upon further research that the bill might cost more in the long haul. He said he would prefer the committee table the bill until it has been sorted out as to whether it will save anyone any money.

List of Testifying Proponents and What Group They Represent:

Judge Donald E. Bertness, City of Billings

List of Testifying Opponents and What Group They Represent:

Cort Harrington, Montana Association of Clerk and  
Recorders

Shelly Laine, City of Helena

Wallace A. Jewel, Montana Magistrates Association

Testimony:

JUDGE BERTNESS, proponent, (Exhibit 1) had been asked to appear here by Judge Herman from Laurel, who is on the lower court commission and could not appear. Judge Herman sent a letter to the State Administration Committee (Exhibit 2).

CORT HARRINGTON, opponent, said that the clerk and recorders objected to the bill for a number of reasons. He said municipal judges are elected in the spring of the year. In the general elections in the fall, there are precincts which include both county and city residents. If the bill passed, it would slow up the voting in the precincts where there is a split between the county and the city. For example in Helena, in Rep. Brown's district, there are two precincts with both the city of Helena and areas outside the city. In those areas separate ballots would have to be printed for the city election portion and when the registered voter came in to vote a determination would have to be made whether or not they were eligible to vote in the city election or the county election. These voters would then be given a separate ballot. He said this would cause long, slow lines, angry voters and increase stress on the election judges. To add to the expense, the paper ballots would have to be counted separately.

WALLY JEWELL, opponent, said that Mr. Harrington pretty much stated the position of the Montana Magistrates Association (Exhibit 3).

SHELLY LAINE, opponent, said the city of Helena is opposed because the city feels there is no need to change the timing of the city judge elections. The city could not see where there would be any advantage. It is far simpler to allow for the election of all city officials at one election. She said it would add to election confusion and the city would be forced to pick up a portion of the cost of another election.

Questions From Committee Members:

REP. MOORE asked how the tremendous conflict in testimony could be explained. Rep. Spaeth said that sometimes when you save money it costs money, too. He said that there are some savings, but obviously there are more problems associated with the bill than there would be savings.

Closing by Sponsor:

Rep. Spaeth said that he thought the bill should be killed. He said that there are too many problems associated with the bill.

DISPOSITION OF HB 106

Motion: Rep. Nelson moved HB 106 DO NOT PASS.

Discussion: None

Amendments and Votes: None

Recommendation and Vote: The motion PASSED. The vote was 16 - 1, with Rep. Whalen voting no.

HEARING ON HB 141

Presentation and Opening Statement by Sponsor: Rep. John Phillips, House District 33, said he was sponsoring the bill at the request of the Public Employees' Retirement Division. The bill concerns the calculation of retirement benefits for public administrators who are members of the Public Employees' Retirement System (PERS) and who are paid on a fee basis. It provides that a public administrator will receive one full year of creditable service for each full year in which he/she serves in office. In addition, the bill changes the definition of "final compensation" for public administrators. Currently under PERS, a member's retirement allowance is based on his/her "final compensation," which is defined as a member's highest

annual compensation during any three consecutive years of membership service. This bill provides that "final compensation" for public administrators means the member's highest annual compensation during any three calendar years in office.

List of Testifying Proponents and What Group They Represent:

Linda King, Assistant Administrator Public Employees' Retirement Division

List of Testifying Opponents and What Group They Represent:

None

Testimony:

LINDA KING spoke in favor of HB 141 (Exhibits 4 - 8).

Questions From Committee Members:

REP. MOORE asked why there is such a fluctuation in the employees' pay and why are they paid some months and not other months. She also asked if it is the intention to average all of the years that they have worked to come up with a base pay for their retirement. Ms. King said the employees are paid a percentage to handle the estates of people that do not have an executor for their estate. Employees may work quite a while before the estate closes, and they are paid a percentage of that estate as their fee. It depends on the cycles of estate closures as to how often they are paid. Ms. King said that they are taking the highest three years of their employment to use for their final average salary instead of consecutive years.

REP. GERVAIS asked if the compensation received from the public administrators is equitable when compared to other employees, and he also asked if their pay was exceedingly high when compared with other employees. Ms. King said that the public administrators pay 6 percent of their salaries the same as any other member of the retirement system, and their salaries depend on the number of estates with no executors. In some counties, the job of public administrator is part time.

REP WESTLAKE asked if under the existing rules of the PERS, were any of the public administrators making a contribution now. Ms. King said that those that were members of PERS were presently doing so.

REP. SQUIRES asked if the public administrator was appointed or an elected official. Ms. King said that in some counties they are elected. She said she is not sure whether some counties appoint them or not.

REP. ROTH asked how much the bill would cost. Ms. King said it wouldn't cost the system anything because when the actuary looks at the benefits payable in the system, he assumes that they would receive the same benefit that is based on their service and contributions as other people do. Now they are receiving less.

Closing by Sponsor:

Rep. Phillips asked that the committee do pass the bill and possibly put it on the Consent Calendar.

DISPOSITION OF HB 141

Motion: Rep. O'Connell moved HB 141 DO PASS.

Discussion: Clarification of what a public administrator is was requested.

Amendments and Votes: None

Recommendation and Vote: The motion PASSED unanimously.  
Rep. Nelson moved to put HB 141 on the Consent Calendar. The motion PASSED unanimously.

HEARING ON HB 89

Presentation and Opening Statement by Sponsor: Rep. Ray Peck, House District 89, said his bill is a "clean up bill" and that there is no cost anticipated on the bill. The bill is introduced by request of the Department of Administration. It addresses the seven public pension plans administered by PER Board: the Public Employees', Judges', Highway Patrolmen's, Sheriffs', Game Wardens', Municipal Police Officers', and Firefighters' Unified Retirement Systems. Rep. Peck briefly reviewed the amendments contained in the bill.

List of Testifying Proponents and What Group They Represent:

Linda King, Montana State Public Employees Retirement Division

List of Testifying Opponents and What Group They Represent:

None

Testimony:

LINDA KING presented written testimony in favor of the bill (Exhibit 9).

Questions From Committee Members:

REP. MOORE asked whether this bill only dealt with PERS elected members. Ms. King said that bill does affect sheriffs and also elected officials in PERS. Those are the only two systems that have elected officials with statutory terms of office.

REP. WHALEN asked Ms. King about a clarification of a change that was made so people wouldn't be penalized if they retired prior to turning 60 and put off applying for retirement before age 60.

Closing by Sponsor: Rep. Peck thanked the committee and said that they have done studies on the retirement system with the idea of putting them all into one system so that everybody receives an equal break. He said they never can get an agreement on combining the systems and hopes that one day the people in the legislature can do that.

DISPOSITION OF HB 89

Motion: Rep. Nelson moved HB 89 DO PASS.

Discussion: None

Amendments and Vote: None

Recommendation and Vote: The motion PASSED unanimously. Rep Nelson moved that HB 89 be placed on the Consent Calendar. The motion PASSED unanimously.

HEARING ON HB 101

Presentation and Opening Statement by Sponsor: Rep. Fritz Daily, House District 69 in Butte, said the proposal before the committee was put forth by the Chief Executive of Silver Bow County, Don Peoples. The reason for the proposal is due to problems caused by the way the state issues warrants to local governments. The bill requires the state auditor to pay to the local

government finance officer (i.e., the county or city treasurer or town clerk) any warrant issued to a city, town, county, or local government entity (excluding school districts). If the warrant is to be deposited to the credit of the local government entity, the state auditor, when mailing the warrant to the finance officer, must mail a notice to the local government entity informing the entity that a warrant has been issued.

List of Testifying Proponents and What Group They Represent:

Don Peoples, Chief Executive Silver Bow County

Martha McGee, Lewis and Clark County Treasurer

List of Testifying Opponents and What Group They Represent:

Debbie Van Vliet, Administrator of the Fiscal Management and Control Division in the State Auditor's Office.

Sue Bartlett, Clerk and Recorder of Lewis and Clark County

Testimony:

DON PEOPLES, proponent, said that he requested the bill to clear up an internal control problem. He said that cities and counties receive a lot of warrants that flow from the state government to local communities. In many cases, these warrants are floating all over the court houses and city halls all over the state. He suggested that all warrants from the state of Montana be directed to the Treasurer or the Finance Officer of the city or county. He thinks that this would correct the problem that exists today. He pointed out some examples of the problems that they are having. He said they had a real problem when the former director of the Butte-Silver Bow Health Department was able to direct monies that were due and owing to the Butte-Silver Bow government from various sources into some personal accounts in the amount of over \$100,000. The former director is now serving time in Deer Lodge. He said that if the checks had been flowing to the Treasurer this would not have occurred. He said he thinks HB 101 needs an amendment to assure that wire transfers and so forth are included. Also, he said that for investment purposes it is better to have the monies going to the Treasurer's office.

MARTHA MCGEE, proponent, said there is quite a bit of confusion when the warrants come into the local government office. She said it may be several days before the Treasurer's office receives them, which results in loss of investment earnings. She said if the warrants were issued to the Treasurer's office, it would leave the best audit trail and clear up confusion.

DEBBIE VAN VLIET opposed HB 101. She presented written testimony (Exhibit 10); a copy of the Montana statewide budgeting and accounting system transfer-warrant claim form (Exhibit 11); and an amendment to HB 101 (Exhibit 12).

SUE BARTLETT, said she was not as much an opponent as someone who would like to offer information from the Clerk and Recorder's perspective. She said in many of the counties it is primarily the Clerk and Recorder's office which knows what grants have been awarded to the county by the state and what offices within the county those revenues should be credited to. In many instances, among the clerks that she has spoken with, they have an internal arrangement with the treasurers that the state warrants received in the Treasurer's office are taken to the Clerk's office in order to identify the appropriate revenue account into which the money should go. She said, in addition, there are agencies that record or file documents with the Clerk and Recorder's office and are billed on a monthly basis. Those warrants need to go to the Clerk and Recorder in order to go through their internal accounting procedure before they are deposited with the County Treasurer. She said that if the bill is approved with the provision that there be a notice sent, she would like to have the notice sent to the County Clerk and Recorder because that will help them to coordinate with the Treasurer's office regarding the accounting of revenues.

Questions From Committee Members:

REP. WESTLAKE asked Don Peoples how would this legislation affect a county like Gallatin that has several city and county governments in the area. Mr. Peoples said that each one of the incorporated cities within Gallatin County would have a finance officer and the warrants would be going to that officer.

REP. ROTH asked Mr. Peoples if it makes any difference whether the auditor issues the notices or the state agency as long as the process is completed. Mr. Peoples said that all they are looking for is the



process.

REP. SPRING asked Mr. Peoples if he felt the suggested amendments would strengthen or weaken the proposal. He answered that he was in agreement with the amendments and felt they would strengthen the bill.

REP. GERVAIS asked if there was a computer or reference number that would identify the local government entity where the warrant was being sent. Ms. Van Vliet said that agencies have clerks that fill out the form claims. She said that these positions are lower grade with a rapid turnover in the positions. She said the clerks use the Montana Operations Manual that explains to the clerk how to fill out the form. She feels that there are many clerks that do not understand the process and are putting in individual names instead of the financial officer or the payee name on the form.

REP. COCCHIARELLA asked if there is ever an instance where the intermediate stop would cause loss of income or a delay problem for the agency or the city. She was told that they didn't think it would as the payments would ultimately have to flow back to the Treasurer.

Closing by Sponsor: Rep. Daily thanked the committee and said that the problem faced by the various governmental agencies in the state is a very serious problem that involves large sums of monies and he believes that it is costing the taxpayers money. He said he thinks the amendments are good and directs the problem to where it originates and that is with the state agency and not with the auditor.

#### DISPOSITION OF 101

Motion: Rep. Campbell moved HB 101 DO PASS.

Amendments and Votes: Rep. Campbell moved the amendment as presented by the auditor's office (Exhibit 12).

Discussion: CHAIRMAN BROWN said the question was raised by Sue Bartlett about a notice being sent to the County Clerk and Recorder, which wasn't provided for in the amendment as the bill says it should be sent to the local government entity. The committee discussed how to amend the bill to address Sue Bartlett's and the State Auditor's concerns. Chairman Brown directed Lois Menzies to work with the interested parties to draft the amendments. REP. WHALEN asked Sue Bartlett what the equivalent is in city government to the County Clerk and Recorder. She said that the Finance Officer

would be appropriate. CHAIRMAN BROWN said they would continue with executive action on HB 101 on January 20, 1989.

Recommendation and Vote: Rep. Campbell withdrew his motion. Chairman Brown said the committee would act on HB 101 on January 20, 1989.

DISPOSITION OF HB 84

Motion: Rep. Phillips moved HB 84 DO PASS.

Discussion: Chairman Brown explained that the bill was returned to State Administration Committee for further amending. She said that it was the sponsor's intent that posting of bond election notices as optional and publishing of the notices be mandatory. Lois Menzies distributed amendments incorporating this change (Exhibit 13).

Amendments and Votes: Rep. Phillips moved HB 84 DO PASS AS AMENDED (Exhibit 13).

Recommendation and Vote: The motion PASSED unanimously.

ADJOURNMENT

Adjournment At: 10:37 a.m.

  
\_\_\_\_\_  
REP. JAN BROWN, Chairman

JB/jb

1514.min

## DAILY ROLL CALL

## STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1-18-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Jan Brown, Chairman	✓		
Rep. Helen O'Connell, Vice Ch.	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Ervin Davis	✓		
Rep. Floyd "Bob" Gervais	✓		
Rep. Janet Moore	✓		
Rep. Angela Russell	✓		
Rep. Carolyn Squires	✓		
Rep. Vernon Westlake	✓		
Rep. Timothy Whalen	✓		
Rep. Bud Campbell	✓		
Rep. Duane Compton	✓		
Rep. Roger DeBruycker	✓		
Rep. Harriet Hayne	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Rande Roth	✓		
Rep. Wilbur Spring, Jr.	✓		

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 106 (first reading copy -- white) do NOT pass.

Signed: \_\_\_\_\_

Jan Brown  
Jan Brown, Chairman

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 141 (first reading copy -- white) do pass and that it be placed on the CONSENT CALENDAR.

Signed: Jan Brown  
Jan Brown, Chairman

11-10-89  
11-52  
26

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 89 (first reading copy -- white) do pass and that it be placed on the CONSENT CALENDAR.

Signed: \_\_\_\_\_

Jan Brown  
Jan Brown, Chairman


STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 84 (second reading copy -- yellow) do pass as amended .

Signed: \_\_\_\_\_

  
Jan Brown, Chairman

And, that such amendments read:

1. Page 1, line 25.

Strike: ":"

Insert: "published as provided in 13-1-108 and may be"

2. Page 2, line 1.

Strike: "(a)"

3. Page 2, line 2.

Strike: ";

4. Page 1, lines 3 and 4.

Strike: "or" on line 3 through "13-1-108" on line 4

Please Print

WITNESS STATEMENT

NAME DONALD BERTNESS, City Judge BILL NO HB 106  
ADDRESS CITY HALL BILLINGS, MT  
WHOM DO YOU REPRESENT? CITY OF BILLINGS  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: the Bill will Allow City Judges and  
J.P. terms to run Concurrent which will  
Allow for one Certifying test be given  
which is now the case. The law requires  
a Judge to be "fully" certified before taking  
office. Now the Commission is giving temp  
orary certificates to cover the year before  
the test is given. It will also save the  
state money by eliminating the necessity of  
giving an additional test. It will also  
allow those judges who sit both as J.P.s  
and City Judges to have their terms run  
concurrent. Checking with the election  
officials in Yellowstone Co. indicates that  
there would be no problem of putting  
the position on the ballot at the general  
election.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



# City of Laurel

LAUREL, MONTANA 59044

EXHIBIT 2  
DATE 1-18-89  
HB 106

CITY JUDGE

DEPARTMENT

P.O. BOX 10  
PHONE: 628-8791

January 16, 1989

House Committee  
State Administration  
Capitol Building  
Helena, Montana

Re: H.B. 106 Election of local judges

Dear Members of the Committee:

Your favorable consideration of H.B. 106 is urged. The proposed legislation will be in the best interest of the State of Montana and its cities. H.B. 106 will do the following:

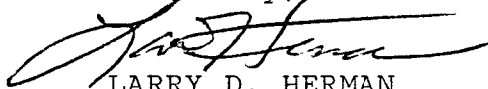
1. Reduce the costs in providing the mandated certification for courts of limited jurisdiction. With the passage of H.B. 106 there would be only one certification school every four years for both city judges and justices of the peace.

2. The terms of the city judges and the justices of the peace will run at the same time. This will allow a justice of the peace, who serves as a city judge, to enter into a contract with the city for the full four years of his term.

3. City judges would be certified before they assumed their office not until one year later.

I urge your committee to recommend that the legislature approve H.B. 106.

Sincerely,



LARRY D. HERMAN  
City Judge

# Montana Magistrates Association

18 January 1989

Testimony offered in opposition to HB106, a bill for an act entitled: "An act to provide for the election of city and municipal judges at the state general election."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association was originally in favor of this measure but after more thorough research the Montana Magistrates Association does not support HB106. Yesterday before the House Judiciary Committee I testified that the Montana Magistrates Association is not opposed to local governments saving money, on the contrary, we would strongly endorse nearly any such proposal.

This legislation as drafted would cost county governments money, this cost would in turn be passed on to the cities. In speaking with Sue Bartlett, Lewis and Clark County Clerk and Recorder I found out that this measure, if passed, would affect 2 precincts in Lewis and Clark County and cost approximately \$300 to \$400 per election. She stated that she had called Missoula County and approximately 18 precincts would be affected there; she did not have a cost estimation but she did say that Missoula County uses a ballot that is more expensive than does Lewis and Clark County. She called Yellowstone County and talked with the Clerk and Recorder there. They told her that this measure would affect 8 precincts in Yellowstone County and again they use the more expensive form of ballot.

Sue Bartlett also expressed concern that this measure does not address the matter of incumbent judges; the City Judges whose term would ordinarily expire on January 1, 1990.

I also spoke with Pat Chenovick of the Supreme Court Administrators office and the person who would probably be most affected in terms of certification procedure for the limited jurisdiction judges. He stated that he was not going to take a position as, after some research, it really did not make much difference one way or the other.

As I stated earlier the Montana Magistrates Association originally favored passage of this bill because it would make the certification procedure for the limited jurisdiction judges more uniform. This should not be accomplished at the expense of the local governments and so the Montana Magistrates Association opposes HB106.

Wallace A. Jewell.

STAFF TESTIMONY

BILL TO CLARIFY PERS STATUS OF PUBLIC ADMINISTRATORS

PAID ON A FEE BASIS

Presented by:

Linda King, Assistant Administrator  
Public Employees' Retirement Div.

On behalf of the Public Employees' Retirement Board, I am here today to urge your favorable consideration for a bill which is aimed at defining the membership service for a special class of PERS members -- Public Administrators paid on a fee basis.

These elected public officials are currently a very small part of the PERS membership; however, current statutes and administrative rules combine to deny those members an equitable retirement allowance.

The first problem is in granting membership service to these members. PERS members are granted service credit for each month in which they make contributions to the retirement system based upon the number of hours worked during that month. No record of hours worked is maintained for elected officials, but all other elected officials receive a fixed monthly salary. Public Administrators paid on a fee basis receive a percentage of the estates closed. If 10 estates are closed one month, they receive a fee for those 10 in one month; if no estates are closed in another month, they receive no compensation for that month. Because of this, there are months where these people may work long hours but would receive no service credit in PERS because no contributions have been received by the system.

The next problem is in computing their "Final Average Salary." Statutes define this as the average of the highest consecutive 3 years salary. Unlike most PERS members, Public Administrators' compensation may vary widely from year to year simply because of the amount and size of estates settled. Current law results in a lower than equitable Final Average Salary for these members.

The Board is proposing to remedy these problems by granting service credits on an annual basis to these members over the entire period of their elected service, regardless of contributions received in any given month. The second part of the proposal is to calculate these members' Final Average Salary by using the average of the highest 3 years compensation received as a Public Administrator.

The Board believes these changes will result in an equitable retirement benefit being paid to this special class of PERS members and urges your favorable consideration of this legislation.

I would be please to answer any questions which you may have.

DRAFT SPONSOR TESTIMONY

BILL TO CLARIFY PERS STATUS OF PUBLIC ADMINISTRATORS

PAID ON A FEE BASIS

This bill is presented at the request of the Public Employees' Retirement Board in order to clarify the status of a class of elected officials, Public Administrators paid on a fee basis, and to guarantee retirement benefits to these members on an equitable basis with other PERS members.

In certain counties, the elected public administrator receives a percentage of the estates which are settled as a fee for services rendered to the county. In some months, no fees may be earned although the administrator may have worked long hours. In other months, he or she may receive several fees at once.

Since records are not kept for hours worked by elected officials, and because there may be several months each year in which no fees are paid to these people, there exists a real possibility under current statute that they will receive no retirement system credit for months where no remuneration is paid and reported to PERS.

In addition to this problem, the statutory definition of "final average salary" for PERS members assumes a constant salary progression for members. However, Public Administrator's salaries are dependent only upon the number and amount of estates settled in any given year. Some years may result in markedly higher or lower compensation than preceding or succeeding years. The current requirement that "final average salary" be the average of the highest consecutive three years can result in a lower than equitable benefit for this special group of PERS members.

I urge your favorable consideration of this bill which defines the service and final average salary for our public administrators paid on a fee basis. It will result in their receiving a retirement benefit which more closely reflects their actual service and contributions to this retirement system and is an equitable solution to a long-standing problem.

QUESTIONS AND ANSWERS

EXHIBIT 6  
DATE 1-18-89  
HB 141

BILL TO CLARIFY PERS STATUS OF PUBLIC ADMINISTRATORS

PAID ON A FEE BASIS

**Q. Who are public administrators paid on a fee basis?**

A. Public administrators are the elected officials who settle estates for those who die leaving no named executor and, oftentimes, no will. Sometimes those public administrators are paid a percentage of the estates which are settled as their "salary."

**Q. Why is the service and salary of these PERS members a problem under current law?**

A. PERS statutes and rules are designed for regularly salaried employees--whether they are elected, appointed, or hired. PERS members receive service and salary credit for months in which they receive paid compensation and pay contributions based on that compensation into the retirement system.

Public administrators paid on a fee basis may work long hours in a month, but may receive no compensation during that month because no estate was actually "closed." And, their fees may vary widely from month to month and year to year simply because of the number and frequency of estates being closed.

Under current statutes and administrative rules, these members may not receive service or salary credits in one or several months in which they received no "compensation." Also, because the fees received in any given year may vary widely from the fees received in preceding and succeeding years, their "Final Average Salary" (which is defined as the average of the highest **consecutive** three years) may be artificially lower and result in a lower retirement allowance.

**Q. What is the Board proposing to remedy the problem?**

A. This problem can be remedied with two simple changes:

- Grant service credit to public administrators on an annual basis over the entire period of their elected office.
- Use the average of the highest three years for the final average salary calculation.

This will result in an equitable retirement allowance being paid to these members of the PERS.

EXHIBIT 7

DATE 1-18-89

HB 141

SECTION BY SECTION ANALYSIS

OF A BILL TO CLARIFY THE STATUS OF

PUBLIC ADMINISTRATORS PAID ON A FEE BASIS

- SECTION 1: Amends 19-3-401 by adding (4) to define service and final average salary for public administrators paid on a fee basis. Service is to be granted on an annual basis, rather than the monthly basis required for other PERS members. Final Average Salary is defined as the highest average annual compensation received during any 3 calendar years, rather than 3 consecutive years for other PERS members.
- SECTION 2: Extends the authority of the Public Employees' Retirement Board to make rules on this subject.
- SECTION 3: Provides for a July 1, 1989 effective date.

BILL ANALYSIS

EXHIBIT 8  
DATE 1-18-89  
HB 141  
1062

NAME:

"AN ACT TO CLARIFY THE STATUS OF PUBLIC ADMINISTRATORS PAID ON A FEE BASIS, DEFINING CREDITABLE SERVICE AND THE BASES FOR RETIREMENT CALCULATIONS; AMENDING SECTION 19-3-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

PURPOSE:

The purpose of this bill is to provide a consistent and equitable basis for crediting service and salary for a special class of PERS members: public administrators paid on a fee basis. The bill defines both service and final compensation for these elected officials.

PROS AND CONS:

Pros: Will eliminate current confusion and will result in consistent treatment for these elected officials who are paid on a fee basis.

Cons: Not aware of any.

ALTERNATIVES TO LEGISLATION:

There is no alternative since current statute defines "final compensation"; any exception must be amended into the statutes.

FINANCIAL IMPACT:

None.

PRIOR LEGISLATIVE HISTORY:

The amendments proposed here have not previously been considered by any session of the legislature.

NEW FULL TIME EQUIVALENCIES (FTEs) REQUIRED:

None.

EXAMPLES OF HARM IF NOT PASSED:

There exists the potential that public administrators paid on a fee basis will not receive full service credit for their elected service. Current PERS statutes and rules are designed to give only fractional service and salary credits to members with highly fluctuating salaries. Since no record of hours worked is reported for elected officials and because these individuals are paid on a fee basis as estates are closed, rather than a fixed monthly amount, current law could result in these members not receiving full salary and service credits.

INTERESTED PERSONS AND THEIR POSITIONS:

This bill will positively impact the retirement benefits paid to public administrators serving county governments in this state. We believe these individuals will favor this bill.

EXHIBIT 8  
DATE 1-18-89  
HB 141  
2012

We are aware of no opponents.

SUGGESTED SPONSORS:

PROBLEMS WITH OCTOBER 1, 1989 EFFECTIVE DATE:

The retirement systems' "plan years" begin on July 1 and it is confusing to both system members and agency staff to implement changes which do not correspond to those designated plan years.



EXHIBIT 9  
DATE 1-19-89  
HB 141

STAFF TESTIMONY

BILL TO GENERALLY REVISE AND CLARIFY

PROVISIONS OF PERS, JUDGES', HIGHWAY PATROL, SHERIFFS, GAME WARDENS'

MUNICIPAL POLICE AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS

103

Presented by:

Linda King, Assistant Administrator  
Public Employees' Retirement Div.

On behalf of the Public Employees' Retirement Board, I am here today to ask your consideration of a bill to generally revise provisions found in the retirement systems administered by our agency. While the proposed changes to these systems are relatively minor, they are meant to address important issues of equity which have come to the Board's attention since the 1987 Legislature.

The first amendment proposed in this bill affects the "out-of-state" service buyback provisions passed during the last session. The Board requests that you repeal the requirement that PERS members must have received a refund of their "out-of-state" or federal retirement contributions before becoming members of PERS.

The original intent of this requirement was to prevent PERS members with a vested interest in another retirement system from transferring that liability to PERS. As the Board began administering this provision in 1987, they found that this requirement served to unintentionally deny this buy-back to a significant number of people who were PERS members, then had out-of-state or federal service, and then rejoined PERS.

An Attorney General's opinion was requested to clarify this portion of the law and the proposed repeal will bring the statutes in line with the ruling which stated that it was obviously not the intent of the Legislature to deny this option to previous PERS members. Since it is not to the monetary advantage of members to give up a vested interest in another retirement system, this repeal is not expected to transfer a liability to PERS from another retirement system.

The next area of proposed change are amendments which would allow members of the various retirement system to elect, in writing, a later annuity starting date than currently allowed in the statutes. A few years ago, in order to protect the interests of members who did not file their retirement applications at the proper time, the Legislature mandated that all annuities would start "on the first day of the month following the member's last day of membership service" after reaching minimum age and/or service requirements.

A really unintentional result of this statutory change was to prevent persons from exercising the option of putting off their annuity starting dates in order to decrease or eliminate an early retirement reduction or in order to decrease a tax liability. Under current law, if a person aged 50 has terminated covered employment and is minimally eligible to receive retirement benefits on a given date, the annuity must begin on the first day of the next month. If he doesn't apply for his retirement for 10 years, we have to compute his retirement allowance based on his age and service at the time he terminated his employment, pay him a lump sum of 120 benefit payments, and then continue paying the early retirement allowance to him for life.

Under the current proposal, if an individual chooses in writing to put off his annuity starting date, we will compute his allowance based on his age and service as of the date of the member's choice. If he elects a later starting date, he will receive no back payments but the monthly benefit amount will be increased if he belongs to a retirement system with early retirement provisions. If he belongs to a system without early retirement provisions, he will permanently forgo benefits which would have been payable; however, this may be advantageous to some members depending upon their individual tax situations.

This proposal will allow members who plan to work elsewhere, and who do not need a retirement benefit at the time they terminate covered employment with the state or one of the political subdivisions, the ability to increase the allowance they choose to receive at a later date and/or to decrease their federal tax liabilities.

This bill also includes provisions to allow elected members whose terms of office are set by statute to retire with January 1 effective dates, even though they may actually continue in office for one to seven days in January. The Board proposes that these elected officials not make contributions or earn service credits for these days in return for beginning their retirements on January 1 rather than February 1.

The next amendment proposed is to extend the "old money purchase option" to all PERS members. In 1973, when the Legislature changed PERS from a defined contribution (or "money purchase") retirement plan to a defined benefit plan, they provided what should have been a significantly higher retirement allowance to PERS members. At that time, they realized there might have been some current members of the system who would have received a higher allowance under the old plan, so those members were given the option of choosing the "money purchase" plan. It was expected that the new plan would provide higher benefits to new members from that day forward.

Some PERS members have relatively "flat" salary histories because they have remained in the same job over all or a majority of their careers and possibly because of salary freezes in the past several years. The Board has noted that a small number of PERS members with these "flat" salaries will continue to receive a slightly higher benefit under the "old money purchase plan" than under the current 1/60 formula. Because a member's contributions and interest (with a matching state annuity) actually pay for the retirement benefit under the old plan, it is equitable to extend this option to all PERS members and not limit it to those who happened to be members when the law was changed.

The next amendment addresses the payment of optional death benefits to the beneficiaries of PERS members who are terminally ill when leaving covered employment. Currently, the statutes define this situation by allowing those beneficiaries to choose optional death benefits if the member dies within 4 months of termination, but prior to retirement, or within 4 months of beginning a disability retirement allowance.

The Board has noted over the past couple of years that a small, but significant, number of members have died 5 or 6 months after leaving covered employment -- probably due to advances in medical science which have prolonged a terminally ill person's life expectancy. Their beneficiaries, however, lose the ability to elect an optional death benefit because of this slight increase in life expectancy.

Since the four-month period found in current law basically is an arbitrary figure, we urge increasing this time period to 6 months, thereby maintaining the intent of offering this option to the beneficiaries of terminally ill PERS members. 3013

Another proposed amendment would extend the election of an optional death benefit to minor beneficiaries of deceased PERS members. Quite simply stated, this appears to be the last vestige of age discrimination found in this statute. While no one has sued the retirement system over the denial of this option, the possibility remains quite real as long as the current prohibition remains in effect.

Since minors do have some limitations founded in law for making legal decisions and receiving monetary payments, provisions are added for election of such an optional benefit by the minor's custodian or the election of the benefit when the minor reaches majority.

This bill also proposes to repeal reference to a "penalty retirement age" in the Judges' Retirement System. During the last Legislature the mandatory retirement provisions were removed from this retirement system. However, an oversight resulted in this definition remaining in the statutes.

The remaining amendments deal with the method by which members of the Judges', Sheriffs', Game Wardens', Highway Patrol and Municipal Police retirement systems must elect their designated beneficiaries. Until recently, members of all retirement systems designated those beneficiaries on their membership cards which were only required to be "witnessed." However, during a review of proposed administrative rules, the Legislative Code Committee noted that the terminology used in these retirement systems -- "duly acknowledged" -- was actually defined elsewhere in statute as meaning "notarized."

Because it was not the intent to require that these four systems be singled out to require membership cards to be notarized, and because this oftentimes results in the unnecessary expenditure of time and money, the Board requests that the language in these four statutes be changed to require the designation of beneficiaries be "witnessed." This change will bring these statutes in line with the other retirement systems and will eliminate an inadvertent and unnecessary requirement.

On behalf of the Public Employees' Retirement Board, I thank you for your consideration of these proposals and would be pleased to answer any questions you may have.

TESTIMONY ON HOUSE BILL 101  
STATE AUDITOR'S OFFICE  
JANUARY 18, 1989

Madam Chairman, members of the committee, for the record, my name is Debbie Van Vliet. I am the Administrator of the Fiscal Management and Control Division in the State Auditor's Office, the part of the State Auditor's Office which processes and mails state warrants.

House Bill 101 makes the State Auditor's Office responsible for making state warrants, issued to a local government entity, payable to the finance officer of the appropriate county or city. It is inappropriate to place this responsibility on the State Auditor's Office because the State Auditor's Office is not the source of payee information used to issue state warrants. The sources of payee information used in issuing state warrants are paying state agencies.

The State Auditor's Office should not be responsible for the duties created in House Bill 101 because it cannot identify whether a payee is a local government entity. To demonstrate that the State Auditor's Office cannot identify whether a payee is a local government entity, I have brought with me, today, copies of forms used in issuing a state warrant.

HANDOUT. The first handout is a form called the TRANSFER WARRANT CLAIM, a form completed by a clerk in a paying state agency. A state agency clerk, who completes the form, is responsible for completing the PAYEE SECTION. The information in the PAYEE SECTION is the information that ultimately is printed on a state warrant.

After the TRANSFER WARRANT CLAIM is completed, the paying state agency sends it to the Central Accounting Division of the Department of Administration where the information is entered into the accounting system. The following morning, the information is transferred from the Department of Administration's computer system to the State Auditor's Office's computer system. The warrants are then delivered to the data center of the Department of Administration's Computer Services Division where they are printed, returned to the State Auditor's Office to be signed, burst, and stuffed into envelopes.

In addition to making the State Auditor's Office responsible for issuing state warrants to finance officers of local government entities, House Bill 101 requires the State Auditor's Office to notify local government entities of warrant issuance. Again, because the State Auditor's Office is not the source of payee information, it will never be able to determine whether a payee is a government entity. Only the paying state agency will know whether a payee is a local government entity for purposes of the bill. A paying state agency, not the State Auditor's Office, should consequently be responsible for notifying local government entities of warrant issuance.

EXHIBIT 10  
DATE 1-18-89  
HB 101

2012

Finally, House Bill 101 requires the State Auditor's Office, if unable to determine whether the payee of a warrant is a government entity, to process and mail the warrant as if it were not payable to a government entity. Since the State Auditor's Office can never determine whether a payee is a local government entity, it would always end up processing and mailing a warrant as if it were not payable to a local government entity.

STAPLE

STATE OF MONTANA  
STATEWIDE BUDGETING AND ACCOUNTING SYSTEM  
TRANSFER-WARRANT CLAIM

A TRANS. DATE (Optional)  
B FORM CODE 231  
C INPUT AGENCY  
D DOCUMENT NUMBER

DESCRIPTION OF ITEMS BEING PAID  
INPUT AGENCY NAME

Transaction Description (Field O):  
1. The completion of this field is optional.  
2. You can fill in Field O for any or all transaction lines. The computer will automatically insert the "payee name" in any line left blank.  
3. The field is limited to 30 characters including spaces. Both lines provided may be used if needed. Please write legibly.  
4. The transaction description is printed at month-end on all applicable 500 series reports, and Part "C" of the 661 report.

PAYABLE TO  
(Payee name is limited to 30 characters.)

TRANSFER TO 6101 07300 1104 2201

Total for Warrant and "Transfer To" Transaction

MULTIPLE VENDOR  
WARRANT SOURCE RECORD PREPARED

TRANSFER FROM DATA PROCESSING ENCODING SUMMARY (MAY BE MINICODED)									
Record For Agency	Accounting Entity	General Ledger Control Account		Transaction Amount	Approp.	Responsibility Center	Object of Expend.	Revenue Estimate	Object of Revenue
E	F	G1	G2	H	I	J1	K1	L	M
A									
B									
C									
D									
E									
F									
G									
H									
TOTAL OF TRANSACTIONS A - H									
HASH TOTAL									
Record "Continued" in total block if supplement is used. (Total does not necessarily agree with warrant total)									
TOTAL OF "TO" AND "FROM" TRANSACTIONS.									

EXHBT 11  
DATE 7-18-89  
HB 101

This claim is approved for the sum indicated. It is mathematically and clerically correct, a proper and necessary expense and a legal charge against the appropriations or funds named herein.

Form 231 Rev. 5/80

AMENDMENTS TO HOUSE BILL 101

1. Page 1, line 22.  
Strike: "warrants issued"  
Insert: "payments made"
2. Page 1, line 22.  
Strike: "the"  
Insert: "a"
3. Page 1, line 22.  
Strike: "auditor"  
Insert: "agency"
4. Page 2, line 1.  
Strike: "auditor"  
Insert: "agency"
5. Page 2, line 2.  
Strike: "mailing the warrant to the finance officer"  
Insert: "processing the claim"
6. Page 2, line 7.  
Strike: "auditor"  
Insert: "agency"
7. Page 2, line 8.  
Strike: "auditor"  
Insert: "agency"
8. Page 2, line 10.  
Strike: "auditor"  
Insert: "agency"

Amendments to House Bill No. 84  
Second Reading Copy

Requested by Rep. Stella Jean Hansen  
For the House Committee on State Administration

Prepared by Lois Menzies  
January 17, 1989

1. Page 1, line 25.

Strike: ":"

Insert: "published as provided in 13-1-108 and may be"

2. Page 2, line 1.

Strike: "(a)"

3. Page 2, line 2.

Strike: ";"

4. Page 1, lines 3 and 4.

Strike: "or" on line 3 through "13-1-108" on line 4



## VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEEBILL NO. HB 106DATE January 18, 1989SPONSOR Rep. Spaeth

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Judge Donald E. Bjerthness	city of Billings	X	
Shelly Laine	City of Helena		X
Wally Jewell	MT. MAG. ASSOC.		X
Carl Harrington	Mont Ass of Clerk & Rec.		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## STATE ADMINISTRATION COMMITTEE

DATE January 18, 1989

SPONSOR Rep. Phillips

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STATE ADMINISTRATION COMMITTEE

DATE January 18, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STATE ADMINISTRATION COMMITTEE

DATE January 18, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.