

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Jan Brown, on March 8, 1989, at 9:00 a.m.

ROLL CALL

Members Present: All present

Members Excused: None

Members Absent: None

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

Announcements/Discussion: Chairman Brown announced that the Committee would meet jointly with the House Judiciary Committee in the old Supreme Court chambers at 8 a.m. on March 16 to hear SB 196. The Committee was told that they would be the only ones voting on the bill.

HEARING ON SB 210

Presentation and Opening Statement by Sponsor: Sen. Gerry Devlin, Senate District 13, introduced the bill. The current nepotism law prohibits a public official from appointing to any position a person related to the official by consanguinity (i.e., blood relationship) within the fourth degree or by affinity (i.e., relationship by marriage) within the second degree. A person violating the nepotism law may be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for not less than 6 months or both. This bill revises this penalty to provide for the same fine, imprisonment not to exceed 6 months, or both.

Sen. Devlin said that the bill is very simple; it changes one word. The reason for the bill is that two years ago there was some legislation concerning nepotism within school districts. He also said it is fairly universal that a member of the family would be on the school board while a teacher was teaching within the system. He said he thought that the law "needed a little adjustment." The senator said that when his county attorney was looking over the laws on nepotism, he said that it bothered him that a misdemeanor would call for imprisonment at the county jail for not less

than six months. The bill now would read for not more than six months.

Testifying Proponents and Who They Represent: None

Testifying Opponents and Who They Represent: None

Questions From Committee Members: None

Closing by Sponsor: Sen. Devlin thanked the members of the Committee.

DISPOSITION OF SB 210

Motion: Rep. Roth moved SB 210 BE CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously. Rep. Nelson moved SB 210 BE PLACED ON THE CONSENT CALENDAR. The motion CARRIED unanimously. Rep. Roth will carry this bill on the House floor.

HEARING ON SB 241

Presentation and Opening Statement by Sponsor: Sen. Joe Mazurek, Senate District 23, Helena, introduced the bill. This bill makes several revisions to the Judges' Retirement System. To maintain the actuarial soundness of the retirement system, the bill requires that \$35 of the \$100 fee charged for filing a petition for dissolution of marriage and the total \$100 fee for filing a motion for substitution of a judge be transmitted to the state. The bill also increases from 31 percent of salary to 35.73 percent of salary the amount from court filing fees, including the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge, to be deposited in the retirement system fund. Furthermore, the bill provides that a retired judge will receive 2 percent of salary (rather than 1 percent of salary) for each year of service after 15 years.

Sen. Mazurek said that he had introduced this bill last session. It passed the Senate by a substantial margin; it initially passed the House and then got caught up in the "twenty-five year retirement battle." Consequently, for reasons unrelated to the bill, it was killed in the House.

He said there are some actuarial problems within the Judges' Retirement System, which should be addressed. This bill attempts to do that. In addition, this bill also reduces a penalty which is imposed upon district court judges under

their present retirement system. This system, unlike any other retirement system in the state, penalizes a judge for working over 15 years. A judge's retirement allowance is based upon 33.33 percent of his final salary, up to 15 years. Once that judge has served 15 years, then the retirement is reduced to one percent of his/her final salary for each additional year of service. This bill would change that penalty from one percent to two percent. The reason for doing that is after judges have been on the bench for 15 years, they will probably be in the 55- to 60-year-age range. They have learned the system well, and they are at their most efficient performance in terms of years on the bench. Sen. Mazurek said that it doesn't make sense to give them an incentive to leave at that point. He said that, "This bill is offered that we may encourage the judges to stay on the bench because I think we would benefit from their service."

Sen. Mazurek said that the second reason he wanted to introduce this bill was "essentially an equity reason." He went on to say:

"In 1963 the contributions that the judges were required to make were increased from six to seven percent. Even though their contributions went up by that much, this penalty was retained."

Nine states with judicial retirement programs don't require any contribution at all. Montana requires a rather significant contribution.

This bill requires that \$35 from the dissolution of marriage fee be remitted to the Judges' Requirement System. In previous bienniums, \$40 of the filing fees for dissolution of marriages was used to fund programs like Big Brothers and Sisters and displaced homemakers. In a House Appropriations subcommittee this session, action was taken to take the \$40 formerly used to fund the displaced homemakers program and similar programs. These programs will now be funded from the unemployment insurance administrative tax account. The effect of this action is that \$40 was freed up. This bill would take \$35 of that \$40 and leave \$5 for other uses in the general fund. He said, "This bill would not take money from any programs."

Testifying Proponents and Who They Represent:

Joel G. Roth, Montana Judges' Association

Allen Chronister, State Bar of Montana

Jean A. Turnage, Chief Justice, Montana Supreme Court,
representing Montana Judges' Association

Linda King, Assistant Administrator, Public Employees'
Retirement Division

Proponent Testimony:

JOEL G. ROTH, a district judge from Great Falls, said that he has served on the bench for 12 years and is representing the 44-member Montana Judges' Association as their president. He said that the bill is a minor adjustment to increase the one percent service credit allowance to two percent. Mr. Roth said that when a person goes on the bench, he goes on for a long-term career. He said, "We are not talking about a lawyer going on the bench for the "short haul" for a stepping stone type of a job that will hopefully lead to a higher paying job. . . . We are talking about a man who has made a decision to be a judge. A judge is not a 100-yard dash man. A judge is a miler. He is in the race for the long haul. That is why retirement becomes important to the judges."

In summary, Judge Roth said, that if a judge retires after serving for 15 years, he would receive 50 percent of his salary as retirement income. He said that hopefully after 15 years, a judge would be at his/her "pinnacle" of his/her judicial career in terms of experience, knowledge and ability to handle the judicial system. Currently there is not much incentive for a judge to stay on the job beyond 15 years. He said,

"We are asking this Committee to consider increasing that one percent after 15 years to two percent. I think that is a very modest, minor, insignificant adjustment but one that will help the judges, and be somewhat of an incentive for the judges to continue on."

ALLEN CHRONISTER, appearing for the State Bar of Montana, said the State Bar supports this bill. He said that "one of the main attributes of this bill is to encourage people to look at the bench as a career move and something to do for the long haul." Mr. Cronister said, "Anything that can reasonably be done to promote that ought to be encouraged. For that primary reason we support this bill."

JEAN A. TURNAGE, appearing on behalf of the judiciary and as a member of the Supreme court, said that he personally is not interested in this bill as he is under PERS. He said, "On behalf of the Montana judiciary, we would very much appreciate your favorable consideration of the bill." He also said that the "bill is, hopefully, an equity bill. In fairness, we are the only system in government that has the step back on retirement credit."

LINDA KING, Assistant Administrator, Public Employees' Retirement Division, said the Public Employees' Retirement Board is neither a proponent nor an opponent of this bill. She said the Board has a concern that they feel will be assisted by this bill. The Board feels it is the Legislature's responsibility to set the limits in any retirement system. The Board is responsible for making sure the funds are available at the time of retirement. In the Judges' Retirement System, 31 percent of the salaries of all judges who are members of the system, are supposed to be paid into the system in contributions from district court fees. For the past six years, the court fees paid into the system have not been sufficient to equal 31 percent of the salaries. This bill requires an additional contribution rate. District court fees will become 35.73 percent of salaries. This will increase the amount available to be paid to the system. The total amount that will be paid to the system, based on current court fee collections (\$165,000 more), will not equal 35.73 percent of salaries. But it will be less of a shortfall than it is currently. Currently, the Judges' Retirement System is running anywhere from \$150,000 to \$180,000 short in contributions each year.

Ms. King said that district court fees are a stagnant source of revenue, and that is what causes this shortfall. The Board supports the provisions of this bill that would increase the court fees available as that will make the system more actuarially sound.

Testifying Opponents and Who They Represent: None

Questions From Committee Members:

REP. NELSON asked what the unfunded liability of the system is. Ms. King said, "It is right under 40 years in the terms of the amortization period."

REP. MOORE asked Chief Justice Turnage why he was on the PERS and not the Judges' Retirement System. He said that PERS is a better system for him because of his number of years of service.

REP. WESTLAKE asked how this bill could keep from affecting the displaced homemakers' program. Sen. Mazurek said that \$75 of the marriage dissolution fee goes into the general fund, and \$40 of the \$75 used to go to displaced homemakers and other programs. The subcommittee in Appropriations said they were not going to touch any of the \$75 this biennium and instead fund the programs through the unemployment administration tax account at the Department of Labor. This freed up \$40 in the general fund. This bill proposes to take \$35 of the \$40 to cover the costs of this bill plus the actuarial problems.

In response to a question from REP. SQUIRES regarding the retirement system's unfunded liability, Ms. King said that currently PERS is collecting between \$150,000 to \$180,000 a year less than is needed to fund the retirement system. The district court fees are insufficient. She said that by increasing the benefits by \$98,000, but also increasing the funds available to the system by \$165,000, you have approximately \$67,000 more going into the system. But this is not picking up the entire shortfall. There will be less of a shortfall with the bill.

REP. NELSON asked why the district court fees are insufficient. Sen. Mazurek said that traditionally district court fees went to fund the Judges' Retirement System. We now use district court fees to fund other programs.

Ms. King said that the fiscal note is somewhat in error. It assumes that \$67,882 would reduce the current deficit. The problem is that the current deficit is \$647,015 plus it increases \$15,800 a year. So the \$67,882 will make the \$150,000 to \$180,000 a year increase in the deficit less. So even though it puts more money into the system, it still is not enough to fully fund the system. She said when judges get salary increases, the salary base goes up. The district court fees have not.

REP. PHILLIPS asked if the judges that have already retired will be included under this legislation. Ms. King said that a judge who retires after the effective date of the bill would have his benefits accrue at this new rate; anyone currently retiring would not have a change in his retirement allowance because of this bill.

Jim Oppedahl, Supreme Court Administrator, said he wanted to bring two things to the Committee's attention: First, the district court fees that are collected have been pretty stable for the last four or five years. This created a shortage for the retirement system. He said that it has not always been that way. In fiscal years 1980 - 1983, district court fees returned in excess of \$1,000,000 to the general fund. That may be more of the pattern of what we are seeing now. We are looking, in terms of the fiscal note, at a very short range of collections. Prior to 1983, the collections were substantially greater than they are today. Second, the fiscal note does not consider the extent that a judge is discouraged from staying after 15 years. The judge that replaces him, instead of getting one percent, goes back to 3.33 percent. That is not a healthy situation for the retirement fund.

Closing by Sponsor: Sen. Mazurek said he thinks the bill is a "fairness issue." It is fair to people to be paid for the work they put in.

DISPOSITION OF SB 241

Action on the bill was deferred until the Committee could ask some questions and the judge's pay bill, SB 196, had been heard.

HEARING ON SB 232

Presentation and Opening Statement by Sponsor: Sen. Tom Keating, Senate District 44, introduced the bill. This bill permits a notary public authorized by any jurisdiction to perform notarial acts, for use in Montana. Presently a notary in Montana can notarize an instrument that is signed in Montana to be recorded in Montana. A Montana notary may sign an instrument signed in Montana for recording in some other state. A person in Montana can send an instrument to another state and have it signed there and notarized by a notary public in that state and record that in Montana. This bill would allow the notary to go from state to state. North Dakota passed a similar law two years ago allowing a Montana notary working in North Dakota to acknowledge an instrument signed in North Dakota to be recorded in North Dakota. This bill would be reciprocal to North Dakota's bill. It would allow a North Dakota notary public working in Montana to notarize an instrument in Montana to be recorded in Montana.

Sen. Keating said SB 232 would assist many of the businesses and people on the border between Montana and North Dakota.

Testifying Proponents and Who They Represent: None

Testifying Opponents and Who They Represent: None

Questions From Committee Members:

REP. MOORE asked if this bill would apply to all states. Sen. Keating said it would apply to states that have reciprocal agreements, and right now North Dakota is the only state that has this agreement.

REP. DEBRUYCKER asked if there would be any additional cost to the state. Sen. Keating said there would not be. A North Dakota notary, coming into Montana, does not have to register or fill out a form for the Secretary of State, nor do Montana notaries going to North Dakota have to file anything in North Dakota. All notaries are bonded. The bond goes with the notary wherever he/she functions. This is for the protection for the party seeking a notary acknowledgment. The grantee of an instrument is the one who is to seek out a proper notary for a proper acknowledgement. The burden is on the grantee in any of those situations to perfect his title of record in any transfer.

Closing by Sponsor: Sen. Keating thanked the Committee for their time. He said that Rep. Gilbert will carry the bill on the House floor.

DISPOSITION OF SB 232

Motion: Rep. Phillips moved SB 232 BE CONCURRED IN.


Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 10:07



REP. JAN BROWN, Chairman

JB/jb

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DAILY ROLL CALL

STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date March 8, 1989

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

March 8, 1989

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Mr. Speaker: We, the committee on State Administration report that Senate Bill 210 (third reading copy -- blue) be concurred in and placed on the CONSENT CALENDAR.

Signed: _____

Jan Brown
Jan Brown, Chairman

[REP. ROTH ~~AND REP. ZOOK~~ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 8, 1989

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Mr. Speaker: We, the committee on State Administration report that Senate Bill 232 (third reading copy -- blue) be concurred in .

Signed: _____

Jan Brown
Jan Brown, Chairman

[REP. GILBERT WILL CARRY THIS BILL ON THE HOUSE FLOOR]

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEEBILL NO. SB 241DATE March 8, 1989SPONSOR SENATOR MAZUREK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>J. A. Turnage</i>	<i>Judiciary</i>	X	
<i>Joel H. Roth</i>	<i>Montana judges' assn</i>	X	
<i>Allen Chronister</i>	<i>State Bar</i>	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.