

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on February 9, 1989, at 10:00 a.m. in Room 331, Capitol.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: Senator Sam Hofman, Senator Paul Rapp-Svrcek

Members Absent: None.

Staff Present: Eddy McClure

HEARING ON SB 346

Presentation and Opening Statement by Sponsor:

Senator Bob Brown indicated SB346 was introduced at the request of the Montana Education Association and the Montana Federation of Teachers. He stated the bill revises provisions of the law concerning the purchase of retirement time, and introduced Mr. Phil Campbell of the Montana Education Association to further explain the provisions of the bill.

List of Testifying Proponents and What Group they Represent:

Phil Campbell, Montana Education Association  
Terry Minow, Montana Federation of Teachers  
Mary Harrington, Teachers Retirement System

Testimony:

Mr. Campbell testified the bill deals with a person's ability to purchase teaching service credit time towards their retirement for services performed outside the United States, and for federal employment. He noted the Attorney General's opinion excluded this service because of the wording in the

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law which stated that, if service is performed outside the United States, that service time is not eligible because it was performed outside the country. Mr. Campbell cited the example of a teacher employed by the Department of Defense teaching in an overseas school, on a military base outside the country, noting that service time is not eligible because it was performed outside the country. He indicated this bill will provide that, if the service had been performed in this state, and would have counted as credit under the Teacher Retirement System, it will count, wherever it was performed. He added that persons wishing to buy that out-of-state service will pay both the employee and employer shares, and there is no additional cost.

Mr. Campbell indicated this bill also deals with leave time. He stated that, currently, a person taking a year's leave of absence is eligible to buy that year's leave time for service credit, but has to wait 5 years before being allowed to purchase that time. He noted that this bill, on page 3, line 21, changes the 5 years to 1 year. He explained that a teacher, coming back from leave, will work a year, and then can buy that year's credit under the system.

Mr. Campbell indicated these are the major changes in the bill, and reiterated that the cost is picked up by the individual wishing to buy the time. He noted that the section regarding out-of-state service credit, at the bottom of page 2 and top of page 3, states a person buying service credit time would pay the amount equal to the combined employer and employee contribution of their first full-year teaching salary earned in Montana, after the out-of-state service, or after July 1, 1989, whichever is later, plus interest. Mr. Campbell stated it does not incur any cost to the system, clarifies the provision for out-of-state service, and shortens the time for buying leave time. He urged the committee's support of SB346.

Testimony:

Ms. Minow indicated the Montana Federation of Teachers supports this bill, and added this bill probably only affects a handful of people in the state, at this point, in terms of out-of-country service. She reported one of their members, who taught in a university out of the country, would be affected by this, adding that individual brought up one problem with the bill. Ms. Minow referred the committee to Section 2(b), which states "the contribution rate must be the rate in effect at the time the member is eligible to qualify for service, or the rate in effect on July 1, 1989, whichever date is later." She indicated that individual came back into

the system in 1972, and, although he does not have a problem with paying interest on the contribution rate, he does not feel he should be paying the 1989 rate. She pointed out that, because the bill is worded to say "whichever is later", anyone coming into the system after July 1, 1989 is going to use whichever date is later and, in terms of this individual's position, he feels it would be fair if it said "whichever is earlier", citing the fact that the difference in wages is fairly substantial from 1972 to 1989. Ms. Minow reported they do support the bill, and she brought that concern up on behalf of their member.

Testimony:

Ms. Harrington's testimony is attached at Exhibit 1.

List of Testifying Opponents and What Group they Represent:

None.

Questions From Committee Members:

- Q. Chairman Farrell cited, on page 4, "the contribution rate must be the rate in effect at the time he is eligible", and "The contribution may be made in a lump-sum payment or in installments", and asked Mr. Campbell if the interest rate on those installments would be about the same as what it was in SB125, which was approximately 8%.
- A. Mr. Campbell responded that he thinks the answer to that is yes, and asked Ms. Harrington to respond to that question.

Ms. Harrington indicated her interpretation is that this bill goes into effect July 1, 1989, and they are opening it up for those members to purchase additional service. She stated the law giving them the right to charge interest went into effect July 1, 1971 but, if there is a change in law which gives a member the right to purchase additional service, it will be July 1, 1971, or the date the law went into effect. She further indicated her interpretation is that he may not be charged interest because this would be the effective date of this law change.

Mr. Campbell clarified the question, indicating Chairman Farrell asked, if the contributions are paid in installments over a period of time, what would the interest rate be.

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Ms. Harrington responded they charge the interest rate in effect for that current year, and the interest rate is determined by the Teachers Retirement Board each fiscal school year.

- Q. Chairman Farrell indicated that, in the hearing on SB125, an interest rate was set.
- A. Ms. Harrington responded that rate is established in the law, and has something to do with the actuarial cost.
- Q. Chairman Farrell asked Senator Brown if there is a fiscal note on this bill.
- A. Senator Brown responded it is his understanding that the costs are picked up entirely by the teacher.

Chairman Farrell announced the hearing on SB346 as closed.

HEARING ON SB 336

Presentation and Opening Statement by Sponsor:

Senator Gene Thayer suggested that all of the committee members have, at one time or another, carried a bill which came about as a result of a constituent asking them to correct what they think to be an error, or strengthen a law, or clarify a law, or for whatever reason. He indicated that, in this case, he is doing it on his own behalf because he feels that, last year, during the campaigns around the State of Montana, there were too many abuses of the campaign practices act, and that it was probably a record year for complaints. He noted there were probably more complaints this last election year than they have ever had. He reported there was a situation in his own race and, when he went to the Commissioner, there was nothing she could do about it.

Senator Thayer indicated there are 3 areas that need to be dealt with in campaign practices. He stated one relates to the very minor things, where someone forgets to complete a form on time, or to put a disclosure on one of their documents; something that is minor, and all that is needed is a letter or a call from the Commissioner's office. He indicated that, usually, those are unintentional things that a new candidate may not be aware of, as it is a fairly complicated process. He added that these rules violations are usually handled by a simple phone call or letter.

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Senator Thayer indicated the other extreme is those types of complaints, that actually fall in to the category of violating the law, and are covered by the criminal statutes. He noted this would be something easily identified as being libelous, or it is proven beyond a shadow of a doubt that somebody really goofed up.

Senator Thayer then indicated he thinks there is an area somewhere in the middle, which he referred to as the "gray area", where the Commissioner will probably rule that, in their estimation, it did not quite cross the line to the criminal side, but was a violation that needed to be stopped. He noted all they can do in that case is suggest to the candidate, or order them, to stop, but that it only identifies and pertains to that particular complaint. Senator Thayer noted the candidate can turn around and do the same thing over again, indicating all that a person can do is make another complaint, the Commissioner's office can rule on that second complaint, ordering them to stop again, and that this could go on for the duration of the campaign.

Senator Thayer cited the circumstances in his case, during the last campaign, when his opponent misrepresented his vote on a particular issue in the last session. He reported he filed a complaint, and the Commissioner ruled that his complaint was valid. He stated he received a phone call from the Commissioner, which he recorded, stating "I have ruled that there was a violation of the Code of Campaign Practices and, while there is no penalty for that in the law, I will advise (opponent's name) of the misrepresentation, and tell him to pull any further fliers he has, and tell him that any further statements he makes in the closing days of the campaign must be accurate and fairly presented."

Senator Thayer reported that was followed-up with a formal letter and, out of courtesy, he called and tried to contact his opponent to ask him if he had also received a phone call from the Commissioner, noting he wanted to know if he was going to pull the fliers. He talked to the candidate's wife, who advised they did have a phone message, but she was not sure she had it right or not. He noted he left a message for his opponent to contact him, but he never did. Senator Thayer reported he was told by one of the campaign workers that they were not going to do anything until they got the formal letter, and the letter was not going to be there until later, so they continued to put the fliers out; they did not do anything about it.

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Senator Thayer then reported they put out a second flyer that stated "SB169, working women do not work as much as men, Keating (R), Billings", and indicated the flyer went on to describe the bill. He indicated that, to his knowledge, Senator Keating never made that statement. He stated the point is, when a person is told not to do something and they come right back out and hit at the same thing again, there has to be something wrong with what is going on in the campaign practices act. He noted he was upset about it, adding that, 30 days after the election, although the election was over, the Commissioner's office ruled on the second complaint in his favor, and he interpreted the last line of the letter to mean that it did not cross over into the criminal portion of the code. He reported he felt that it did, because the law says if you knowingly violate, which to him is a key thing, and he checked this out with an attorney. Senator Thayer indicated he firmly believed they did, because of knowingly violating the same thing over again.

Senator Thayer stated he thinks the committee should be aware that if you feel you have been violated, there is nothing you can do. You can not go to the courts, or do anything about it, except go to the Commissioner, who is the only one who can take action the way the present law is. He stated he thinks we need to do something to tighten up that middle area, and that is what SB336 attempts to do. He noted it is a pretty simple bill, and will permit the Commissioner of Political Practices to issue a cease and desist order, or seek a restraining order, or injunction for violation of the code by a candidate or officer of a political committee who subscribes to the code, providing a penalty for violating the cease and desist order. Senator Thayer indicated that, if the candidate did not subscribe to the code, it would not apply to him, but most of the time, we don't run into these kinds of problems. He noted he thinks it is perfectly alright for a candidate to challenge an incumbent, but that they should get their facts straight, and tell it the way it is.

Senator Thayer stated the bill explains how to file a complaint, stating that the Commissioner will investigate the complaint, and can issue a cease and desist order. He indicated he does not know if this is exactly the way it should be, it probably needs some work, and that he is open to suggestions, noting that all he is trying to do is give that office some means for handling this area in the middle. He noted to have to rule on every allegation is ridiculous, that one ruling telling them to act responsibility in the balance of the campaign should be enough. He indicated that he brought the bill in, not only because of what happened to

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him personally, but also because of what was happening state-wide, and he believes there should be something to strengthen that.

List of Testifying Proponents and What Group they Represent:

Dolores Colburg, Commissioner of Political Practices

C. B. Pearson, Common Cause

Don Judge, Montana State AFL-CIO

Testimony:

Ms. Colburg stated she supports the intent of the bill, but that there are some areas in which she thinks there are problems. She indicated, before she gets into that, she would like to say she supports what the Senator is attempting to do.

Ms. Colburg indicated that she believes the people of Montana are lucky that, except for instances such as with Senator Thayer, a contest down in Bozeman, and a judicial race in Havre, she did not hear any reports of really bad campaigns. She noted Montana is not like New Jersey, where they had a wicked U.S. Senate race, and that we want to keep it that way. She indicated that, approximately two weeks before the November 8 election, she submitted a statement to the press urging candidates, in the closing days of the campaign, to use every caution to make sure their statements were not only truthful and fair, but that they were also fairly and accurately presented. She noted that, notwithstanding, incidences did occur.

Ms. Colburg reported that, because of the timing on Senator Thayer's case, it became difficult to resolve the problem. She stated she did find violations of the code, to which this opponent had subscribed to, and she did find there was a misrepresentation in the flyer. She reported that, because of the timing, she not only wrote a letter, but got on the phone and told this opponent not to distribute any more of the fliers because there was a misrepresentation. She noted that, when it is that late in the campaign, even though she acted as quickly as she could, it is difficult to counteract that damage, and she advised the Senator, just as she advised other candidates, not to wait for her ruling, but to use every means in their power, the media etc., to counteract.

Ms. Colburg stated the political criminal libel statute, 13-35-2345, provides that candidates who get into character defamations, or misrepresentations or distortions of the voting record, or the public stance of a candidate, knowingly

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or with reckless disregard as to the truth of those allegations, can be taken to court under the criminal political libel statute, adding it is a misdemeanor offense.

Ms. Colburg stated this bill almost has the effect of criminalizing the code. She referred to subsection (2) on page 3, which states "If the Commissioner, after an investigation, finds that the candidate or officer knowingly or with reckless disregard violated the code", indicating that, on one hand it would seem to strengthen the code but, on the other hand, it may have the effect of weakening it. She pointed out that, in the case of Senator Thayer, as well as the others, she could find a violation of the code, without having to find that it was done knowingly or with reckless disregard, and she could tell those people to stop circulating that material.

Ms. Colburg stated her concern is that, by inclusion of language which says she can only find a violation of the code if she finds that it was done knowingly and with reckless disregard, she believes it will be far more difficult to find code violations, and suggested the committee may want to look at that issue, and may wish to speak with the Legislative Council, or some legal people. She noted she has spoken with her own lawyer, who had a similar concern.

Ms. Colburg stated the bill would also amend the code to include not only candidates, but that every officer of a political committee would also have the opportunity to subscribe to the code. She pointed out that the wording of the code has not been changed, it clearly speaks only to candidates, and she thinks it could be a problem to include officers of political committees subscribing to a code that speaks only to conducting a campaign as a candidate. She then pointed out that, except for ballot issue committees, other political committees do not conduct campaigns. She noted political parties assist their candidates, helping them in a variety of ways, but they are not running the campaigns. She added that political action committees do not run campaigns, and do not campaign; they give money. Ms. Colburg noted the only kinds of political committees that she is aware of who do conduct campaigns are ballot issue committees, and suggested, if those committees that do conduct campaigns are to be included, that it be limited to ballot issue committees. She further stated she thinks part of the code will have to be re-written to include those political committees because, the way it is currently written, it speaks only to candidates.

Ms. Colburg further indicated that a statement was included in the bill stating that "If the Commissioner prevails, he is



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entitled to reasonable attorney fees and court costs." She noted she thought the "he" was referring to the person who prevails, who brought the complaint. She stated another portion provides that, if the Commissioner goes to court, the State of Montana pays the fees, and this would be at variance with the other statute. Ms. Colburg added that she retains her own legal counsel, and it would not be a great amount of money.

Testimony:

Mr. Pearson's written statement is attached as Exhibit 3. He closed by saying they support this legislation, noting he has talked to a number of candidates who were successful, and almost every one of them expressed concerns about negative campaigning, particularly false advertising, and their basic response was that something needs to be done.

Mr. Pearson noted he is not sure this is the perfect answer, but he thinks we need to take a look at this area, and start dealing with this problem. He added he does not know that this legislation, or any piece of legislation, will stop what they call "dark hearts", people who want to do negative campaigning and false advertising, but what it will do is be a deterrent; it will be enough of a deterrent that people will second-think what they are doing, and that is the best we can do. He noted a lot of the campaign laws are not black and white and it will never be that way but, if we can set up deterrents along the way, we will get campaign managers to re-think the direction they are going and maybe, through that re-thinking, we will not get the negative campaigns, and the mushrooming effects other states are experiencing, as well at the national level. Mr. Pearson closed by recommending a do pass.

Testimony:

Mr. Judge's testimony is attached as Exhibit 4. He noted their political action committee only makes contributions to candidates; that it does not conduct campaigns out of that campaign fund. He noted that is separate and distinct from the activities they perform in communicating solely with their members, and those communications are protected under the Constitution. He added the issue which came before the Commissioner over this last campaign had to do with ballot issues, that they have in the past participated with ballot committees, and would be happy to subscribe to a code of fair campaign practices any time they are involved in a ballot issue.

Mr. Judge concurred with Ms. Colburg's statement that the language "knowingly", which was inserted in the bill, probably makes it more difficult to enforce the code. He further indicated they would be happy to work with the committee on one other problem they see with the bill; that the code is not written for committees and political officers of committees. He noted this needs to be addressed if it is to be included in the code.

Questions From Committee Members:

Q. Senator Bengtson indicated this bill seems to put a lot more responsibility into the office for investigation, and almost makes it a criminal justice agency. She asked Ms. Colburg if she thinks the office can handle this additional responsibility, noting that negative campaigning is very tough, and she does not know how many complaints will be unloaded on the office expecting some sort of action. Senator Bengtson stated she does not know how they can handle all that, that it could become an investigatory agency.

A. Senator Thayer responded he does not know, and indicated the Commissioner could probably answer better. He noted he is not trying to create a new bureaucracy or add people to the staff and that, when he asked for the bill to be drafted, he indicated they needed to give the Commissioner more power when she issues a ruling that any further statements made in the closing days of the campaign must be accurate and fairly presented. Senator Thayer asked, if that means anything, why do they have to make a second complaint, and why does the Commissioner have to rule on every issue. He noted that he was told she can not rule on the second flyer until she sees it, acknowledging that is true; she can not take his word over the phone that a second one went out with the same sort of charges.

Senator Thayer stated this bill is what the Council came up with, but he agrees with the suggested changes, and would agree with anything that will simplify it and make it more workable.

Q. Senator Bengtson asked Ms. Colburg, after she issues a cease and desist order, what does she view as the next step, indicating she would have to have the power to issue a warrant for the person's arrest, and then asked who would enforce the penalty.

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- A. Ms. Colburg responded that she thinks what Senator Thayer has in the bill strengthens what the Commissioner can do, even though, as she testified earlier, the law states that she can enforce the law, adding that enforce means she can tell people they have done wrong and, therefore, to cease and desist. She indicated the language in the bill, which states the Commissioner may issue an order to cease and desist, strengthens that, and points out that the person who violates that may be fined, so there is more teeth. She added she agrees with that.

Ms. Colburg stated that, if there is a problem, it will be that there is a distinction between negative campaigning and untruthful campaigning. She pointed out that negative campaigning may be seen as going against an opponent with statements that may be negative, but also may be truthful. She noted that being a referee would be a misuse of the office, and that there has to be a clear distinction in the code, using words that make it very clear if a person is distorting the record, misrepresenting the record, or making a malicious statement characteristic of the person's race, sex, religion, background, etc.

She indicated she does not know what kind of impact this would have on the office but, from her point of view, it seems that part of the job of the Commissioner is to see that the laws are enforced, and part of those laws deal with truthful, fair campaigns. She noted she has a concern with the language "knowingly and with reckless disregard", and that it may make it more difficult to find infractions of the code to which people may still voluntarily subscribe. She added that, anytime a person crosses the line, in that knowingly or with reckless disregard area, they are in the criminal political libel statute, and can be taken to court. Ms. Colburg stated it is difficult, these are not easy things to prove, and you have to have very hard, good, credible evidence for any court to find that the person did so knowingly and with reckless disregard.

- Q. Senator Abrams asked, when the Commissioner rules an act was malicious and untruthful, and issues an order, who besides the two candidates knows about this.
- A. Ms. Colburg responded she sends it to the press, as well. She stated she thinks this is probably one of the more powerful tools to dissuade people from that sort of

thing, adding that unfavorable publicity generated through the media may well be as effective as any fine. Ms. Colburg went over the circumstances of Senator Thayer's situation, pointing out the timeliness of the circumstances, and added she does not think one agency will be handle to everything, whether it is the Commissioner of Political Practices, or some other, stating she feels a large part of it will still rest with the individual candidates taking the necessary steps immediately to counteract.

- Q. Senator Anderson indicated he thinks people got tired of the recent campaign, referring to negative campaigning, or misrepresentation, noting that he and his opponents ran a clean campaign, and they both had comments that people appreciated it. Senator Anderson further indicated that, while this could be a deterrent, and will make the candidates more careful of what they do, it is to their advantage to run a clean, honorable campaign, and he thinks this bill would bring on a lot more work to the Commissioner's office.
- A. Ms. Colburg asked Senator Anderson to clarify his question.
- Q. Senator Anderson indicated his question is, in view of the fact that people will be more careful as a result of this, this bill should not have the effect of bringing more problems or work to her office.
- A. Ms. Colburg responded that, if the supposition is that all those who subscribe to the code will therefore not get into any problems at all, she thinks that is probably the case. She reported that she did not find evidence, in a number of the complaints she received surrounding campaign practices, that it was people making errors deliberately, willfully, knowingly and with reckless disregard for the truth. She noted she believes it was carelessness. Ms. Colburg indicated that Senator Thayer's investigation is still continuing but, in the others, she did not find any clear-cut credible evidence, and noted that they simply goofed up; they were careless, perhaps taking information that someone else had written for them, trusting that other person.

Ms. Colburg noted this may cause people to think they now have an avenue to the Commissioner that they do not, in fact, have. She indicated that finding "knowingly and

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with reckless disregard" takes good, concrete, credible evidence.

- Q. Senator Harding asked, in the cover letter the Commissioner sends out with the campaign information that all candidates get, if there is a warning clause included in that, noting she could not remember, but that she thinks it did. Senator Harding added that, if this is not included, perhaps it would be a good way to approach every new person regarding violations.
- A. Ms. Colburg responded that she has not sent out letters to candidates advising them to "be good", but that she does, as required by law, send out the C-1 forms and, at the same time, the Code of Fair Campaign Practices form, advising them in a cover memorandum what they need to do with the statement of organization as a candidate, and that the code is enclosed, which they may voluntarily endorse, subscribe to, sign and return. She noted if they do subscribe and return it to her office, it will be on file. She added that she does not send out letters unless she finds a violation, notifying the candidate she has found a misrepresentation, telling them to pull the flyer and not to circulate any more that has that kind of language, and urging them to take care to conduct the rest of the campaign in a fair and accurate manner.
- Q. Senator Vaughn asked, in a case such as Senator Thayer's that is still pending, if that person had been elected and the Commissioner finds that person was at fault, would he be disqualified.
- A. Ms. Colburg responded that, if it should be found that there was a violation, it would be a matter of going to court, adding that she can not do anything. She indicated that, if that occurred after the election, and the court found it did happen, the election could be contested in court.
- Q. Chairman Farrell asked if Ms. Colburg had any idea of the time frame for conducting a hearing, noting the bill indicates she may issue a temporary restraining order pending a hearing.
- A. Ms. Colburg responded they would try to do that as quickly as possible, in perhaps a few days, but that, in the meantime, she could issue a cease and desist order, pending the outcome of the hearing.

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- Q. Chairman Farrell asked if that could be done without a hearing.
- A. Ms. Colburg responded that, as she reads the bill, a temporary order can be issued pending the outcome of the hearing, and that the time frame is between the time the Commissioner gets the complaint and the findings. She noted it will be more difficult because of the language regarding intent, pointing out that would mean a lengthy investigation.

Chairman Farrell announced the hearing on SB336 as closed.

OTHER BUSINESS

Discussion: SB 178

Chairman Farrell noted that, regarding SB178, he asked the representatives from PERS to provide additional information regarding extending this supplemental benefit to people hired after 1981, and they have indicated their proposal is the cheaper way to go, rather than the way he suggested to them. He noted his suggestion, according to their information, would have required an additional \$86,000 per year of funding. He indicated the current law is scheduled to sunset after the last pre-1973 member dies, and they are asking to extend the current system.

Senator Bengtson asked, regarding the increased contribution of \$86,000 a year, does that come from an increase in the state's contribution. Chairman Farrell responded that it does. Senator Bengtson then asked what percentage that is; if it comes to a figure other than 22.98%. Chairman Farrell responded that would change the state's contribution from 22.98% to 23.88% or 23.89%. Senator Bengtson then asked if that comes off the premium tax that she pays, and Chairman Farrell indicated that is correct. He noted there is approximately \$5.5 million of the premium tax that is being used in the general fund and, to do it the way he had suggested, the \$86,000 would have been taken out of the general fund.

Chairman Farrell indicated the PERS does not know where the \$49,000 of general fund impact, indicated on the fiscal note, comes from, saying they are about \$13,000 underfunded in that fund right now, unless that is money being collected now, and the fiscal year has not changed. He added that, when you add that money in, you also have to add the liabilities that would

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be incurred and, right now, the 1981 contribution is not funding the additional liabilities for this supplement.

Senator Bengtson asked how many people will be affected. Mr. Vern Erickson, Montana State Firemen's Association, responded that, if this legislation is passed, those people hired after 1981 will be covered. Senator Bengtson asked how many that would be, and Mr. Erickson responded that, currently, it is about 40% of the active fire fighters, and that there are about 400 active fire fighters, currently, in the state. Chairman Farrell asked if that would be 175, and Mr. Erickson responded that is close. Senator Bengtson asked how old these people are now. Mr. Erickson responded their ages range between 25 and 30 years old.

Chairman Farrell noted that, according to the actuary, in order to keep the unfunded liability at 36 years, an additional \$86,000 would have to be contributed from the general fund, right now, noting the first person would be eligible in the year 2001, and the major portion would become eligible approximately in the year 2015. He added that, in order to accrue the interest to pay the benefits when they start retiring, money has to be contributed now.

Senator Bengtson offered a motion that SB178 do pass.

Recommendation and Vote:

Motion passed by the committee that SB178 do pass.

Discussion: SB 194

Chairman Farrell announced that the committee reported SB194 out of committee as do pass as amended, but the amendment was incorrect and had to be rewritten. He reported the amendment should indicate, on page 2, line 10, delete "65", and insert, in lieu thereof, "60", adding that the figure "24" is correct.

Chairman Farrell then indicated, the way it was explained to him, the Sheriff's retirement fund is 2.29% overfunded, and the additional cost would be about 1.25% of salary, noting they are still funded, and are still bringing down their unfunded liability, but are just not bringing it down as fast. He added their unfunded liability is either 29 or 31 years, that it is coming down, just not as fast, and this would give them an extra benefit.

There was discussion regarding the length of time for unfunded liabilities in some of the retirement systems. Chairman

Farrell reported that, in 1985, many of them were 50, 55 and 60 years, some were 70, and noted one was 155 years. He indicated the employees in a lot of these funds are contributing more money to help get the unfunded liabilities down.

Senator Bengtson offered a motion to adopt the amendments to SB194.

Senator Bengtson offered a motion that SB194 do pass as amended.

Recommendation and Vote:

Motion passed by the committee to adopt the amendments to SB194.

Motion passed by the committee that SB194 do pass as amended.

Discussion: SB 19

Senator Bengtson offered a motion that SB19 be tabled.

Recommendation and Vote:

Motion passed by the committee that SB19 be tabled.

Discussion: SB 288

Chairman Farrell indicated that the Department of Health and the Department of SRS have not gotten back to him with the information he requested regrading SB288, and stated he will wait until Friday, February 10 before taking executive action on SB288. Senator Bengtson indicated all of the committee members received a letter from the Montana Health Care Association, and asked Ms. Rose Hughes from that organization if she has been in contact with the Department of Health and SRS.

Ms. Hughes responded she has been in contact with them, that the Department of Health has already started performing the functions, as they were required to begin performing them as of January 1, 1989, and that they have the authority to do it. She noted they have approved some programs for training the nurses aides, and have approved the curriculum. Ms. Hughes added they have been working with the Health Department for over a year on these things that the Board of Nursing is now saying they want to do, instead.



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Senator Bengtson stated that her original fears are coming true, noting she has calls she needs to make, and indicated she would like to wait before taking executive action on SB288, to give her time to contact the nursing homes in her area. Senator Vaughn indicated she contacted the nursing home in her area, noting the administrator was very much against this bill, but the nurses were in favor of it. She added she feels very uncomfortable with the bill, noting the Board of Nursing did not have a plan to present to the committee. Senator Harding noted the director of the nursing home in her area is also in favor of the bill.

ADJOURNMENT

Adjournment At: 11:35 a.m.

  
WILLIAM E. FARRELL, Chairman

WEF/mhu  
SB336.029

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: February 9, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTON	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN			✓
PAUL RAPP-SVRCEK			✓
TOM RASMUSSEN	✓		
ELEANOR VAUGHN	✓		

SENATE STANDING COMMITTEE REPORT

February 9, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 178 (first reading copy -- white), respectfully report that SB 178 do pass.

DO PASS

Signed: *William E. Farrell*

William E. Farrell, Chairman

*W.E.F.*  
*2/9/89*  
*3:20 p.m.*

SB 346

TESTIMONY

TEACHERS' RETIREMENT BOARD

Mary L. Harrington, Assistant Administrator

TITLE: "An act revising provisions concerning the purchase of creditable service for out-of-state employment and for employment while on leave under the Teachers' Retirement System; amending sections 19-4-402 and 19-4-403, MCA; and providing an effective date."

Members of Teachers's Retirement System prior to July 1, 1971 and subsequent to 1949 were allowed to purchase service credit for any type of instructional service previously performed, whether within a public, private, or federal institution, including any area outside the borders of Montana. This included other states, United States territories and possessions and foreign countries.

The law concerning out-of-state creditable service was amended in 1971 which narrowed the scope once more to include only prior teaching in public elementary and secondary schools and universities within the United States, its territories or possessions. Clarification of this interpretation was requested and received from the Attorney General in September 1978.

The Teachers' Retirement System supports passage of SB 346 as this would bring consistency to all members of the Teachers' Retirement System for the purchase of additional service. Also, with the various changes in the law, errors have occurred in the calculation of cost for out-of-state teaching service and errors are easily made in the determination of the type of service be priced as well as the eligibilty of the member to purchase additional service.

Section 2 is amended to allow a vested member of the Teachers' Retirement System to purchase service credit not exceeding 2 years while on leave, upon completing 1 year subsequent to the break in service. The orginial law required a member to complete 5 years of full-time service subsequent to the break in Montana teaching service. The 5 year requirement was consistant with the 5 year vesting period. Since the member must be vested to be elibible to purchase service while on leave, the 5 year waiting period would not be required.

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 2/9/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB 336

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

DOLORES COLBURG

9 February 1989

Address:

Capitol Station

Helena 59620

Phone:

444-2942

Representing whom?

Commissioner of Political Practices

Appearing on which proposal?

SB 336

Do you: SUPPORT?  AMEND?  OPPOSE?

Comments:

1. Code really not written to include political committees.

Also, except for ballot issue political committees, they do not conduct campaigns.

2. Requiring a finding of "knowingly" and "with reckless disregard" will make it harder to find violations of

code. Besides, these terms are found in political criminal libel statute (section 13-35-234)

3. Court costs + attorney fees <sup>incurred by</sup> ~~for~~ Commissioners all paid by the state in other statutes.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



# COMMON CAUSE/MONTANA

P.O. Box 623  
Helena, Montana 59624

(406) 442-9251

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 2/9/89

BILL NO. SB 336

## TESTIMONY OF COMMON CAUSE IN SUPPORT OF

SENATE BILL 336

9 FEBRUARY 1989

Mr. Chairman and Members of the Senate State Administration Committee, for the record, my name is C.B. Pearson, Executive Director of Common Cause in Montana. On behalf of Common Cause and its members we would like to go on record in support of SB 336.

We have discussed this bill with Senator Thayer and support efforts to solve the problem of negative campaigning using false or misleading information. We are working with several members of the legislature to address this area of concern.

As you all probably know, this past campaign season was one of the worst in the history of Montana for negative campaigning. Negative campaigning isn't new to Montana. There has always been some use of negative campaigning.

Negative campaigning alone isn't necessarily bad. In some instances negative campaigning, based on truthful assertions of differences between candidates or campaigns, can help sharpen the debate or clearly distinguish the candidates or issue at question. However, the use of false or inaccurate advertising in a negative campaign distorts the political process.

In modern campaigns the use of polling has increased the temptation to use false or misleading advertising. Polls can tell a candidate or a ballot issue campaign the means why a voter may vote against a candidate or a ballot issue. Once these reasons are in hand the candidate or political committee is tempted to advertise these points regardless of the truthfulness of the advertisement.

The reason for concern with protracted use of negative campaigning is the long term harm it causes to the political process. Negative campaigning has as its fundamental purpose a vote against rather than a vote for. Yet, negative campaigning can and often reduces voter participation and increases voter apathy.

Such campaigns unfairly damages the reputations of many candidates and elected officials, provides an unfair advantage to unscrupulous candidates or unscrupulous campaign managers, and serves to further erode public confidence in elected officials. Such campaigns discourage people from running for public office, thus weakening our republic. These type of campaigns also cause bitter feelings that can spill over into the actions of legislators in their committee work or in debates before the full body.

Further voters, confused by misleading information, are distracted from the more substantive political issues and vote not for their choice of candidates or issues but for the lesser of a set of perceived evils. As a consequence, some political scientists suggest, election results may be skewed and less qualified and deserving candidates may be propelled into office.

False and misleading advertising has as its goal for the candidate or ballot committee the gaining of the upper hand in an election. Some candidates and ballot committees are willing to say whatever is necessary to win even if it is not based on fact. Many candidates and elected officials reported to Common Cause after the election their concern with negative campaigning and false publication of political materials. The most often stated position was, "something has to be done."

We believe SB 336 is a step in the right direction therefore we urge a "do pass".



SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 2/9/89

BILL NO. SB 336

JAMES W. MURRY  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on Senate Bill 336 before the Senate State Administration Committee, February 9, 1989

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Mr. Chairman and members of the Committee, for the record, my name is Don Judge and I'm representing the Montana State AFL-CIO in support of Senate Bill 336 sponsored by Senator Thayer.

This bill does two things. It expands the Code of Fair Campaign Practices to officers of political committees, and it provides for penalties for violating the Code.

Both of these changes are long overdue. The Montana State AFL-CIO strongly believes in the importance of the Code, and we feel that the people of Montana deserve more than words on paper to insure that the Code is enforced. The extension of the Code to officers of political committees is only fair because of the increasingly important role which political committees play in the political process. Violations of the Code should carry appropriate penalties. Currently, the Code exists only in the good will of those who follow it. When a candidate or committee makes a commitment to follow the Code, he or she should be held accountable to the Code. The penalty provision of this bill does just that.

The Montana State AFL-CIO heartily endorses this legislation and urges your favorable consideration.





Amendments to Senate Bill No. 194  
First Reading Copy

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 2/9/89

BILL NO. SB194

For the Committee on Senate State Administration

Prepared by Eddy McClure  
February 8, 1989

1. Page 2, line 10.  
Following: "age"  
Strike: "65"  
Insert: "60"

SB019401, AEM

