

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIR JAN BROWN, on February 5, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Jan Brown, Chair (D)
Vicki Cocchiarella, Vice-Chair (D)
Beverly Barnhart (D)
Gary Beck (D)
Ernest Bergsagel (R)
Fred "Fritz" Daily (D)
Ervin Davis (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Gary Feland (R)
Gary Forrester (D)
Patrick Galvin (D)
Harriet Hayne (R)
Betty Lou Kasten (R)
John Phillips (R)
Richard Simpkins (R)
Jim Southworth (D)
Wilbur Spring (R)
Carolyn Squires (D)

Staff Present: Sheri Heffelfinger, Legislative Council
Judy Burggraff, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: CHAIR BROWN thanked Rep. Roger DeBruycker for bringing treats again.

HEARING ON HB 372

Presentation and Opening Statement by Sponsor:

REP. BUDD GOULD, House District 61, Missoula, presented HB 372 to revise entry into Firefighters Unified Retirement System. The fiscal note will explain the bill. The bill is important to legislators as they only have to serve for five years to become eligible for Public Employees Retirement System (PERS). The law

says that if you want to convert state insurance to yourself, you must be paid up in PERS.

Proponents' Testimony:

Larry P. Nachtsheim, Administrator, PERS, presented written testimony. EXHIBIT 1

Tim Bergstrom, President, Montana State Council of Professional Firefighters, said all of the members of our state council are also members of the Firefighters Unified System. This bill seeks to provide protection and to keep that system solvent.

Opponents' Testimony: None

Questions From Committee Members:

REP. ERNEST BERGSAGEL questioned what distinguishes a first-class city? What would be smaller? Is it based on population? Mr. Nachtsheim said the size of the class of the city is defined by population. The smallest city in the system is Red Lodge. The other small cities are Glasgow and Miles City.

REP. RICHARD SIMPKINS asked if each city in the bill is required to have a paid firefighting staff. Mr. Nachtsheim replied the members in the system are only "paid" firefighters. Some of the smaller cities have "part-pay" firefighters -- Glendive and maybe Glasgow. All are basically a "paid" fire department.

Closing by Sponsor:

REP. GOULD closed HB 372.

EXECUTIVE ACTION ON HB 372

Motion/Vote: REP. BETTY LOU KASTEN MOVED HB 372 DO PASS. Motion carried unanimously.

Motion/Vote: REP. SIMPKINS MOVED HB 372 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously.

HEARING ON HB 395

Presentation and Opening Statement by Sponsor:

REP. FRED THOMAS, House District 62, Stevensville, introduced HB 395. The purpose of the bill is the Department of Administration (DA) seeks to make the procurement of services more simple and efficient. It also desires to keep the authority to determine what bonding amounts are proper for differing types of procurement, but wishes to repeal the mandatory levels. Many vendors and small businesses have complained about the bonding

requirement as it eliminates many people who would be able to bid these jobs. The DA sees the mandatory levels as an unnecessary barrier barring small private businesses from the bidding process. In addition, the bonds cause costs to be artificially increased. "I would like to see the Legislature give to (DA) the administrative discretion as to when the bid and performance bonds would be required and to determine the amount of security at that time depending upon the service procured through the bidding process." The statute now requires DA to secure a bid bond or a bid security on any amount over \$10 thousand, of at least 10 percent, and 25 percent of the total contract price for the contract performance security. That is the language being requested to be struck from current law. If a bidder who was awarded a contract fails to enter into a contract, the DA at their discretion can require the bidder to forfeit his entire bid security. A bid bond is intended for protection for the taxpayer against a bid being withdrawn after the bids have been opened. It represents that the bid has been submitted in good faith. The performance security provides for fulfillment by others in the event of the default of the successful bidder. The amount of the performance bond is usually 100 percent. The bill would strike the language on a contract exceeding \$10 thousand. The DA shall require a bid security and contract performance security and give the DA the discretion to determine in what areas it is needed. In other areas where it is not needed, the DA would request these stringent requirements but something more applicable.

Proponents' Testimony:

Marvin Eicholtz, Administrator, Procurement and Printing Division, Department of Administration, presented written testimony. EXHIBIT 2

Opponents' Testimony:

Eugene Fenderson, Montana State Building Construction Trades Unions, representing 11 different unions within Montana, said they oppose HB 395 for numerous reasons. One reason is because the bill addresses all other entities in the state such as municipalities, school districts, irrigation districts and all forms of government which would be covered under the bill. Over the years, there have been a number of entities that had to call in their security bonds on certificates of deposit on any given project or service, whether it be construction or janitorial service where the vendors could not provide what they said they were going to provide. The original intent of this type of legislation was to protect the people and the government of Montana. DA says they will require a bond "when need be." The question of "when need be" may vary a great deal from county to county. They think the protection legislation now in effect is good and protects the investments of the taxpayers.

Lars Ericson, Montana State Council of Carpenters, said with the current law requiring bid and performance bonds on public

contractors, the owner is protected against claims by subcontractors, materials suppliers and so forth. The statute also protects the employees in the case of construction projects. It is a method of collecting wages and fringe benefits should the contractor or subcontractor not pay them properly. It also protects the owner, the taxpayer, from shoddy workmanship and poor materials. It guarantees most construction projects as many have a one-year guarantee. You have a guarantee with a performance bond if the contractor or subcontractor go out of business or work is not done properly. Bid bonds do not open up the bidding process to more bidders. Only reputable contractors, subcontractors and suppliers are allowed to bid with the present statute; only those with a good financial track record. A performance bond is a "guarantee that when the job is finished, you've got what you paid for."

Questions From Committee Members:

REP. RICHARD SIMPKINS asked if Rep. Thomas knew that several performance bonds had been forfeited. **REP. THOMAS** said he is not aware of what is happening out in the counties and school districts. On the state level, very seldom do they have to go back on performance or bid bonds. "We are not getting rid of the performance or bids bonds, they will be required where they feel there is risk. There are a few instances where they are unnecessary."

REP. CAROLYN SQUIRES asked when bid and performance bonds are not necessary. **Mr. Eicholtz** said there are only a few instances such as bank services where it doesn't make sense to do this. They will still be required on construction projects.

REP. SOUTHWORTH asked if the bid and performance bonds were there for the public. **Mr. Eicholtz** said yes.

REP. PATRICK GALVIN asked if the passage of the bill would allow the bidder "off the hook" at the discretion of the state agency. **Mr. Eicholtz** said it didn't allow the bidder "off the hook;" it allows them to assess whether or not there is enough risk to require a bid bond.

REP. ERNEST BERGSAGEL asked if the bill promotes bidding by more small businesses in Montana? Does the system, as it is set up, encourage only large business to bid on certain projects or to provide materials for the state? **Mr. Eicholtz** said, "I think that is correct to some degree. The contractors we deal with that have the most problem of getting a performance bonds are . . . the small or newer businesses. The larger businesses normally do not have a problem . . . That cost is going to be passed on to us if we require that in the contracts." **REP. BERGSAGEL** asked for an example of a procurement that would benefit small business. **Mr. Eicholtz** said lawn-care maintenance or snow removal. "If the vendor does not perform or fails to sign the contract, we believe it is not that difficult to go out and get

another contractor to pick up where that contractor left off. The risk there would be minimum." The cost may be a "couple of dollars more, but we (would not) have to go through the process of the performance bond." The DA at times chooses not to collect on a performance bond because of the "hassle" of collecting on it and what it means to the contractor. The DA will then go with the second lowest bidder.

REP. GARY FORRESTER said he is in opposition to the bill because there is too much chance to give local preference especially with school construction, and SA wouldn't have any oversight. Mr. Eicholtz said he could not speak for the local communities. Right now they have the discretion of requiring a bid performance bond for procurements under \$10 thousand. This bill would not prevent them from requiring a bid performance bond on items over \$10 thousand if they think it is necessary. REP. FORRESTER said the chance would still remain for a "little bit of manipulation to occur" where a contractor could approach a school board member and say, "I can't get the performance bond . . . (but I want the job)." I think the chance for abuse is there. Mr. Eicholtz said, "From the state's perspective, we believe that we are requiring bid and performance bonds for unknown risks. If we can assess that risk and decide that bid performance bonds are not necessary and then we are stung by venders, I can assure you we will be going back to performance bonds."

REP. CAROLYN SQUIRES said you would take the first bidder and if they aren't good at doing what they do then you would go to the second bidder. Who pays the wages of the employee when no one has a bond with which to pay the wages? A bid performance will guarantee wages and benefits to the employee in the process. Mr. Eicholtz said if the second lowest bidder were awarded the contract, they would be responsible for payment of those wages. The contractor would also come to the DA to help pay those wages. This would be an instance where we would have made a mistake. From then on we probably would be more careful and require bid performance bonds. REP. SQUIRES said you would be more careful on the second go around, but what happens on the first go around. The workers would be penalized. The second bidder would not want to pay the debts of the first bidder so that he can get this "magnanimous" job. It is a certain responsibility of the state and local governments. "I support small businesses, but the reputation of small businesses is that not (many) are successful. It would seem . . . the small business person should be bonded" Mr. Eicholtz said he did not think that the small contracts Rep. Squires mentioned would go over \$10 thousand. There are a few where there is no construction work involved where we do not feel it is necessary to have a bid bond. A good example would be when working with the financial institutions. "If we issue bonds, we require them to put forth a bid bond saying they will go ahead and sign the contract. I have yet to see a financial institution renege on a promise to buy our bonds. I feel it is unnecessary until we get into a situation where we are having problems . . . where we would put bid and performance

bonds back on."

REP. SIMPKINS said upon failure of a contract, is it automatic that the payment be made by the bond company? Could there be court litigation before the money is awarded? **Mr. Eicholtz** said that is correct. Their experience with performance bonds is that it is something that you can't turn around and collect. The vendor must go into court against the state. It is a lengthy process. It may take up to a year before payment is made. **REP. SIMPKINS** asked if we drop to the second lowest bidder could it present a situation where the employees that were employed on the job could be hired by the second lowest bidder especially in a local situation. **Mr. Eicholtz** said that is possible. In most instances the lowest bidder determines that they did not bid enough to do the contract and they want out. In that instance, the DA goes to the second lowest bidder.

REP. FORRESTER asked if the correct procedure would be that when the original bidder fails to perform, the state agency would not have the option to give it to the second bidder as the performance company holding the bond would make the award of the contract with the approval of the state agency who then would have a say as they are bound with a financial loss. **Mr. Eicholtz** said we can require performance bonds but we have the discretion of whether or not we are going to execute them. It would provide us some protection on those types of jobs, but I think we are already going to have them on very risky situations. The SA does not have to go back on a performance bond if they don't want to.

Closing by Sponsor:

REP. THOMAS said the premises in the bill are good. He gave more background on the bonds: A bid bond goes in with the bid. That is how it gets its name. A 10 percent bid bond is typical in the country. To get a bid bond you must have secured the full authority for a performance bond prior to receiving one. That is typically 100 percent of the contract. It is very rigorous financially to obtain a bond. The law does not only require a bid bond for security. Other forms, such as a certificate of deposit or another form of security, may be used. Ten percent in the form of a bid bond does not tie up capital, but it is very hard to get from the bonding company because you have to have the contract performance bond okayed first. "I don't believe that most performance bonds are going to have language built into them for wage-payment guarantees. The bond is a guarantee that the job will be completed. . . at the point it 'stops being done.' It does not go back and pay what hasn't been paid, it goes forward to complete the job. . . . Sixty percent of all Montana businesses employ one to four people. . . ." He suggested that if the Committee was uncomfortable with the bill or if other language would be better, that they amend the bill. "We need to come up with some more flexibility in this area as it is eliminating a lot of competition."

HEARING ON HB 434Presentation and Opening Statement by Sponsor:

REP. ED McCAFFREE, House District 27, Forsyth, introduced HB 434, which would allow the State Treasurer to assess counties an interest charge for the late remittance of money collected by county treasurers for the state, rather than to require the assessment. The bill came at the request of the DA because the existing law requires that the DA charge counties for late submittal of funds owing to the state. For various reasons such as mechanical problems such as a computer breakdown or whatever, the some counties are late submitting those revenues. In some cases the state has chosen to not charge the interest if they feel the county's request is reasonable. The Audit Report called this to the attention of the SA. The department was told "you will charge interest or you (will) amend the law giving you the option of charging or not charging (interest) depending on the reason for the late submittal of revenue."

Proponents' Testimony:

Chuck Virag, Administrator, Accounting and Management Support Division, Department of Administration, presented written testimony. EXHIBIT 3

Opponents' Testimony: NoneQuestions From Committee Members:

REP. JIM SOUTHWORTH asked if the late receipt of county monies was a problem. Mr. Virag said in the last fiscal year, of the 672 deposits made by the counties to the State Treasurer, only 4 of those were late. This represents about .5 percent of deposits. If the counties would have been assessed an interest charge as provided by statute, SA would have collected about \$13,000 in interest from the counties.

REP. WILBUR SPRING asked if the confusion of 703 caused some late payments. Maybe it was a fault of the Legislature and not the county for the late payments. Mr. Virag said the written explanations of why the counties remitted late never cited that reason. The primary reason has been accounting system changes that haven't been completed on a timely basis.

Closing by Sponsor:

REP. McCAFFREE said the counties are being as fair as they possibly can. In rural areas when a computer breaks down, it sometimes takes a long time to get someone to repair the equipment. In some rural areas, they still do their record keeping by hand.

EXECUTIVE ACTION ON HB 434

Motion: REP. SIMPKINS MOVED HB 434 DO PASS.

Discussion:

REP. BETTY LOU KASTEN asked for clarification. Lines 11 - 18 clarify the existing language as "must." The sense of the bill is "may." Ms. Heffelfinger said that is correct. In the first part of the bill, the counties must remit the money. In the second part, the inserted language uses the word "may" where the "treasurer may assess 10 percent interest."

Vote: HB 434 DO PASS. Motion carried unanimously.

HEARING ON HB 480

Presentation and Opening Statement by Sponsor:

REP. THOMAS LEE, House District 49, Lake County, introduced HB 480, an act to include town employees among those public employees entitled to military leave. The federal statutes require that when National Guard and the Army Reserve personnel go for training they must be restated with all seniority and so forth upon returning. The time they are gone is not accrued against their vacation or annual leave time, and there is no loss of benefits. Almost all levels of public employ have granted that the two weeks of military training is a paid leave with no loss of annual leave time. The present code says that all levels are covered except towns. The bill will amend into the group of public employees those persons who are employed by towns. If the bill is passed, they will have available to them two weeks of paid military leave. He read a 1987 Attorney General's Opinion by Mike Greely stating that the way the statute is currently written that towns are exempt. **EXHIBIT 4** It is possible that the current statute could be declared unconstitutional if someone were to challenge it on an equal protection basis -- where public employees do not have access to the same type of benefit that other types of employees of the same class are currently afforded. There is no rational basis for excluding town employees.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. ERVIN DAVIS asked what the difference was between a city and a town. CHAIR BROWN said Ms. Heffelfinger would answer that

question during executive session.

Closing by Sponsor:

REP. LEE said the Attorney General's opinion does address some of the definitional aspects of the problem.

EXECUTIVE ACTION ON HB 480

Motion: REP. ERNEST BERGSAGEL MOVED HB 480 DO PASS.

Discussion:

Ms. Heffelfinger said a town has to be incorporated as a municipality by passing a resolution. In Title 7, Ch. 1, Sect. 4-41-11, MCA, the classification of municipalities includes every city having a population of 10,000 or more is a city of first class. Every municipal corporation having a population of less than 1,000 and more than 300 is a town.

Vote: HB 480 DO PASS. Motion carried unanimously.

Motion/Vote: REP. KASTEN MOVED HB 480 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously.

HEARING ON SB 41

Presentation and Opening Statement by Sponsor:

SEN. BOB BROWN, Senate District 2, Whitefish, introduced SB 41 to transfer tramway gross receipts from the Department of Revenue (DOR) to the Department of Commerce (DOC). The money obtained from the source totaled about \$25,000 in 1988; in 1990 it was about \$28,000. There is a little fee paid to the DOC by the DOR to cover the cost of safety inspections on the tramways -- ski lifts. There is a relatively minuscule amount of money collected by the DOR and given to the DOC for the same purpose. Since the DOC does collect other fees, by mutual agreement the DOR and DOC think it would be better if the DOC would collect its own fee and handle the matter itself.

Proponents' Testimony:

Charlotte Maharg, Department of Revenue, said the motivation for the bill came from one of the ski lift owners who said, "I have to deal with Commerce in October and you again in December, why can't I do it just once." That makes a lot of sense.

W. James Kembel, Administrator, Public Safety Division, Department of Commerce, said tramway inspections are part of our program. We have no problem with the bill.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. BROWN said the bill would be a minor improvement and urged the Committee's support.

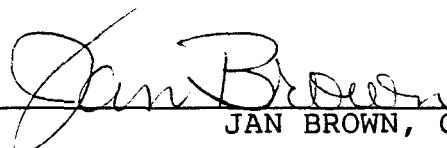
EXECUTIVE ACTION ON SB 41

Motion: REP. SPRING MOVED SB 41 BE CONCURRED IN. Motion carried unanimously.

Motion/Vote: REP. SIMPKINS MOVED SB 41 BE PLACED ON THE CONSENT CALENDAR. Motion failed 18 - 1, as it must be a unanimous decision, with Rep. Cocchiarella voting no.

ADJOURNMENT

Adjournment: 10:15 a.m.


JAN BROWN, Chair


JUDY BURGGRAFF, Secretary

JB/jb

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 2/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, VICE-CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 372 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: _____

Jan Brown
Jan Brown, Chairman


HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that House Bill 434 (first reading copy -- white) do pass .

Signed: _____


Jan Brown, Chairman

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 480 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: _____


Jan Brown, Chairman

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that Senate Bill 41 (third reading copy -- blue) be concurred
in .

Signed: Jan Brown
Jan Brown, Chairman

Carried by: Rep. Kasten

TESTIMONY of the
PUBLIC EMPLOYEES' RETIREMENT BOARD

Presented by Lawrence P. Nachtsheim, Administrator
Public Employees' Retirement Division

The Public Employees' Retirement Board has requested this legislation to serve two separate but interrelated purposes.

First, the bill is designed to prohibit the transfer of unfunded liabilities from local plans to the statewide plan without continuing responsibility for those liabilities by the city transferring into the FURS.

The rationale behind this request is that, as the law now stands, additional unfunded liabilities to FURS will require increased contribution rates from either the current member cities or the state from the insurance premium tax fund. The current statutory funding rate of 42% of salaries is required to fund accruing benefits and amortize current unfunded liabilities, any additional liabilities can not be absorbed without additional funding.

Funding for additional liabilities brought into the plan should remain the responsibility of the incoming city and should not be borne by either the state or other cities.

Second, at the recommendation of the Legislative Auditor, the Board proposes to repeal the requirement for a separate valuation of the unfunded liabilities of all prior plans as of July 1, 1986.

The requirement for this separate valuation was placed in law prior to a 1983 amendment providing additional funding from the insurance tax premium fund to pay the unfunded liabilities of the system. The original intention of the Firefighters' Unified Retirement Act was that individual city members would be required to make additional payments to retire any unfunded liabilities which could not be amortized by the current employer and state contributions to the system.

Subsequently, a statutory increase in the amount contributed by the state from the insurance tax premium fund (from 18% to 22.98% of salaries) was enacted. The regular 1986 actuarial valuation of the FURS determined that current contributions to the system were sufficient to amortize all unfunded liabilities within an acceptable timeframe. Therefore, the Retirement Board determined that a separate valuation of excess unfunded liabilities was not necessary since there were no excess unfunded liabilities.

The Legislative Auditor has indicated the PERD is technically out of compliance with law for not conducting this separate valuation. The most recent audit report of the retirement division recommends the Board seek repeal of this unnecessary valuation.

On behalf of the Public Employees' Retirement Board, we request your approval of this legislation.

TESTIMONY - HB395

Prepared by Marvin Eicholtz, Administrator, Procurement & Printing Division, Department of Administration.

The department would like to have discretion in requiring and setting the amount of bid and performance bonds for different types of procurement based upon evaluation of the risk involved.

Other than where mandatory for construction work, approximately 90% of the states allow bid security and performance bonds at the discretion of the chief purchasing officer. This policy is also recommended by the National Association of State Purchasing Officials. With discretion, the department will be able to set bonding requirements equal to the risk involved.

Where the risk of default and loss is minimal, bid and performance bonds are an unnecessary cost which is passed on to the state. Where bonding is required we estimate the cost to be 1% of the contract value. Currently, the department requires bid/performance security on approximately 6% of their purchases.

The department intends to require bid and performance bonds on purchases greater than \$10,000 as before and intends to excuse bonding requirements on an exception basis. If after assessing the risk, we believe that bonding is not necessary or reduced bonding is sufficient, this conclusion will be documented and approved by the purchasing bureau chief.

This bill will make our procurement services more efficient while protecting the state when the risk warrants it.

Please support passage of this bill. Thank you.

TESTIMONY
DEPARTMENT OF ADMINISTRATION
HB 434

TITLE: "AN ACT TO ALLOW THE STATE TREASURER TO ASSESS COUNTIES AN INTEREST CHARGE FOR THE LATE REMITTANCE OF MONEY COLLECTED BY COUNTY TREASURERS FOR THE STATE, RATHER THAN TO REQUIRE THE ASSESSMENT; AMENDING SECTION 15-1-504, MCA; AND PROVIDING AN EFFECTIVE DATE."

PURPOSE

The purpose of this legislation is to amend current statutes to allow rather than require that the State Treasurer assess counties an interest charge for late remittances. The State Treasurer has not complied with this requirement in the past, and consequently the Legislative Auditor recommended that the Department of Administration propose legislation to amend the related statute.

TESTIMONY

Under current law, the State Treasury must collect interest at the rate of 10% per annum from counties who do not remit by the 25th day of each month all State moneys collected during the preceding month. This statute does not allow for extenuating circumstances which can occur at the county level, such as computer problems in small counties where repairmen may only be available once a week or illnesses in an office with limited staff.

The State has not assessed a late remittance charge for at least the past 10 years because of the desire to maintain a good working relationship with the county treasurers and the lack of a significant problem in this area. FY 1990 provides an example of the minimal potential financial effects of charging counties interest on late remittances. During FY 1990 the county treasurers collected, and deposited with the State, over \$79 million of State funds. The State could have assessed the counties interest charges of approximately \$13,000 for the late remittance of these funds.

If this proposed legislation were enacted, the State would retain its authority to penalize counties for the late remittance of State moneys. However, the State could exercise judgement in determining when such a penalty was justified given the circumstances surrounding the late remittance.

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Office of the Legislative Auditor



State of Montana

EXHIBIT 3DATE 2/5/91HB 434

Report to the Legislature

June 1989

Performance Audit Report

Treasury Bureau

Department of Administration

This report contains recommendations for improvements in the maintenance of depository bank accounts. The recommendations address:

- ▶ Criteria for determining compensating balances.
- ▶ Obtaining banking services.
- ▶ Consolidating the number of depository banks.

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

88P-42A

Chapter III Bureau Administration

Late Transfers From Counties

Montana law (section 15-1-504, MCA) requires counties to remit to the state treasurer, by the 25th of the month, all moneys belonging to the state collected by the county treasurer during the preceding month. If the counties do not remit collected funds by the 25th, the county treasurer shall pay interest at a rate of 10 percent per annum.

We selected a judgmental sample of six months during fiscal year 1987-88 to determine if the Treasury Bureau received money from counties in a timely manner. For each month we reviewed county collection reports from the 56 counties. We found 57 out of 336 collection reports were delinquent. Delinquent reports ranged from 1 to 100 days late. A majority of the reports included notes attached explaining the cause of the delay. The most common cause was computer trouble. Based upon the interest rate specified in the law, the state of Montana should have received \$20,185 during the six months sampled as a result of late payments.

A contract audit report, presented by a public accounting firm to the Legislative Audit Committee in September 1980, recommended the state treasurer collect the interest due on the county collection reports. The report suggested warning counties of the change in policies before implementation. In the state treasurer's reply to this report, she indicated her office would implement the recommendation as of October 1980.

The current bureau chief said the bureau was not charging interest at the time he became bureau chief in 1982. Department personnel indicated they would need to notify the counties before implementing a change in policy. Bureau personnel indicated they will review the bureau's current policy, and may charge interest on late reports if an acceptable reason is not provided by the county.

An alternative the department has to charging interest is to seek a statutory change. The current law requires the bureau to charge interest. A change to permissive language would allow the bureau the flexibility to assess interest charges if necessary.

Chapter III Bureau Administration

Late Transfers from
Counties (continued)

Recommendation #5

We recommend the bureau:

- A. Assess interest on late revenue transfers from counties as required by law, or
- B. Seek a change in the statutes requiring the assessment of interest on late revenue transfers.

OPINIONS OF THE ATTORNEY GENERAL

not apply to a town, and that a town is therefore not required to grant paid leaves of absence for military training.

According to federal law, a public or private employer must grant a leave of absence for the period required to perform active duty for training or inactive duty training in the armed forces of the United States, including the National Guard. 38 U.S.C. §§ 2024(d), (f). The federal law further provides: "Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes." 38 U.S.C. § 2024(d). While the section is ambiguous with respect to whether the leave of absence must be given on a paid or unpaid basis, it has been determined that the Veteran's Reemployment Rights Act does not require an employer to pay a reservist for the time he is away on reserve training duty but only requires that a reasonable request for an unpaid leave of absence upon proper notice be granted. Hilliard v. New Jersey Army National Guard, 527 F. Supp. 405 (D.N.J. 1981).

THEREFORE, IT IS MY OPINION:

An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 27

LIENS - Definition of "owner" of real property being purchased under a contract for deed;
TAXATION AND REVENUE - Definition of "owner" of real property being purchased under a contract for deed;
MONTANA CODE ANNOTATED - Sections 15-8-601; 15-16-402(1);
OPINIONS OF THE ATTORNEY GENERAL - 9 Op. Att'y Gen. at 440 (1920-22), 23 Op. Att'y Gen. No. 114 (1950).

EXHIBIT 4
DATE 2/5/91
HB 480

HELD: 1

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Dear Mr.

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OPINIONS OF THE ATTORNEY GENERAL

17 September 1987

Donald D. Cole
Saco Town Attorney
171 South Central Avenue
Malta MT 59538

Dear Mr. Cole:

Your request for my opinion inquires whether a town employee who is a member of the National Guard is entitled to a leave of absence with pay while attending a training session with the National Guard. The subject of military leave is addressed by section 10-1-604, MCA, as follows:

A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time. [Emphasis added.]

Your letter concludes that this section has no application to a town employee. I agree with your conclusion.

The Montana Constitution defines the term "local government units" to include counties and incorporated cities and towns. Mont. Const. art. XI, § 1. Cities and towns are separately defined entities according to population, as set forth in section 7-1-4111, MCA. The term "municipality" means "an entity which incorporates as a city or town." § 7-1-4121(9), MCA. The plain meaning of the word "city" is not synonymous with the word "town." I cannot insert what the Legislature has omitted. If the Legislature had intended to include towns in section 10-1-604, MCA, it could have expressly done so either by enumeration or by utilization of the term "local government units" or "municipalities." As a rule in statutory construction, expressio unius est exclusio alterius, i.e., the expression of one excludes the other. I conclude that section 10-1-604, MCA, does

OPINIONS OF THE ATTORNEY GENERAL

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3. Securities issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Board, the Federal National Mortgage Association, and Farm Credit System banks are permissible investments under section 7-6-202, MCA. Mortgage-backed certificates issued by a private entity but guaranteed by the Government National Mortgage Association are not permissible investments under section 7-6-202, MCA. Treasury investment growth receipts represent investments in direct obligations of the United States government permissible under section 7-6-202, MCA.
4. The permissible alternatives for deposit or investment of county general fund moneys, protest fund moneys, and school district moneys differ and are governed, respectively, by sections 7-6-202 to 213, 15-1-402, and 20-9-213(4), MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 26

ARMED FORCES - Town not required to give paid military leave of absence;
CITIES AND TOWNS - Town not required to give paid military leave of absence;
LEAVES OF ABSENCE - Town not required to give paid military leave of absence;
LOCAL GOVERNMENT - Town not required to give paid military leave of absence;
MUNICIPAL GOVERNMENT - Town not required to give paid military leave of absence;
MONTANA CODE ANNOTATED - Sections 7-1-4111, 7-1-4121(9), 10-1-604;
MONTANA CONSTITUTION - Article XI, section 1;
UNITED STATES CODE - 38 U.S.C. §§ 2024(d), 2024(f).

HELD: An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

STATE ADMINISTRATION

COMMITTEE

BILL NO. HB 372

DATE 2/5/91

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REP. BUDD GOULD

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim BERGSTROM	MT. STATE COUNCIL OF PROFESSIONAL FIRE FIGHTERS	X	
Richard Seddon	MONTANA STATE Firemen's Assoc	X	
RBudd Gould	Self	X	
Young MackTavern	PERD	X	
E FENDERSON	MT ST ALG TRADES	X	

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**HOUSE OF REPRESENTATIVES
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STATE ADMINISTRATION

COMMITTEE

BILL NO.

HB 395

DATE 2/5/91 SPONSOR(S) REP. FRED THOMAS

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MARVIN EICHOLTZ	Dept of Administration	✓	
DEWEY HALL HELENA			✓
E FENDERSON	MT ST BLY TRADES		✓
LARS ERICSON	MT STATE CARPENTERS		✓

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO.

HB 434

DATE 2/5/91

SPONSOR(S) REP. TIM DOWELL

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chuck Virag	Dept. of Administration	X	

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BILL NO.

HB 480

DATE 2/5/91

SPONSOR(S)

REP. ED McCAFFREE

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Thomas Lee	HD 419, Bigfork	✓	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

STATE ADMINISTRATION COMMITTEE BILL NO. SB 41
DATE 2/5/91 SPONSOR(S) SEN. BOB BROWN

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
W. James Kembel	Public Safety Div / DAC	information	
Char Maharg	Dept of Revenue	✓	

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