

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIR JAN BROWN, on March 7, 1991, at 9:02 a.m.

ROLL CALL

Members Present:

Jan Brown, Chair (D)
Vicki Cocchiarella, Vice-Chair (D)
Beverly Barnhart (D)
Gary Beck (D)
Ernest Bergsagel (R)
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)

Members Excused: Fred "Fritz" Daily (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:

REP. VICKI COCCHIARELLA said that the Pay Plan Committee was planning on giving all state employees a \$1 an hour raise. The vote of the Subcommittee was 3 to 2.

CHAIR BROWN said the coordinating amendment was not ready for SB 222, and the amendments were not ready for HB 871.

HEARING ON SB 167

Presentation and Opening Statement by Sponsor:

SEN. DELWYN GAGE, Senate District 5, Cut Bank, introduced SB 167 at the request of the Public Employees' Retirement Board. "It deals with when retirement funds are to be paid into the retirement system."

Proponents' Testimony:

Linda King, Assistant Administrator, Public Employees' Retirement Division, presented written testimony. EXHIBIT 1

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor: SEN. GAGE closed. He did not have anyone to carry the bill in the House.

HEARING ON SB 251

Presentation and Opening Statement by Sponsor:

SEN. DELWYN GAGE, Senate District 5, Cut Bank, introduced SB 251 at the request of the Department of Justice. He said, "This bill deals with reprimands for highway patrol personnel." It would put into statute what is now the current practice. Some amendments had been added to the bill at the request of the Montana Public Employees' Association (MPEA) in the Senate. Everyone seems to agree with the bill. "We did check with the highway patrol people, and they were satisfied with the bill."

Proponents' Testimony:

Peter Funk, Assistant Attorney General, Department of Justice, said the bill will make some changes in the existing statutory process for disciplining highway patrol officers (HPO). The existing process is essentially as follows: There are four basic types of discipline ranging from less to the most serious discipline: 1) a simple reprimand; 2) a suspension for whatever length of time; 3) a demotion; and 4) a discharge. Before a HPO can be disciplined in any way, there must be a contested-case type of a hearing prior to the implementation of any of the four levels of employee discipline. SB 251 is "generally designed to carve out two exceptions to that process." The bill would allow the administration of the highway patrol to reprimand or to suspend "up to a 10-day period without the necessity of holding a pre-disciplinary contested-case hearing." The view of the Department of Justice is that in those two types of "most minor" disciplines, it doesn't make much sense to have that sort of a hearing before, as an example, a letter of reprimand

may be put in a HPO's file. If the HPO are removed from the statutory process, they would have the ability "to grieve that imposition of discipline." But, they would only have the ability to do this after the fact, instead of having a pre-disciplinary hearing. The HPO would have access to "a couple of different grievance processes depending on whether they are under the collective bargaining agreement (as some HPO are). If they are not under the collective bargaining agreement with MPEA, they would then be subject to the regular state employee grievance process. The reason the Department of Justice chose the 10-day time period was because under regular state employee disciplinary rules of the state of Montana, an employee is entitled to a contested-case hearing if a suspension of more than 10 days is to be imposed." The suggested changes are "near the rules that are in effect for other state employees." The removal of the reprimands and suspensions of up to 10 days are included in Sects. 2 and 5 of the bill. In Sect. 1, there is language which allows an officer to waive any of the proceedings under the existing statutory process. There is a waiver form which "we now ask officers to sign if they don't want to go through the contested-case hearing. We find that many officers do sign that and accept discipline, some don't. We then go to contested-case hearings. The language in Sect. 1 is designed to insert the waiver process explicitly in the statute. Sect. 3 has a clarification about an officer's right to counsel at a disciplinary hearing, which states that it is at the officer's expense. The change in Sect. 4 lengthens the time frame for the attorney general's final decision. The existing time frame is 15 days; HB 251 would change it to 30, or additional time, if that is agreed upon. The reason for that change is due to the nature of the contested case proceedings. "What happens in an administrative hearing, is that the hearing officer makes a proposed decision which the attorney general must consider and either accept or reject." It is difficult to obtain a final decision from two decision makers. The Montana Highway Patrolmen's Association have "given no opposition on the bill. We amended the bill fairly significantly on the Senate side to take care of some concerns expressed by MPEA, but I have a feeling that they are in opposition to the bill at this time despite the amendments on the Senate side."

Bob Griffith, Chief Administrator, Montana Highway Patrol Department, said he is in support of HB 251. "I think Mr. Funk has explained the bill in detail to you."

Tom Schneider, Executive Director, MPEA, said, "The reason Peter Funk said we are in opposition is because we reached an agreement on the bill, and they have backed out on another agreement on another bill, but I am not going to let that taint the fact that I reached agreement on this bill. We support this bill because it really does provide a better avenue of appeal and protects the rights of the employees more than the current process. The current process for disciplinary action is 10 days or less and requires a hearing. The only appeal process then is through the

District Court. HB 251 would allow the HPO to grieve a disciplinary action of 10 days or less through the contract grievance procedure, which has a process of arbitration. "We think that is a far better process. We certainly would not want to see any of the amendments that were made in the Senate put back in the bill. The bill, as currently written, is acceptable to the HPO and us." He reminded the Committee of Rep. Robert Clark's HB 222, which would put all demotions, suspensions and discharges under the contract grievance procedure. "This bill just goes hand-in-hand with that bill."

Opponents' Testimony: None

Questions From Committee Members:

REP. PATRICK GALVIN made the statement that he thought the bill would prejudge an officer and send the officer before a kangaroo court. The officer must then prove himself innocent rather than being proven guilty. Mr. Schneider said, "In actuality, (HB 251) puts a highway patrolman in the same position as any other state employee. Currently, a grievance is filed when an action takes place. In the case of the HPO right now, they cannot be disciplined without a hearing being held. This is not required for any other state employee. REP. GALVIN asked if the offending officer proves himself innocent, would he be entitled to his back pay or any retribution whatsoever? Mr. Schneider said he would receive his pay.

REP. GARY BECK said the bill states the officer must pay for his own defense. If he is found to be correct, is there any recourse to recoup the expense of the attorney? Mr. Schneider said, "In the case of a suspension of less than 10 days, the officer would be giving up the right to a hearing. Right now, that is a decision to be made by a judge. The Department of Justice does not pay the legal fees.

REP. JIM SOUTHWORTH asked how many disciplinary hearings were there last year? Mr. Funk said, "We had one, I believe, in the last 12 months where we actually went all the way through." Col. Griffith responded by saying, "We discharged one officer and suspended two in 1990."

REP. GARY FORRESTER asked what would be an offense that had a 10-day penalty and what would carry a penalty greater than 10 days. Col. Griffith said they suspend officers for a "couple of days" for abusing equipment or if their firearms have been taken apart and tampered with, for multiple accidents with state vehicles, gross inefficiency and failure to get their paper work and reports in on time.

REP. WILBUR SPRING referred to Sect. 2, Ln. 24, of the bill where "the Department of Justice has cause to believe that any member" What could give the Department of Justice "cause" to be suspicious? Col. Griffith said it might be a complaint from a

citizen.

REP. GARY BECK said that he really worries about citizen complaints as they can be a "real iffy thing." Some citizen complaints can be legitimate, others not. Is there a way to investigate the complaints thoroughly? Col. Griffith said, "Absolutely. They have recourse for a hearing on any complaint filed against them. Ninety percent of them, or more, are unfounded. Once in a while there is a legitimate complaint, and we deal with it."

REP. GALVIN questioned if the "counsel" could be a friend rather than another attorney. Col. Griffith said it could be anybody they want to bring.

REP. RICHARD SIMPKINS asked for a clarification on the following: "Just because we give you the authority to impose a suspension, it doesn't eliminate checking into the case to find grounds prior to imposing the disciplinary action, does it?" Col. Griffith said, "Absolutely." REP. SIMPKINS said he was equating the disciplinary action that the bill is seeking to an Article 15 in the military where a commander can examine a situation to see if it warrants a disciplinary action. Col. Griffith said no suspension takes place until "it goes all the way to the top of our organization."

Closing by Sponsor:

SEN. GAGE closed. He did not have anyone to carry the bill in the House.

HEARING ON SB 222

Presentation and Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, Senate District 30, Missoula, introduced SB 222 to change the eligibility requirements for local police retirement. This bill is similar in some ways to Rep. Strizich's HB 595, (that would allow police officers to begin collecting retirement benefits after 20 years of service regardless of age) which the Committee has already heard. SB 222 is a "no cost" bill. It will provide for vesting in the Municipal Police Officer's Retirement System. SB 222 would allow officers, after they have served for ten years, to retire and begin drawing retirement benefits at age 50, regardless of the date they retired from service. In the interim, there was an attorney general's opinion issued, which said police officers employed after July 1, 1975, had to work until age 50 in order to be able to draw any of their retirement benefits. EXHIBIT 2 The reason the attorney general's opinion needs to be overruled is because "that was never the understanding of the police officers who came to work (after July 1, 1975)." In addition, it was never the understanding of the Public Employees Retirement Division when they were administering the law. Their assumption,

when the actuary calculated the cost associated with the program, was that police officers would be able to retire after 20 years of service, regardless of age. The actuary also assumed they would not begin drawing their benefit until age 50. The attorney general's opinion was requested because of "some amendments that were made in the 1989 session of the Legislature." HB 595 does have some costs associated with it. It was Sen. Van Valkenburg's understanding that when the bill went through second reading it was referred to the House Appropriations Committee where it now sits. He did not want to "undercut the efforts of HB 595 for the consideration of (his) bill. It is an important bill. I support it, but I am not sure what will become of it." SB 167 is not inconsistent with HB 595 in "any fashion." There may be a desire by some to have a coordinating instruction with respect to what would happen if both bills were to pass. "This bill . . . would straighten out the law and make sure we recognize the value of police service work . . . and make it fair for those people that went to work in 1975"

Proponents' Testimony:

Tom Schneider, Executive Director, MPEA, presented written testimony. EXHIBIT 3

Linda King, Assistant Administrator, Public Employees' Retirement Division, presented written testimony. EXHIBIT 4

Jonathan Motl, Lobbyist, Montana Police Protective Association, said, "We are working with the staffer and Rep. Cocchiarella of the Committee to add a coordinating instruction to the back of SB 222. If HB 595, which removes the age limit, and SB 222 were to both pass, it is possible you could have somebody retiring with less than 20 years (of service) below age 50. That is not the intent of this bill."

Opponents' Testimony: None

Questions From Committee Members:

REP. SIMPKINS asked at what age a vested employee working for the state could draw their retirement? Ms. King said that after five years of service, a PERS member would first be eligible for an early actuarially reduced retirement benefit as early as age 50. A regular retirement benefit would begin any time after age 60. REP. SIMPKINS asked if a municipal police officer were to work for ten years, quit and then work for the state for ten years, could he draw retirement from the Police Retirement Fund at age 50. Ms. King said, "That is correct. There is no offset in any of the systems about eligibility to draw a benefit while they're working somewhere else." REP. SIMPKINS said that just working for ten years and then quitting does not fall in the same category of the intent of 20 years for retirement, there are two sets of circumstances. Mr. Motl said he felt that way. That is why a coordinating instruction is needed. REP. SIMPKINS said he

thought that it would be more suitable to bring the age in line with PERS requirement of age 60 for retirement. Mr. Motl said that HB 595 would require 20 years of service with no age limit; SB 222 requires 20 years of service with an age limit of 50. The average officer now retires at about age 48. SB 222 would allow the ten years vesting so an officer could retire with ten years and at age 50.

Closing by Sponsor:

SEN. VAN VALKENBURG closed.

HEARING ON SB 230

Presentation and Opening Statement by Sponsor:

SEN. CHET BLAYLOCK, Senate District 43, Laurel and West Billings, introduced SB 230 at the request of "very few highway patrolmen." One highway patrolman has been caught in the position of having served in the Wyoming Highway Patrol and then being employed by the Montana Highway Patrol. SB 230 would allow a vested member of the Highway Patrol Officers' Retirement System (HPORS) to qualify one year of out-of-state law enforcement employment for one year of creditable service under HPORS up to a maximum of five more years of additional creditable service. The law enforcement officer would be limited to purchasing a maximum of five years of military and out-of-state law enforcement service combined. The costs will be paid by the member purchasing the additional years of creditable service. As a courtesy, and as a matter of fairness to people who have served in other states in the law enforcement area, this should be allowed since they will be paying the actuarial cost.

Proponents' Testimony:

Tom Schneider, Executive Director, MPEA, presented written testimony. EXHIBIT 5

Opponents' Testimony: None

Questions From Committee Members:

REP. ERNEST BERGSAGEL asked if there were provisions available so the enforcement office could purchase this over a four or five year period. Mr. Schneider said the bill provides that they could work out a payment schedule with the retirement system. The retirement system has been very good about working with people so that they can meet a payment schedule and not be left destitute.

Closing by Sponsor:

SEN. BLAYLOCK closed and said he would ask Rep. Charles Swysgood to carry the bill in the House.

CHAIR BROWN commented that there were two member of the Committee that had signed the bill. She asked Reps. Southworth and Galvin if they would like to volunteer to carry the bill. Rep. Southworth agreed to carry the bill.

EXECUTIVE ACTION ON SB 230

Motion/Vote: **REP. JIM SOUTHWORTH MOVED SB 230 BE CONCURRED IN.** The motion carried 15 to 2 with Reps. Roger DeBruycker and Feland voting no. Rep. Daily was excused for the day, and Rep. Jane DeBruycker was absent for the vote.

EXECUTIVE ACTION ON SB 167

Motion/Vote: **REP. BETTY LOU KASTEN MOVED SB 167 BE CONCURRED IN.** The motion carried 16 to 1 with Rep. Roger DeBruycker voting no. Rep. Daily was excused for the day, and Rep. Jane DeBruycker was absent for the vote.

EXECUTIVE ACTION ON SB 251

Motion: **REP. SOUTHWORTH MOVED SB 251 BE CONCURRED IN.** The motion carried 15 to 2 with Reps. Bergsagel and Beck voting no. Rep. Daily was excused for the day, and Rep. Jane DeBruycker was absent for the vote. Rep. Cocchiarella will carry the bill in the House.

EXECUTIVE ACTION ON HB 966

Motion: **REP. SOUTHWORTH MOVED HB 966 DO PASS.**

Discussion:

Sheri Heffelfinger distributed two sets of amendments that had been requested by Reps. Southworth and Barnhart. **EXHIBIT 6** and **EXHIBIT 7** She explained them as follows: The amendments would add one more person to the Committee. That person, in Rep. Southworth's amendments, would be the governor's coordinator on aging. His amendments would also change the representative from the director of Family Services to the director of Social and Rehabilitation Services. Rep. Barnhart's amendments would change the member of the mental health community chosen from the Mental Health Association, to a consumer of mental health services having been an inpatient in a psychiatric hospital more than 24 hours and who is to be appointed by the governor. Rep. Barnhart's amendment was written with the concurrence of the Montana Mental Health Association. On Pg. 4, Ln. 15, her amendments would add a component to the study that would allow the Committee to study the experiences of other states with state mental health facilities.

Motion/Vote: REP. SOUTHWORTH moved his amendments.

Discussion on Southworth Amendments:

REP. SOUTHWORTH said he thought Curt Chisholm's proposed amendment to limit the Committee members to no more than one member from the House and one from the Senate from the house or senate district representing the Montana State Hospital campuses were needless. Rep. Southworth agreed with the other amendments proposed by Mr. Chisholm.

Vote: HB 966 SOUTHWORTH AMENDMENTS. The motion carried unanimously.

Motion: REP. BARNHART moved her amendments.

Discussion on Barnhart Amendments:

REP. BARNHART said that one of the people testifying suggested that a consumer should be on the Committee and she agreed. She talked to the sponsor of the bill about adding a consumer, and he has agreed.

REP. KASTEN asked if the amendments wouldn't limit "some very good input" from the mental health organizations by not having them as a member of the Committee. "I find that even though people are there to give testimony, unless someone is involved in the whole process, you often don't have them in concurrence with the Committee. I oppose this amendment because I think you need the expertise of someone working in that area."

REP. SIMPKINS said he thought the idea of consumer advocacy is "absolutely important." More consumers should appear before committees. He was afraid that the consumer, in this particular case, would have a very narrow and limited experience surrounding their particular situation versus a qualified person from the mental health associations who would have a very broad spectrum over all mental health issues within the state.

REP. BECK asked if the Committee was trying to determine whether or not a person who had been treated in a mental hospital or who had a mental illness was capable of serving on a committee.

REP. BARNHART said, "I don't think that is what we're doing."

REP. BECK asked if the Committee members were questioning the qualifications of that person. REP. KASTEN said, "I don't think a consumer would have the total background and understanding that would be needed on such a committee. I would favor an amendment that took out Montana on Ln. 18 and said, "a member from the Mental Health Association or something of that sort." She said it was not because consumers may or may not be qualified. "I just want the best expertise available." REP. BARNHART said she would "resist taking a consumer off of any committee. Any member of a committee does not have to understand all aspects of what that committee is doing. A consumer brings to a committee

certain aspects that are very important." REP. SOUTHWORTH reminded the Committee that with his amendment there would be 15 people on the Committee.

REP. BECK said he thought it would be good to have a consumer on the Committee. REP. SIMPKINS said he disagreed with removing a professional from the Committee. He suggested cutting back on a Legislator. REP. PHILLIPS said he was not sure he wanted to remove a Legislator as that would result in an imbalance with the parties. REP. BECK was concerned about the size of the committee and said too large of a committee could not act effectively. REP. KASTEN commented that a committee of over 7 to 9 "gets unwieldy." More discussion followed concerning the Committee membership.

Motion: REP. SIMPKINS moved to adopt Amendments No. 2 and No. 3 of the amendments presented yesterday by the Department of Institutions. (See EXHIBIT 4 of the Minutes for 3-6-91)

EXECUTIVE ACTION ON HB 871

Discussion:

REP. PHILLIPS said, "I have not found anyone in favor of this bill."

CHAIR BROWN said she would like to see the Citizens' Advocate Office (CAO) in statute rather than just existing by executive order.

REP. KASTEN said she had talked to Greg Petesch of the Legislative Council. She had been told that if the CAO was moved to the Legislative Council, they would request the space that is now being used for the service as they would not have room in the Legislative Council area. She checked into 800 numbers and watts lines -- 800 lines are like watts lines. The difference is \$2.63 an hour. They purchase it by the month. Incoming calls on the 800 number are purchased at \$16.50 for the first nine hours of the month. The outgoing rate is \$14.88 for the first nine hours of the month. After nine hours, the cost is \$12.15 per hour. The 800 line is only used for 8 hours when someone is in the Citizens' Advocate Office. She said she would not like to see the CAO in statute because if the time ever came when it would be too costly to maintain the CAO, it would be easier to remove it from the governor's budget.

REP. SIMPKINS said, "if we are concerned about the Legislators using the lines, we could cut back by having the CAO have state employees call back. . . . I know the governor's office wants Legislators to use those lines to communicate with the office. It is up to us to intercede and solve problems before they get into the courts. I do not think there is any need for this

legislation.

REP. BECK said if the Legislators didn't use the CAO number, who would they call to help constituents?

REP. BARNHART said she would like to see the CAO in statute and she was surprised to know that there was a "loop hole" that allowed Legislative use of the Office.

REP. VICKI COCCHIARELLA said she uses it for the citizens she serves. She could not understand, since it was so important for Legislators, why the Committee did not want to put the CAO in statute.

Motion/Vote: REP. PHILLIPS MOVED TO TABLE HB 871. The motion carried 9 to 7. EXHIBIT 8

ADJOURNMENT

Adjournment: 10:22 a.m.


JAN BROWN, Chair


JUDY BURGGMAFF, Secretary

JB/jb

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 3-07-91

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

March 7, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that Senate Bill 220 (third reading copy -- blue) be concurred
in.

Signed: _____

Jan Brown, Chairman

Carried by: Rep. Southworth

HOUSE STANDING COMMITTEE REPORT

March 7, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that Senate Bill 167 (third reading copy -- blue) be concurred
in .

Signed: Jan Brown
Jan Brown, Chairman

Carried by: Rep. Jan Brown


HOUSE STANDING COMMITTEE REPORT

March 7, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that Senate Bill 251 (third reading copy -- blue) be concurred
in .

Signed: _____


Jan Brown, Chairman

Carried by: Rep. Cocchiarella

TESTIMONY OF THE
PUBLIC EMPLOYEES' RETIREMENT BOARD

SB 167

Presented by: Linda King, Asst. Admin.
Public Employees' Retirement Div.

On behalf of the Public Employees' Retirement Board, I am here today to ask your favorable consideration of a bill to correct an obvious oversight in previous retirement system statutes.

While contribution due dates and mechanisms for collecting delinquent contributions and interest penalties have been set for PERS-covered employers, this has been omitted in the statutes for other retirement systems. Those statutes simply state that employer and employee contributions will be made, and the amount of those contributions. There is no deadline and no mechanism for collection when payments are not made.

A second purpose of this bill is the request for Board authority to set payment due dates by administrative rule. When the current PERS contribution due dates were placed in law, these requirements coincided with then-current state and federal payroll reporting deadlines. Since that time, withholding and other taxes have been required to be reported sooner and all employers have the ability to also report and pay their retirement payrolls to the retirement division within that same time structure.

Since PERS contribution due dates have not kept up with federal and state tax reporting deadlines, there is less investment income to the retirement trust funds than could be the case. Because investment earnings on the trust funds represent the largest increase in operating capital to the pension funds each year, increasing the investment earnings to the funds will stave off increases in employer and employee contribution rates in the future. Empowering the Board to set the contribution due dates by administrative rule will give the flexibility necessary to keep retirement system contributions payable on the same basis as other state and federal payroll taxes.

The intent of this legislation is that the Public Employees' Retirement Board would shorten the current contribution deadlines if it could be shown that the potential for increased investment earnings would forestall an increase in employer contribution rates. It is not the intent of this legislation that increased earnings would accrue to the pension trust funds at the expense of local government employers.

VOLUME NO. 43

OPINION NO. 20

POLICER - Officers' eligibility for retirement benefits before age 50;

RETIREMENT SYSTEMS - Eligibility of municipal police officers for retirement benefits before age 50;

MONTANA CODE ANNOTATED - Sections 19-9-801, 19-9-802;

MONTANA LAWS OF 1989 - Chapter 196, section 15.

HELD: A police officer hired after July 1, 1975, who completes 20 years of service before reaching the age of 50 must continue serving as a police officer until he reaches age 50 in order to be eligible for retirement benefits.

June 5, 1989

Charles W. Jardine
City Attorney
201 South Seventh Street
Miles City MT 59301

Dear Mr. Jardine:

You have requested my opinion on the following question:

May a police officer whose eligibility for service retirement depends on section 19-9-801(2), MCA, retire before reaching age 50 if he has completed 20 or more years of aggregate service and waits until he reaches age 50 to receive his benefits, or must he continue serving as a police officer until he reaches age 50 in order to be eligible for the benefits?

Section 19-9-801, MCA, which was amended by House Bill 89 (1989 Mont. Laws, ch. 196, § 15), effective March 20, 1989, now provides:

Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank and has terminated covered employment.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment.

(3) (a) Except as provided in subsection (3)(b), the retirement allowance may commence on the first day of the month following the member's last day of membership service or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.

(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday.

Standing alone, subsection (2) of the statute clearly requires that a police officer hired after July 1, 1975, reach age 50 before he is eligible for his service retirement, but it is ambiguous concerning whether the officer must remain employed as a police officer until he reaches age 50. However, the next section of the act, section 19-9-802, MCA, clarifies the matter. That section states:

(1) A police officer who is eligible for service retirement under 19-9-801(1) or (2) may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year. [Emphasis added.]

§ 19-9-802, MCA.

The language of section 19-9-802(2), MCA, requires an officer hired after July 1, 1975, to remain a police officer each additional year between his twentieth year and his reaching the age of 50, in order to be eligible for service retirement.

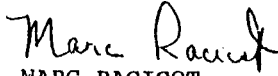
A section of an act must be interpreted in such a manner as to ensure coordination with other sections of the act and fulfill legislative intent. Hotstetter v. Inland Development Corp. of Montana, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977). When section 19-9-801(2), MCA, is read in conjunction with section 19-9-802, MCA, the intent of the Legislature that police officers hired after July 1, 1975, work until age 50 is clear.

EXHIBIT 2
DATE 3-07-91
HB 222

THEREFORE, IT IS MY OPINION:

A police officer hired after July 1, 1975, who completes 20 years of service before reaching the age of 50 must continue serving as a police officer until he reaches age 50 in order to be eligible for retirement benefits.

Sincerely,


MARC RACICOT
Attorney General

MR/KS/bf

PUBLIC

EMPLOYEES

ASSOCIATION

EXHIBIT 3
DATE 3-07-91
SB
HB 222

January 29, 1991

TO: House State Administration Committee

FROM: Tom Schneider, Executive Director

SUBJECT: SB 222

SB 222 is the result of a problem with the current language of the Municipal Police Retirement System. When the law was changed in 1975 to provide that police officers hired after July 1, 1975 would have to be age 50 to retire, a gray area was created.

The law requires a police officer who completes 20 years of service to keep working until age 50 or forfeit his entire benefit. That was not the original intent but the language of the current law is not clear.

SB 222 is the result of work between MPEA, PERD and the Actuary to correct this problem with no cost to the system. The Actuary recommended that a "vested right" provision be put in the law to allow any officer who completes 10 years of service to leave his account and draw a benefit at age 50.

At the same time he recommended that we change the law on page 5 to include all purchased service as "qualified service". This change is already in HB 274 and was included in this bill at the recommendation of the PERS.

This bill has been determined not to require additional funding by the PERS Actuary.



TESTIMONY OF THE

PUBLIC EMPLOYEES' RETIREMENT BOARD

Presented by Linda King, Asst. Administrator
Public Employees' Retirement Division

On behalf of the Public Employees' Retirement Board, I am here today to share with you the Board's endorsement of SB 222 which will allow members of the Municipal Police Officers' Retirement System (MPORS) to become vested in their eligibility for a retirement benefit after having accumulated at least 10 years of service with this retirement system. This bill will also provide that service which has been purchased by members will be used for calculating their retirement eligibility.

Currently, the MPORS is the only system administered by the Board which does not provide vesting for members of the system prior to actual retirement eligibility. In PERS and several other systems, members are vested in 5 years. As is the case in the Firefighters' system, this bill will provide vesting for Police Officers after 10 years service.

Vesting is an important concept in retirement systems. What it means is that after a certain number of years membership, the member can terminate covered employment but elect to leave his or her contributions on deposit with the system and be eligible to receive a retirement allowance when reaching minimum age requirements. In the case of the MPORS, this would be age 50 persons who became members after this new system came into being.

While this is indeed a benefit "enhancement" for those members who terminate active employment as a police officer prior to reaching age 50, it has no actuarial cost to the retirement system and will not require additional employee, employer, or state contributions. The reason for the "no cost" fiscal note is that the system's actuary currently assumes that all members with at least 10 years of service will draw a retirement allowance upon reaching age 50. Since the allowance can not begin prior to age 50, the benefits for vested inactive members will already have been funded prior to their receiving their first monthly benefit.

Similarly, there is no cost for allowing member's who have purchased service -- for example, those who have paid the actuarial cost of transferring service from the Sheriffs' Retirement System into MPORS -- to have this service count toward their retirement eligibility. Since the actuarial cost for these years of service has already been paid into the system, the benefit members receive for this service has been fully funded. There is really no need to require a person who has served 10 years in a county sheriff's department to serve an additional 20 years as a city police officer before he or she can become initially eligible to retire.

The Public Employees' Retirement Board is pleased to strongly endorse SB 222 with the technical amendments offered by the sponsor. This proposal will provide equitable benefits for all members of the MPORS without the need for increased contributions to the system.

MONTANA

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PUBLIC

EMPLOYEES

ASSOCIATION

EXHIBIT 5
DATE 3-07-91
HB 230

SENATE BILL 230

I am Tom Schneider, representing the Montana Public Employees Association and the members of the Montana Highway Patrol.

Currently we have four officers who had previous service with law enforcement agencies of other states. While a patrol officers who has such credit within the state can purchase such credit, the law does not currently allow the purchase of out of state service.

Other Montana retirement systems do allow the purchase of out of state time with the same limits and cost provision as SB 230. It is our hope that you will support the right of highway officers to receive equal treatment.

Thank you for your attention to this matter and I hope you will vote yes on SB 230. I will be happy to answer any questions you may have.

Eastern Region
P.O. Box 22093
Billings, MT 59104
(406) 245-2252

Western Region
P.O. Box 4874
Missoula, MT 59806
(406) 251-2304



Amendments to House Bill No. 966
First Reading Copy

Requested by Representative Southworth
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 7, 1991

1. Page 2, line 9.
Strike: "14"
Insert: "15"

2. Page 3, line 3.
Following: "designee;"
Strike: "and"

3. Page 3, line 4.
Following: "department of"
Strike: "family"
Insert: "social and rehabilitation"

4. Page 3, line 5.
Following: "designee"
Insert: "; and
(i) the governor's coordinator on aging or a designee"

Amendments to House Bill No. 966
First Reading Copy

Requested by Representative Barnhart
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 7, 1991

1. Page 2, lines 17 through 19.

Following: "member" on line 17

Strike: remainder of line 17 through "association" on line 19

Insert: "who is a consumer of mental health services having been
an inpatient in a psychiatric hospital more than 24 hours
and who is to be appointed by the governor"

2. Page 4, line 8.

Following: "system;"

Strike: "and"

3. Page 4, line 15.

Following: "homemakers"

Insert: "; and

(e) study the experiences of other states with state
mental health facilities"

EXHIBIT 8
DATE 3-07-91
HB 871

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL VOTE

DATE 3-07-91 BILL NO. HR 871 NUMBER 1

MOTION: Table the bill.

NAME	AYE	NO
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		✓
REP. JAN BROWN, CHAIR		✓
TOTAL	9	7

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO.

SB 167

DATE 3/07/91

SPONSOR(S) SEN. GAGE

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LINDA KING Public Employees' Retirement	Public Employees' Retirement Board	SB 167		✓
Tom Schneider	MPEA	HB 167		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO.

SB 222

DATE 3-07-91

SPONSOR(S)

SEN. VAN VALKENBURG

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LINDA King, Public Employees' Retirement Div	Public Employees' Retirement Board	SB 222		✓
MARK LANGDORF	AFSCME	222		+
<i>John Schneider</i>	THPEA	222		X
1 Roy McGeer	MPPA	222		with X Amendment
Int'l union	mppa	222		with X amendments

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION COMMITTEE BILL NO. SB 251
 DATE 3-07-91 SPONSOR(S) SEN. GAGE

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Peter Funk	Dept. of Justice	351		✓
Tom Schnader	IMPERA	251		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.