

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By DICK SIMPKINS, CHAIR, on February 1, 1993, at 9:07 a.m.

ROLL CALL

Members Present:

Rep. Dick Simpkins, Chair (R)
Rep. Ervin Davis, Vice Chair (D)
Rep. Pat Galvin (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

Members Excused: Rep. Wilbur Spring, Rep. Beverly Barnhart; Rep. Bob Gervais

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

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

Committee Business Summary:

Hearing: HB 244; HB 289; HB 291
Executive Action: HB 244; HB 291

HEARING ON HB 289

Opening Statement by Sponsor:

REP. CHASE HIBBARD, House District 46, Helena, introduced HB 289 which would require the heads of public agencies actively manage the vacation leave of agency employees. **REP. HIBBARD** explained that, currently, employees may accumulate accrued annual vacation leave up to two times the maximum number of days earned annually.

Any excess vacation leave must be used by the employee within the first 90 days of the next calendar year or be forfeited. If the agency workload precludes the employee from using the vacation leave in the first 90 days, then the employee necessarily forfeits the excess leave.

REP. HIBBARD explained HB 289 was intended to rectify the loss of excess vacation leave by making the head of the agency responsible for providing a reasonable opportunity to employees to use rather than forfeit accumulated vacation leave. If employees were denied such opportunity, then HB 289 entitled the employee to cash compensation for the unused, excess vacation leave. **REP. HIBBARD** stated he was unaware of the extent of the problem of excess leave until the fiscal note on HB 289 was completed showing that total cash compensation in FY 92 would have been \$255,000. Since HB 289 was not intended as an appropriation or benefit bill, **REP. HIBBARD** presented amendments to HB 289 which remove the cash compensation and, instead, extends to the end of the calendar year the time period for the employee to use the excess vacation leave. **EXHIBIT 1**

REP. HIBBARD concluded that HB 289 was a good management bill which helps in the management of employees' time. He stated HB 289 would be good for employee morale and urged positive consideration of the bill.

Proponents' Testimony:

Tom Schneider, Montana Public Employees Association, stated that the issue of forfeiture of excess vacation leave became evident when he read a memorandum to employees of the Grain Lab in Great Falls. The memorandum stated that employees could not schedule vacation during the Lab's peak season from August 1, 1993, to January 1, 1994. **EXHIBIT 2**

Mr. Schneider recognized the difficulty some employees may have in using their accumulated vacation leave when five months of the year were excluded from the schedule. He stated, however, that he was unaware of the magnitude of the problem of employees forfeiting vacation leave until he saw the fiscal note for HB 289. **Mr. Schneider** assured the committee that the bill, with proposed amendments, would still require employees to try to use their vacation leave in a timely manner. Only when employees were refused leave by the employer and would therefore forfeit vacation leave would they be able to extend the time period to the end of the calendar year. **Mr. Schneider** concluded that it is the employer's responsibility to ensure employees' timely use of annual leave.

Terry Minow, Montana Federation of State Employees and Montana Federation of Teachers, declared her association's support of HB 289. She pointed out that the fiscal note demonstrates the extent of the problem for employees. She noted that further reductions in state personnel would likely increase the problem

as fewer employees were required to complete more agency tasks and therefore would have even less time available for vacation leave.

Don Waldron, Montana Rural Teacher Association, stated his association supports HB 289 as amended.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. ROSE, addressing **Mr. Schneider**, stated he did not think it was unreasonable for the Grain Lab to restrict employee leave from August 1 to January 1. **Mr. Schneider** responded that he did not disagree with the leave policy; his concern was that employees not forfeit leave as a consequence of the policy.

REP. GALVIN asked **Mr. Schneider** if it were possible for employees to work during their vacations and thus be paid double. **Mr. Schneider** replied that public employees are not allowed to work vacation time and be paid twice.

REP. GALVIN asked **Mr. Waldron** whether school district maintenance employees received vacation leave. **Mr. Waldron** stated that school district personnel receive vacation leave; maintenance employees frequently work year-round and are encouraged to take their leave during the summer months. **REP. GALVIN** asked **Mr. Waldron** if school bus drivers also received vacation leave. **Mr. Waldron** stated that, if they are school district employees, then they also receive vacation leave. **Mr. Waldron** stated that because it was easier to find substitute bus drivers, school districts did not have as much difficulty granting them vacation leave during the school year.

REP. GALVIN referred to bills concerning unemployment benefits and asked **Mr. Waldron** whether school employees were prohibited from claiming vacation and receiving unemployment at the same time. **Mr. Waldron** agreed that employees were prohibited from such a practice.

REP. MOLNAR asked **Mr. Waldron** whether school employees were allowed to take vacation leave during the summer months when school was not in session. **Mr. Waldron** explained that school districts encouraged school employees to take their vacation leave in the summer.

REP. RICE asked **REP. HIBBARD** whether HB 289 affected school district employees. **REP. HIBBARD** replied that it affected all public employees. **Mr. Schneider** clarified that public employees earn vacation leave by the number of hours they work. He also stated employees are prohibited from filing for unemployment if they are taking vacation leave.

REP. SIMPKINS asked Mr. 'Schneider what happened if the employee did not want to take excess vacation leave during the time allowed by the employer. Mr. Schneider stated, in that circumstance, the employee would forfeit the excess leave.

Closing by Sponsor:

REP. HIBBARD closed by suggesting committee members had introduced ancillary issues which were not related to HB 289. He reiterated that HB 289 is a "good management" bill for state government. He pointed out that, currently, Legislative Council employees with excess leave would be required to use the leave in the first 90 days of the calendar year. Particularly during legislative sessions, such employees would not be able to use the leave in that time period and would therefore forfeit their leave. REP. HIBBARD stated HB 289 addressed this problem and urged the committee to pass the bill.

HEARING ON HB 291

Opening Statement by Sponsor:

REP. CHASE HIBBARD, House District 46, Helena, introduced HB 291 by request of the Office of Political Practices. He stated the bill has two purposes: (1) to transfer from the Secretary of State to the Commissioner of Political Practices the responsibility for furnishing copies of election laws related to campaign practices, campaign finances, and contested elections; and, (2) to eliminate the prescription by the Commissioner of Political Practices of the manner in which county clerk and recorders receive, file, collate, and maintain reports filed with them under the campaign practices laws.

REP. HIBBARD explained that currently the Secretary of State distributes a booklet to candidates and other election administrators, the bulk of which describes rules related to campaign practices and campaign finances. Because the booklet is distributed by the Secretary of State, recipients with questions contact the Secretary and are confused when they are then referred to the Commissioner of Political Practices. Having the Commissioner publish the booklet should eliminate the confusion.

With reference to the second purpose of HB 291, REP. HIBBARD held that the Commissioner of Political Practice should not be dictating to county clerks and recorders the way in which they maintain their files. He suggested the clerks and recorders can decide the best way to maintain their files, depending upon their facilities.

Proponents' Testimony:

Ed Argenbright, Commissioner of Political Practices, stated his support of HB 291. The bill would clarify for the public the

most appropriate office for questions and provide for more direct communication. **Mr. Argenbright** added the Commissioner's Office currently issues a detailed prescription of file maintenance at the county level. He contended the state should not be dictating such details to county officials.

Joe Kerwin, Secretary of State's Office, related the frustration and confusion of people who call the Secretary's office with questions and are referred to the Commissioner's office. He was concerned these people had the perception they were receiving the bureaucratic run-around. He urged support of HB 291.

Amy Kelley, Executive Director, Montana Common Cause, declared her support of HB 291.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. WALLIN asked **Mr. Argenbright** what the county clerks and recorders did with the reports. **Mr. Argenbright** stated that the reports were available for public inspection; the county clerks and recorders maintained them for the public's convenience, making them available at the county level rather than only in Helena.

REP. WALLIN asked **Mr. Argenbright** whether clerks and recorders followed up on candidates who do not file reports with them. **Mr. Argenbright** stated it was the responsibility of the Commissioner of Political Practices to follow-up on discrepancies in reporting. **REP. WALLIN** asked what purpose the system served if there was no follow-up. **Mr. Argenbright** replied that the purpose was to provide convenience at the local level.

REP. WALLIN asked **Mr. Argenbright** if he would be opposed to an amendment to eliminate the clerk and recorder's record-keeping. **Mr. Argenbright** responded that he was not prepared to eliminate the record-keeping function completely; HB 291 only sought to change the requirements of how the record keeping was done.

REP. SQUIRES asked **Mr. Argenbright** whether the proposed changes in the record-keeping requirements would limit accessibility. **Mr. Argenbright** responded that the information would still be accessible; county clerks and recorders would be allowed to devise their own system of filing.

REP. SQUIRES asked **Mr. Argenbright** whether counties would establish reporting guidelines. **Mr. Argenbright** responded that the Commissioner of Political Practices would establish reporting guidelines; the only change sought in HB 291 is a change in record keeping.

REP. SIMPKINS confirmed with Mr. Argenbright that laws prescribing the reports from political candidates were not being changed by HB 291; the only change under consideration is the manner in which reports were handled. REP. SIMPKINS asked Mr. Argenbright whether files were accessible to the public once they were filed. Mr. Argenbright responded "yes".

REP. SQUIRES stated she was unclear what "handling" referred to with reference to the reports. REP. SIMPKINS responded that the bill would no longer have the Commissioner of Political Practices telling county clerks and recorders how to handle reports. REP. DAVIS referred to Page 2, lines 19-21, and pointed out this section was being eliminated by HB 291. REP. HIBBARD added that county clerks and recorders were already practicing the intent of HB 291 by maintaining the records in their preferred manner.

Closing by Sponsor:

REP. HIBBARD concluded that HB 291 was a "house-keeping" bill. He stated he had spoken to the clerks and recorders association and which favored the bill. He also stated the Secretary of State favored the bill. REP. HIBBARD noted the \$2,500 cost of publishing the booklet of election laws would be transferred from the Secretary of State's office to the Office of the Commissioner of Political Practices.

HEARING ON HB 244

Opening Statement by Sponsor:

REP. DORE SCHWINDEN, House District 20, Wolf Point, introduced HB 244 by request of the Teachers' Retirement System (TRS) Board. REP. SCHWINDEN stated the purpose of the bill is to amend the TRS statutes as required by recent changes in federal law. These changes include providing for the splitting of withdrawn contributions, repealing the age requirement for disability benefits, and clarifying the TRS board's procedures for reviewing disability retirement applications.

REP. SCHWINDEN reviewed the effect of each section of HB 244. He stated Section 1 allows TRS members to direct the system to split payment of a refund, paying the taxable portion to another qualified plan, such as an IRA, and the non-taxable portion to the member. This amendment is necessitated by provisions of the Unemployment Compensation Amendments Act of 1992. REP. SCHWINDEN stated Section 2 clarifies the TRS boards' authority to request information for review of disability retirement applications, to order examinations, conduct hearings, administer oaths, and to issue subpoenas, if necessary. REP. SCHWINDEN also stated Section 3 amends state law to comply with the age discrimination requirement of the Older Workers' Benefit Protection Act of 1990. Eligibility for disability benefits under TRS is currently tied to age 60 which is discriminatory under federal law. REP. SCHWINDEN concluded that the System's actuary had determined

these changes would not impact the funding of the system and recommended no change in the current contributions rates.

Informational Testimony:

David Senn, Executive Director, Teachers' Retirement System, stated HB 244 reflects recent changes in federal law. Section 1 of the bill allows TRS to comply with the Unemployment Benefits Act of 1992 under which TRS is required to withhold 20% of any lump sum, refund, or supplier benefit paid by TRS. To avoid the 20% withholding, members have the option of having TRS send their taxable portion to another qualified plan and receive only the nontaxable portion. Current state law requires TRS to pay the whole retirement fund accumulated account balance to an individual and does not provide for the split between tax-deferred and taxable portions.

Mr. Senn stated that Section 2 repeals all reference to age with regard to disability retirement benefits. Under existing law, individuals 60 years and older are not eligible for disability, a restriction which is now considered discriminatory under the Older Workers' Protection Act of 1990. Under the disability benefits of TRS, the minimum benefit is generally 25% based on a formula in which years of service is divided by 60. The minimum benefit only refers to individuals with fewer than 15 years of service; and in order to qualify, individuals must have at least five years of service.

Mr. Senn stated that dropping the age restriction will provide an enhancement to a small group of people, approximately 1300 individuals who currently have between 5 and 15 years of service and were hired after the age of 45. Very few individuals, however, retire under disability each year. **Mr. Senn** noted that although the fiscal note estimates a \$150,000 cost, in fact, there was no way to calculate the cost. He stated this is a no-cost enhancement of the retirement system.

Mr. Senn stated that Section 3 clarifies the information the board can receive for determination of disability. The concern is about stress-related claims and having sufficient information to make a disability determination.

Proponents' Testimony:

Don Waldron, Montana Rural Education Association, stated they support any action which results in increased flexibility and maintains the actuarial soundness of the system.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. ROSE asked REP. SCHWINDEN to explain the transfer of funds into IRA's. REP. SCHWINDEN stated HB 244 would allow the individual to take their benefit and transfer the taxable portion into another form of retirement.

REP. ROSE asked Mr. Senn to describe the benefits of the bill. Mr. Senn responded that it will provide more disability coverage to people 45 and over without 15 years of service. He stated the main purpose of the bill is to comply with federal law.

REP. MOLNAR asked REP. SCHWINDEN whether employees in the private sector were allowed to split their benefits. REP. SCHWINDEN responded that he did not know about private systems, but other public retirement systems addressed this issue in the last legislative session and currently are able to split their benefits.

REP. MOLNAR asked REP. SCHWINDEN whether the Internal Revenue Service would consider the splitting of benefits an attempt to avoid taxes. REP. SCHWINDEN stated that, in his understanding, noncompliance with the legislation would result in the disqualification of TRS and members would be taxed on their benefits each year.

REP. MASON asked Mr. Senn whether there was a problem with people applying for disability rather than retirement. Mr. Senn answered that the problem was with age discrimination. If someone is age 60, they may not qualify for the minimum benefit. Congress considers that restriction discriminatory. Mr. Senn noted that anyone applying for disability would still be required to qualify, and the determination process does not allow for abuse.

Closing by Sponsor:

REP. SCHWINDEN stated in closing that HB 244 appears to be complicated, but that it basically addresses the issue of compliance with federal law. The other public retirement systems are already in compliance. He noted the bill has an immediate effective date which is important to prevent the denial of claims. He urged the committee to pass HB 244.

EXECUTIVE ACTION ON HB 244

Motion/Vote: REP. SCHWINDEN MOVED HB 244 DO PASS. Motion carried unanimously with REPS. SPRING, GERVAIS, and SQUIRES voting by proxy. EXHIBITS 3, 4, 5

EXECUTIVE ACTION ON HB 291

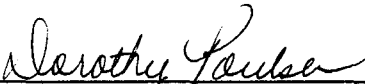
Motion/Vote: REP. MASON MOVED HB 291 DO PASS. Motion carried unanimously with REPS. SPRING, GERVAIS, and SQUIRES voting by proxy. EXHIBITS 3, 4, 5

ADJOURNMENT

Adjournment: 10:16 a.m.



DICK SIMPKINS, Chair



DOROTHY POULSEN, Secretary

DS/DP

HOUSE STANDING COMMITTEE REPORT

February 1, 1993

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that House Bill 244 (first reading copy -- white) do pass .

Signed: *Dick Simpkins*
Dick Simpkins, Chair

Committee Vote:

Yes , No

-351052SC, Hec

HOUSE STANDING COMMITTEE REPORT

February 1, 1993

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 291 (first reading copy -- white) do pass.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

Committee Vote:
Yes , No .

251054SC.Hss

Amendments to House Bill No. 289
First Reading Copy

Requested by Rep. Chase Hibbard
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
February 1, 1993

1. Title, lines 6 and 7.

Following: "EMPLOYEE" on line 6

Strike: "MUST" through "UNUSED," on line 7

Insert: "IS ENTITLED TO USE"

2. Title, line 9.

Following: "LEAVE;"

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 14.

Following: "(1)"

Strike: "Annual"

Insert: "(a) Except as provided in subsection (b), annual"

4. Page 1, line 19.

Following: "accrued."

Insert: "(b)"

5. Page 1, line 23.

Following: line 22

Insert: "reasonable"

6. Page 1, line 24.

Following: "forfeited"

Insert: "under subsection (a)"

7. Page 1, line 25 through page 2, line 4.

Following: "the" on page 1, line 25

Strike: "employee" through "section" on page 2, line 4

Insert: "request, then the excess vacation leave is not forfeited
and the employing agency shall ensure that the employee may
use the excess vacation leave before the end of the calander
year in which the leave would have been forfeited under
subsection (a)"

8. Page 2.

Following: line 16

Insert: "NEW SECTION. Section 1. {standard} Effective date.
[This act] is effective on passage and approval."

EXHIBIT 2
DATE 2/1/93
HB 289

VACATIONS 1993

NO SCHEDULED VACATIONS DURING LAB'S PEAK SEASON FROM AUGUST 1, 1993 TO JANUARY 1, 1994.

VACATIONS DURING THIS TIME FRAME WILL BE APPROVED BY SENIORITY ONLY IF WORKLOAD PERMITS.

THIS VACATION SCHEDULE WILL BE HANDED OUT IN ORDER OF SENIORITY AND EACH EMPLOYEE WILL HAVE ONE WEEK TO SELECT THEIR VACATION.

1/1 - 1/9		7/4 - 7/10	
1/10 - 1/16		7/11 - 7/17	
1/17 - 1/23		7/18 - 7/24	
1/24 - 1/30		7/25 - 7/31	
1/31 - 2/6		8/1 - 8/7	
2/7 - 2/13		8/8 - 8/14	
2/14 - 2/20		8/15 - 8/21	
2/21 - 2/27		8/22 - 8/28	
2/28 - 3/6		8/29 - 9/4	
3/7 - 3/13		9/5 - 9/11	
3/14 - 3/20		9/12 - 9/18	
3/21 - 3/27		9/19 - 9/25	
3/28 - 4/3		9/26 - 10/2	
4/4 - 4/10		10/3 - 10/9	
4/11 - 4/17		10/10 - 10/16	
4/18 - 4/24		10/17 - 10/23	
4/25 - 5/1		10/24 - 10/30	
5/2 - 5/8		10/31 - 11/6	
5/9 - 5/15		11/7 - 11/13	
5/16 - 5/22		11/14 - 11/20	
5/23 - 5/29		11/21 - 11/27	
5/30 - 6/5		11/28 - 12/4	
6/6 - 6/12		12/5 - 12/11	
6/13 - 6/19		12/12 - 12/18	
6/20 - 6/26		12/19 - 12/25	



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

2/1/93

To whom it may concern,

I give my Proxy Vote to

Rep Davis on all Bills,
Amendments and other actions in
House State Administration
Committee.

Rep Bob Dewar

HB 217

227

239

292

~~291~~ - Yes

~~289~~ - Yes

~~244~~ - Yes

EXHIBIT 3

DATE 2/1/93

HB 244; HB 291

FEB 1-1993

I leave my vote with
Carolyn Spence on all
tabling, bills, etc.

Bunny Borchert

H.B. 239 - held til next day -
Amendment -

H.B. 291 - Hibbard - yes

H.B. 244 - Schwinden - yes

EXHIBIT 4
DATE 2/1/93
HB 244; HB 291



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

Hilbur Spring

EXHIBIT 5
DATE 2/1/93
HB 244; HB 291

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration COMMITTEE BILL NO. HB 291
DATE 2/1/93 SPONSOR(S) Rep. Hibbard

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
AMU KELLEY	Common Cause	X	
Ed. L. Gentry	Comm. of Psh. Practices	X	
Donna Muffet	" "	X	
Joe Kerwin	Sec. of State	X	

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.

HB 289

DATE _____

2/1/93

SPONSOR (S)

Rep. Hibbard

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[illegible]

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