#### MINUTES

## MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN RICHARD SIMPKINS, on January 27, 1995, at 9:00 A.M.

#### ROLL CALL

#### Members Present:

Rep. Richard D. Simpkins, Chairman (R)

Rep. Matt Denny, Vice Chairman (Majority) (R)

Rep. Dore Schwinden, Vice Chairman (Minority) (D)

Rep. Matt Brainard (R)

Rep. Patrick G. Galvin (D)

Rep. Dick Green (R)

Rep. Antoinette R. Hagener (D)

Rep. Harriet Hayne (R)

Rep. Sam Kitzenberg (R)

Rep. Bonnie Martinez (R)

Rep. Gay Ann Masolo (R)

Rep. William Rehbein, Jr. (R)

Rep. Susan L. Smith (R)

Rep. Jay Stovall (R)

Rep. Lila V. Taylor (R)

Rep. Joe Tropila (D)

Members Excused: Rep. George Heavy Runner (D)

Rep. Carolyn Squires (D)

Members Absent: none

Staff Present: Sheri Heffelfinger, Legislative Council

Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and

discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 306, HB 316, HB 324, HB 325

Executive Action: NONE

{Tape: 1; Side: A.}

#### HEARING ON HB 306

#### Opening Statement by Sponsor:

REP. HARRIET HAYNE, HD 86, opened by stating this was a bill for an act entitled: "An act revising the service retirement benefits payable under the sheriffs' retirement system; reducing the

number of years of service required for normal and early retirement eligibility; eliminating the age requirement for normal service retirement; eliminating the percent of salary limit on the amount of a normal service retirement benefit; increasing the benefit paid to survivors; increasing employer and employee contribution rates to fund the benefit changes; amending section 19-7-403, 19-7-404, 19-7-501, 19-7-503, 19-7-901, MCA; and providing an effective date." She stated there were many reasons this bill should be favorable considered by the committee. First was because law enforcement is a high risk employment. The life expectancy of law enforcement officers isn't as long as those people with other jobs. This bill addresses the needs of those people, especially sheriffs and deputies. In a law enforcement profession it is better to have those officers leave service earlier before they can no longer perform and so they may also have time to make a transition into another line of work. Another reason was because the municipal police force allows for people to retire after twenty years of service regardless of age. She felt sheriffs and deputies should be allowed the same consideration as municipal police officers. She stated this bill was passed by the joint interim committee on retirement.

## Proponents' Testimony:

Kathy McGowan, Montana Sheriffs and Peace Officers Association, submitted written testimony, exhibit 1.

Bill Fleiner, Board member of Montana Sheriffs and Peace Officers Association, submitted written testimony, exhibit 2.

Greg Hintz, Missoula County, Montana Sheriffs and Peace Officers Association, submitted written testimony, exhibit 8.

William Barnes, Gallatin County, Montana Sheriffs and Peace Officers Association, submitted written testimony, exhibit 3.

Mike O'Hara, Ravalli County Sheriff, Missoula County Sheriff, submitted written testimony, exhibits 4, 5, 6, 7.

Alan "Doc" Harts, Flathead County Sheriffs Department, Kalispell, asked the committee for a favorable consideration on this bill. Gordon Morris, Director of the Association of Counties, said this is well worth the effort of achieving the area benefit option. He stated they support the bill.

Tim Solomon, Sheriff of Hill County, stated he was in support of the bill and urged the committee's support of the bill.

Chuck Riley, Sheriff of Lewis and Clark County, stated he was in support of the bill.

Kurt Surer, Rosebud County Police Office, stated they supported the bill.

Elvin McGillis, Carbon County, urged the committee's support of the bill.

Carolyn Robinson, Gallatin County, urged the support of the bill.

Red Wilson, Gallatin County, stated he was in support of the bill.

Bill Trout, Gallatin County, stated he was in support of the bill.

Ronald Savall, Choteau, spoke in favor of the bill.

Douglass Williams, Choteau, spoke in favor of the bill.

Gary Wilsam, Gallatin County, urged a do pass recommendation.

Ralph Cristy, Gallatin County, asked for the committee's support of the bill.

Scott Howard, Gallatin County spoke in favor of the bill's passage.

Mike Grey, Powell County, urged a do pass.

Linda King stated in the past they had been opposed to change in equity because of equity issues. These are important thing to take into consideration. This proposal is actuarially sound and should not be confused with previous proposals they had been opposed to in the past. They had worked in the drafting of the bill and supported it.

## Opponents' Testimony:

none

#### Informational Testimony:

none

## Questions From Committee Members and Responses:

REP. GALVIN asked Bill Fleiner six questions. Exhibit 9.

REP. MASOLO asked what the priorities would be in twenty years.

Mr. Fleiner stated it would be a priority in the future. It is a priority of the sheriffs across the state.

REP. BRAINARD asked what the average starting age was for these people.

- Mr. Fleiner stated the average starting age for deputies was 30 years and for police officers the starting age was between 20 and 25 years of age.
- REP. SMITH asked how many people this would affect.
- Mr. Fleiner stated there are about 450 people in the system that are actual members. He didn't know the percentage between 15 and 20 years of service that this would affect.
- REP. TROPILA asked why there wasn't a representative from Cascade County speaking for or against the bill.
- Mr. Fleiner stated the bill had originally been scheduled for hearing the day before and then changed. There were some people who were unable to come because of the change in the hearing day.
- REP. TROPILA asked if they were willing to take a cut in their benefits to do this.
- Mr. Fleiner stated this would be an increase in benefits. If the people were to retire in 20 years there would be a 31% increase to the 41%.
- CHAIRMAN SIMPKINS clarified saying they had originally wanted to have a 50% increase at 20 years of service but that was too much to ask for so they dropped that out of the bill because of cost and that was where the idea of them taking a decrease was coming from.
- REP. STOVALL asked to explain the 60% cap.
- Mr. Fleiner stated in the system the sheriffs would have to work 28 years to get a 60% cap on the benefits. With this they would be getting a 2% increase with no cap.
- CHAIRMAN SIMPKINS stated that was not a cost factor in the plan.
- Mr. O'Riley stated there had been some question on the number one priority of this bill. There are several elements that are involved in this bill and they all tie together to reach the whole and the entire bill is their priority.

#### Closing by Sponsor:

**REP. HAYNE** stated this is the first time changes have been made to these people and she asked the committee for their favorable consideration on the bill.

CHAIR TURNED OVER TO VICE CHAIRMAN MATT DENNY.

#### HEARING ON HB 316

## Opening Statement by Sponsor:

REP. DAN HARRINGTON, HD 38, stated this bill dealt with the Teacher's Retirement System. The costs in the bill are actuarial costs and deal with certain areas. This would allow people to purchase time from other retirements and use them in another retirement system. Most states are already doing this and it is important to recognize the services these people have done. They deserve to have the option to purchase this time and apply it somewhere else. They would be paying the full amount plus interest with this proposal. It is not a cheap way of doing this, but it is something that needs to be an option for these people. He hoped the committee would look favorably upon the bill.

## Proponents' Testimony:

David Senn, Teacher's Retirement System, submitted written testimony. EXHIBITS 10 and 11.

{Tape: 1; Side: B.}

Phil Campbell, Montana Education Association, stated teachers coming into the system after 1989 don't have this option to buy time. Page 2 lines 18 through 20 is what the bill is about. The ability to buy into service isn't cheap but they should have the option available to them. He asked the committee to give the bill a do pass.

Don Waldron, Montana Rural Education Association, stated this is a good actuarially sound bill and he asked the committee to give the bill a do pass recommendation.

## Opponents' Testimony:

none

#### Informational Testimony:

none

## Questions From Committee Members and Responses:

REP. SMITH asked if these people would pay the entire cost. She asked if the school usually pays or is it a matching system.

Mr. Senn stated it is not a matching system. This is the cost of enhancement to the system. They use a percentage plus a percentage of the number of years of service. There are two factors that apply only to the individual not the system. He system this is a little different.

- REP. SMITH asked what the cost to the employer was.
- Mr. Senn stated it would be the same as before under this proposal.
- REP. SMITH asked for clarification.
- Mr. Senn stated there would be the same percentage of salary paid into the system.
- REP. SMITH asked if the employer would be paying them.
- Mr. Senn stated they wouldn't pay for it under this proposal.
- **REP. SMITH** asked what the dollar amount would be that the employer would pay.
- Mr. Senn stated they wouldn't pay anything.
- REP. STOVALL asked when they calculate these figures if they had anything to do with where they previously worked.
- Mr. Senn stated they don't look at service from out of state. They only look at the years of service eligible in Montana under current law dealing with years of service and age.
- REP. STOVALL asked is there is a limit of five years.
- Mr. Senn stated there is a limit of five years.
- REP. Taylor asked if when they pay for this if they would have to pay it in a lump sum or periodically.
- Mr. Senn stated it has to be paid for in full at the time of purchase when the apply for retirement.

#### Closing by Sponsor:

**REP. HARRINGTON** stated there has been demand for a bill of this type in the past. this proposal is actuarially sound with no cost to the system. It would be important for them to pass this bill.

#### HEARING ON HB 324

## Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, HD 49, stated this is a clean up action and hoped the committee would support his efforts. This proposal was approved by the interim retirement committee. This would give people the option to buy one year of service for every five. He submitted EXHIBITS 12 and 13.

## Proponents' Testimony:

Linda King, PERD, stated they were in strong support to standardize this benefit between systems. Jobs like police officers need to retire early. This is actuarially funded and there is no reason to have diversions. She hoped the committee would pass the bill.

Art Whitney, ARMPE, stated they were in support of the bill.

Kathy McGowen, MSPOA, stated there had been a minor problem with the draft that had been corrected and they were in strong support of this bill.

## Opponents' Testimony:

none

#### Informational Testimony:

none

## Questions From Committee Members and Responses:

- REP. STOVALL asked what was meant by saying this was actuarially funded and if that would change unfunded liability.
- Ms. King stated the individual members will pay for all of the actuarial cost for purchasing time. if they do it in a lump sum it is the full actuarial cost if they were to pay for the time periodically they would pay the full amount plus interest. There would be no unfunded liability.
- **REP. REHBEIN** asked how this would affect other retirement systems.
- Ms. King stated the PERS, Sheriffs, and TRS are the only ones to have these provisions. This won't affect the other systems at all.
- REP. REHBEIN asked if this bill were to pass if the sheriffs will come in and use this.
- Ms. King stated the sheriffs already have this so it was unnecessary to have them in this bill.
- **REP. TAYLOR** asked if the sheriffs can buy one year of service for every five and if that would go toward their twenty years of service to be eligible for retirement.
- Ms. King stated they would be able to do that. They would have to pay for the total actuarial cost without a cost to the system. This way is more expensive than the Teachers' Retirement

System, but less expensive than the sheriffs'. The individual would pay for the entire cost.

REP. REHBEIN asked how many would use this.

Ms. King stated she didn't know.

REP. SMITH asked if as an incentive the employer could pay into this.

Ms. King stated this has been used as an incentive in the past and was mechanically utilized by the system.

## Closing by Sponsor:

REP. SIMPKINS stated this wouldn't cost any money except to the employee who would have the option to buy one year for every five years of service. This would help to standardize the plans without affecting the other systems and plans.

## **HEARING ON HB 325**

## Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, HD 49, stated there would be no cost for this proposal. The statement of intent on the bill tells who would be eligible for this. They would be able to accept fees for non-profit organizations and provide access to information for retirees. At no time would there be lists be given out. Each person would have to pay their own costs and clarify the investments. They would be redefining funding and job duties. There would be a judicial review of the complaints. With changing the ages it doesn't change the cost factors. He submitted EXHIBIT 14.

## Proponents' Testimony:

Linda King, PERD, submitted written testimony. EXHIBITS 15 and 16.

{Tape: 2; Side: A.}

Art Whitney, Montana retired Public Employees Association, spoke in favor of the bill.

Kathy McGowen, Sheriffs and Police Officers Association, stated they supported this bill.

#### Opponents' Testimony:

none

## Informational Testimony:

none

## Questions From Committee Members and Responses:

**REP. BRAINARD** asked if there would be a list of associations so they would be able to mail directly.

Ms. King stated if they had the tax confirmed from the IRS and if their individual mailing met the standards of the board they would be able to do that.

**REP. TAYLOR** asked if this would allow them to move from one system to another without paying taxes.

Ms. King stated some don't have the benefit. They can't accept roll overs under the law. They can get a transfer of service in which they would take a refund and pay taxes. They are trying to provide this in their system. Others currently have this roll over ability but they don't.

## Closing by Sponsor:

REP. SIMPKINS closed.

HOUSE STATE ADMINISTRATION COMMITTEE

January 27, 1995

Page 10 of 10

## **ADJOURNMENT**

Adjournment: 11:00 a.m.

MANA SIMPRIMS. Chairman

CHRISTEN VINCENT, Secretary

RS/cdv

## HOUSE OF REPRESENTATIVES

## **State Administration**

**ROLL CALL** 

DATE 1-27-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	V		
Rep. Matt Denny, Vice Chairman, Majority	~		
Rep. Dore Schwinden, Vice Chair, Minority	V		
Rep. Matt Brainard	V		
Rep. Pat Galvin	/		
Rep. Dick Green	V		
Rep. Toni Hagener	V		
Rep. Harriet Hayne	~		
Rep. George Heavy Runner			
Rep. Sam Kitzenberg			
Rep. Bonnie Martinez	V		
Rep. Gay Ann Masolo	V		
Rep. Bill Rehbein	1		
Rep. Susan Smith	V		
Rep. Jay Stovall			
Rep. Carolyn Squires			
Rep. Lila Taylor	V		
Rep. Joe Tropila	V		

PRESIDENT
Barry Michelotti
Great Falls, MT 59401
761-6842

PAST PRESIDENT Rick Ross Billings, MT 59101 256-2930



SECRETARY-TREASURER Tony Harbaugh, Sheriff

1010 Main Street
Miles City, MT 59301
Office: 232-2237

OFFICIAL PUBLICATION
"THE MONTANA SHERIFF"

## Sheriffs and Peace Officers Association

Testimony in Support of HB306 Presentation by Kathy McGowan

Ten meetings were held across the State by the Montana Sheriffs and Peace Officers Association and a questionnaire returned by the membership who attended those meeting clearly stated the priority of the MSPOA this session was to introduce this legislation for sheriffs and deputies to change their current retirement system to twenty year eligibility.

Law enforcement in Montana generally has the same mission. The mission is to serve and protect. The priority of the law enforcement mission is to save life Sheriffs in the State of Montana have the broadest scope of and property. authority. All other law enforcement entities have <u>limited scope of authority</u>. An individual who makes up their mind to enter into the law enforcement profession will have done so usually based on an encounter that they would have had with another law enforcement officer who they respected or they had knowledge, were a victim, or witness to a criminal activity in their youth and made a decision they were going to do something to make a difference. importance of a retirement usually does not become a factor to the individual until their twelfth or fifteenth year of service because a conscious recognition is made they will not be able to continue this line of employment forever. Law enforcement in many ways can be likened to professional athletic teams. behooves a community to employ the person at a youthful age and use the benefits of his or her youth and disassociate them also at an early age so that they may move on to other interests while they have employable capabilities. A study conducted which compared different professions to athletic professions resulted for law enforcement to have the same similarities as football players.

DATE January 27,1990

Sheriffs' offices are the primary resource the Legislature empowers to fulfill enforcement mandates and are responsible for the myriad of court orders, civil, criminal and incarceration. Sheriffs offices are the detention and correction officers in their counties. Other duties included coroners, humane officers, disaster and emergency services coordinator appointments, and firewarden duties. These other functions may or may not be law enforcement related and are reimbursed at the counties' discretion to the Sheriff and his deputies. These other delegated duties are not presented to you in terms of moaning and groaning but rather a fitting tribute to an elected official and qualified by who better should be assigned the broad task of public safety?

Generally accepted norm of longevity after retirement is five to eight years for law enforcement officers who fall within the range of senior citizen status. You will hear from the other presenters more specifically what is occurring in the Sheriffs' Retirement System both as active members and retirees based on qualified data prepared by the Public Employees Retirement Division. About the twentieth year of a law enforcement officer's career there will be rapid declines in productivity not because of his dislike for his or her profession, but more of a result of physiological changes and one of the items that most impacts those changes is shift work. The benefit to counties in what is proposed in HB306 is when a sheriff or deputy retires twenty years or later there is a direct cash return to the county by the virtue they are no longer paying longevity for the tenure of the retiring individual. So what increases are proposed to the contributors of the system are offset by a new officer who would be hired at a substantially lower rate of salary.

The 1993 Legislature allowed criminal investigators of the Department of Justice for the State of Montana to be members of the Sheriffs' Retirement System so when the Department of Justice was recruiting experienced investigators the State needed to have who are called to assist local law enforcement agencies they would not be leaving a retirement system which required longer service time for the equivalent benefits as are in the Sheriffs' Retirement System versus the Public Employees Retirement System. Recruitment for experienced investigators generally occurs at the local level. This is not a third funding source for the Sheriffs' Retirement System. The investigators would be mandated to pay into a retirement system and the purpose of the investigator's participation is to the benefit of the State in their recruiting effort.

HB306 Bill Fleiner

- I. Current Sheriffs' Retirement Systems benefits:
  - A. 2.0834% credit for each year of service
  - B. After 24 years the % of credible service drops to 1.35% for every year thereafter
  - C. The % of salary that can be earned is capped to a maximum of 60%
  - D. Members who entered the system prior to July 1, 1989 have no age limitation when they become eligible at 24 years of service
  - E. A member who entered the system on July 1 or after must have 24 years of membership service and reached the age 50 to retire on a service retirement benefit
  - F. Eligibility for early retirement occurs when the member has 15 years of membership service
  - G. If a member retires at 20 years currently this would be an early retirement and with the actuary reduction he would receive about 31% of the member's salary

EXHIBIT INO DATE January 27, 1995 HB 306

## II. HB306 proposes:

- A. 2.0834% credit for all years of service
- B. Eliminate the 60% cap
- C. Eliminate the age requirement
- D. Eligibility for retirement is after 20 years of service
- E. The member would retire at about 41.668% of the member's salary when the become eligible after 20 years of service
- F. The member will still have to work 24 years to receive a 50% of salary retirement benefit

EXHIBIT 2 DATE 1-27-95 HB 306

## III. Contribution costs to the system:

## **CURRENT**

Sheriff/Deputy County
7% 7.67%

Increase to contributions by contributors:

7.865% 8.535%

Total cost to contributors: 1.73%

IV. Impact to Sheriffs' Retirement System as a result of the annual benefit adjustment (GABA):

## **CURRENT**

Sheriff/Deputy County
7% 7.67%

Increase to contributions by contributors:

8.67% 9.34%

Total cost to contributors: 3.34%

PRESIDENT
Barry Michelotti
Great Falls, MT 59401
761-6842

PAST PRESIDENT Rick Ross Billings, MT 59101 256-2930



SECRETARY-TREASURER
Tony Harbaugh, Sheriff
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Miles City, MT 59301
Office: 232-2237

OFFICIAL PUBLICATION
"THE MONTANA SHERIFF"

## Sheriffs and Peace Officers Association

Mr. Chairman and members of the committee, my name is William Barnes. I am a deputy in the Gallatin County Sheriff's Office and member of the legislative committee of the Montana Sheriffs and Peace Officers Association, and president of the Deputy Sheriffs Association of Gallatin County.

During the years 1988 through 1993 there have been 204, or 37%, of our members, quit. Not retire, but quit. A 37% turnover rate in six years is frightening.

There are currently 552 active members in the Sheriff's retirement system. One hundred eleven persons currently get some sort of

> DATE JONUARY 27,1995 HB 306

retirement benefit. Of that one hundred eleven only 68, or 61%, are retired members. The balance is made up of thirty one receiving a disability retirement, twelve receive survivor benefits and nineteen receive a benefit because they were vested into the program before they quit and elected not to withdraw their contributions. Of the sixty eight members drawing retirement only twenty six, 23%, are members who had twenty four or more years of service.

Of the current five hundred and fifty two active members two hundred twenty six, or 41%, have been sheriff's or deputies less than four years. Only 8% of all the sheriff's and deputies in the state have twenty or more years of service.

DATE 1-27-95

HB 306

In Gallatin County, where I am from, we have thirty officers. There is one drawing retirement. Missoula County has forty seven officers and there is one drawing retirement. Lewis and Clark County has twenty five officers and there is one drawing retirement. Only one of these retired officers retired with twenty four or more years of service.

Law enforcement is a demanding profession. Not only physically, but mentally and emotionally. Law enforcement officers have the highest rate of divorce in the nation, estimated at forty per cent. In Lewis and Clark County, of the officers that have ten or more years of service, 60 % are divorced. In Gallatin County, of the officers with ten or more years of service 80 % are divorced.

I have been in law enforcement almost fourteen years. Most of that has been as a deputy sheriff. I have seen many people come into this profession and I've seen many leave it. I have personally never known one to leave by retiring with twenty four years of service.

Clearly the vast majority of persons who became, or will become, sheriff's and deputies, will not, or could not, survive this occupation long enough to retire from it.

We desperately need a twenty year retirement plan. Thank you for your time and consideration.

Wmc.B





January 25, 1995

Legislative Committee working HB-306

REFERENCE: 20 Year Retirement Bill

Members of the Committee:

I thank you for allowing me to enter into the record my written comments concerning the bill on sheriffs and deputies retirement.

I have worked in the Criminal Justice field for 30 years. I was fortunate enough to serve in numerous assignments, to include former Chief of Police for the City of Missoula and now Sheriff of Missoula County. This has given me a great opportunity to observe this field of endeavor.

Law enforcement is unique in many ways. You are the answering service for the problems a community experiences. This especially on weekends, holidays or after 5:00 p.m. on weekdays. Many times these are problems you, as an officer, are not prepared through training or equipment to handle. The public, however, expects some type of assistance or direction. Couple this with many violent, negative calls and you begin to build what is now realized as a true problem in law enforcement. That's stress. Stress as a problem has been especially recognized these past 10 years. The job has changed a great deal in the last 30 years. Law enforcement is being held accountable for far more today than in yesteryear. Plain and simple, for most officers, especially those with general duty assignment, 20 years is enough. For a number of them it is too much. They've left the service mostly out of stress borne by what they saw or experienced during their tour of duty. Even administrators are at times for things they have no control over being held rightly or wrongly more accountable than in years past. Today's society is more litigious than before, thus adding to the load a law enforcement officer carries as they conduct their duties.

- For my years in this career we have been number one, two or three in divorce nationwide. Currently we hold the number two rank.
- Struggles with excessive consumption of alcohol used as an escape mechanism has haunted this job for years.
- Our incidents with physical or mental impairments affecting our officers have grown over the years.

DATE January 27, 1895

- 4. Suicide by officers is a critical problem and has been growing.
- 5. We have a high incidence of heart attacks. This is not only caused by stress, but the poor eating habits officers develop. Eating on the run, or engaging in very strenuous activities just after a meal have put many an officer down.
- 6. Sitting for hours in a quiet mode, then suddenly being thrust into an adrenaline charged situation caused by the fight or flight syndrome of perpetrators takes a real toll.

The bottom line is for most who choose this career 20 years is enough. I believe this is an important issue, one that needs to be addressed. It is my understanding we are one of the few areas of law enforcement that does not have the 20 year plan.

Thanks for hearing my concerns.

Sincerely,

Doug Chase Sheriff

DWC/ms

cc: Undersheriff Weatherman
MDSDA President Scott McDonald
Capt. O'Hara
Lt. Hintz



# DOUG CHASE Sheriff LARRY WEATHERMAN Undersheriff

January 25, 1995

Legislative Committee working HB-306

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DATE Genery 27 1993

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The bottom line is for most who choose this career 20 years is enough. I believe this is an important issue, one that needs to be addressed. It is my understanding we are one of the few areas of law enforcement that does not have the 20 year plan.

Thanks for hearing my concerns.

Sincerely,

Doug Chase Sheriff

DWC/ms

cc: Undersheriff Weatherman
 MDSDA President Scott McDonald
 Capt. O'Hara
 Lt. Hintz

## Granite County Sheriff's Department

P.O. Box 188 Philipsburg, MT 59858 Telephone (406) 859-3251 288-3542

FAX 859-3252

January 26, 1995

Captain Mike O'Hara Missoula County Sheriff's Office Missoula, Montana FAX-523-4719

Re: Sheriff's Retirement Bill, Now before the Montana Legislature.

Dear Mike:

Due to manpower problems in my Office, I cannot attend the hearing on the retirement bill, or send anyone tomorrow.

I believe all Sheriff's Officers in Montana should have some goal to work towards, as everyone who works in Law Enforcement, 20 years is a lifetime.

Officers in the class of County Standing that Granite County, currently stands, by law, our Deputies do not receive overtime, or comp time. All put in many hours over their 40 per week to protect Granite County. Wages are low in our county, and a Deputy has to be truly dedicated to Law Enforcement to work here, which they all are.

The least our Tax Dollars should do in my estimation is to provide Sheriff's Offices with a decent retirement.

The way our retirement system now stands, as many years as a person has to put in, he will be totally burned out, and an old person before his time, and possibly not have enough money to exist on.

I would appreciate if you could convey this letter to the Legislative Committee Hearing tomorrow.

Sincerely,

Don Dee Kennedy, Sheriff

DATE anuary 27,1995

MICKEY F O'BRIEN Sheriff / Coroner

## Office of the Sheriff

MINERAL COUNTY Superior, Montana 59872 406-822-4861

ANITA PARKIN Undersheriff

January 25,1995

Montana Sheriff's Association House Bill 306

I fully support House Bill 306 Deputy Sheriff's 20 year retirement plan.

Mexica Horizante Coroner.



## MISSOULA COUNTY SHERIFF'S DEPARTMENT 200 W. Broadway

Missoula, Montana 59802

(406) 721-5700, Ext. 3302 523-4757 After Hours 721-8575 FAX 9-1-1 Emergency

## TESTIMONY

House State Administrative Committee

House Bill 306 (Sheriff's Retirement Bill)

By: Lt. T. Gregory Hintz, Missoula Co. Sheriff's Department Member of the Board of Directors for the Sheriff's and Peace Officer's Association.

The Montana Sheriff's and Peace Officer's Association does support House Bill 306, affecting the Sheriff's Retirement System.

Of those who belong to our current retirement system the average age of the membership is age 40. The average age of these officers when gaining employment, and placed in this retirement system is 31 years of age. Most of them only serve 8 years in the system and earning an average salary of \$28,748.

Of those who retire from the system the average retiree in the system is 68 years of age. What's remarkable when comparing our system to others is that the average age is 60 before our members are able to retire, with an average benefit of \$771 per month.

DATE January 27, 1995 HB 300

## Page 2.

When comparing the death rate of those Active members in our system, our numbers are substantially higher than any other similar retirement system for other law enforcement in the state, i.e. judges, wardens, highway patrol, metropolitan police and fire fighters.

As you are well aware of our current members also pay into the Social Security System during their careers. Because of the average benefit of only \$771 a month many officers are working far past their prime and capabilities required for this profession.

Even though it may be their ambition, many officers may never reach the opportunity of a promotion and a permanent desk job or Administrative Position; many simply retire as patrol officers. The ageing process and the stress of this type of employment takes a terrific toll on them and their families. This often produces mental illness, alcoholism and heart failure.

When retiring at 60 years of age, these members are usually unable to find other employment to supplement their meager retirement income, and the several years of waiting for the opportunity to draw benefits from Social Security certainly puts a financial strain on the retiree and family.

For instance I will not be able to draw benefits from Social Security until I reach the age of 66. Every year there is talk by our government of either raising the age of Social Security to age

... au alimination it all tawath.

EXHIBIT 8 DATE 1-27-95 1 HB 306

Page 3.

Because of all these factors it is important for our membership in the Sheriff's Retirement System to have the opportunity and benefit of retiring after 20 years of service.

This will allow them to get into a job market at a younger age and supplement their retirement income.

Your support in this legislation is important!!!

Thank You.

HB 306 / Questions for Bill Heiner By Pat Nature.

Q. What is your Number One Priority?

A. A Twenty Year Retirement. Even if that means a decreased monetary benefit. Currently Peace Officers in SRS (Sheriff's Retirement System) cand retire after 24 years at 50% of salary. With HB 306 they'll be able to retire at 20 years with approx. 43% of salary. They're willing to sacrifice a little \$\$ for the 20 years.

Q. Why is the 20 years the top priority in the bill?

A. We want to be able to attract qualified, enthusiatic young men and women into the profession of local law enforcement; give them a good, rewarding career, and get them out of this profession at an young enogh age to get into another profession.

Q. Would you describe the disadvantages of the 24 year option and its effect on law enforcement professionals?

A. The physiological and psychological effects of the profession and the job begin to get progressively more pronounced between 20 and 24 years. The cumulative impacts of shift work, high stress encounters, etc. take their toll on the body as well as the mind.

Q. How does all this effect the lives of the people?

A. MSPOA has done some research and we've identified a pattern by our people: Very few make it 24 years. Many leave the profession after about 15 years because they realize it's a 'stretch' to go 24 years, and they won't have the time, energy, or ambition (much less the money) to pursue other options if they do go the full 24. This pattern robs local law enforcement agencies of some quality people who leave early. Rehiring and retraining are time consuming and costly. All because of some simple disincentives in the current SRS. The human cost is also high in the present system. Those who go the distance and retire after 24 years typically are too old to start another career, so the death rate, divorce rate, alcoholism rate, etc. is very high among that group.

 $\omega^{(l)}$ . And changing to a 20 year option will improve things.

We beleive it will. It will improve on the incentives currently in place. People in the profession will have an incentive to complete a full term of service, knowing that there is ample opportunity for other active pursuits. HB 306 will improve the SRS in many ways, but we believe the 20 year retirement provision is the most important element in the bill.

EXHIBIT rine DATE January 27, 1995 HB 306 # 84

## TREASURE COUNTY SHERIFF'S OFFICE 307 RAPELJE P.O. BOX 511 HYSHAM MT 59038 PHONE 406-342-5211

STEVEN J. WILKINS SHERIFF/ CORNER

UNDERSHERIFF

DICK SIMPKINS CHAIRMAN STATE ADMINISTRATION

RR: HB 306 20 year retirement bill.

Dear, Chairman Simpkins,

Please work to pass HB 306 into law. This is a legislative action to reduce the years of service required for normal and early retirement eligibility and to increase the retirement benefits under the sheriff's retirement system.

IHB 306 is every important as it will bring the retirement years of service for a sheriff or deputy to 20 years verses 25 years as it stands. In the history of Treasure County only one sheriff has served and worked or lived long enough to receive retirement as it is set up now. The burnout rate do to the job is great as we work daily with unpleasant circumstances. All other employees of Treasure County are eligible for retirement benefits at 20 years. For these reasons I urge you, as I do to support IIB 306.

Teven J. Wilkins

DATE January 27,1995 HB\_306

## Amendments to House Bill No. 316 First Reading Copy

#### TECHNICAL AMENDMENTS

For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger January 25, 1995

1. Page 1, line 17.
Following: "service"

Insert: ", who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service,"

2. Page 2, lines 6 through 8.
Following: "plus interest."

Strike: "The" on line 6 through "service." on line 8

3. Page 2, line 21; page 3, line 18; and page 4, line 25.

Following: "(2)" Insert: "(a)"

4. Page 4, line 3.

Following: "service"

Insert: ", who has completed 1 full year of active membership subsequent to the member's private school employment,"

5. Page 4, line 21.

Strike: "credit"

Insert: "purchase"

6. Page 7, following line 14.

Insert:

"NEW SECTION. Section 7. Coordination instruction. If House Bill No. 205 is not passed and approved or if it is passed and approved but does not contain a new section providing that a member of the teachers' retirement system may roll over, or transfer, the member's contributions from another qualified retirement plan to the teacher's retirement system, then [section 1(1)(b) of this act], amending 19-20-402, must read as follows:

If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member must receive a refund of the member's contributions for the service before qualifying service under

this section.""

Renumber: subsequent section

EXHIBITALEVER DATE January 27,1995 HB 316

## TESTIMONY HOUSE BILL 316 TEACHERS' RETIREMENT BOARD PRESENTED BY DAVID L. SENN

House Bill 316 will permit a vested members of the Teachers' retirement System, who became members after July 1, 1989, to purchase creditable service for out-of-state teaching service, private teaching service, service while on leave, and time spent on an injury-related leave. The maximum number of years of service a member will be eligible to purchase in any combination of the above will be limited to five years.

Members electing to purchase service under the provision of this act will be required to pay the actuarial cost of the service. The actuarial cost will be based on the member's salary at the time application is made to purchase the service, their age and years of service. Since the member is paying the actuarial cost, there is no cost to the Teachers' Retirement System.

The following examples of actuarial cost are based on assumed ages, salaries and years of service, and are intended to show what it could cost to purchase one year of service.

## POST 1989 SERVICE PURCHASE COST TO PURCHASE 1 YEAR

PURCHASE A	SALARY AT PURCHASE	YEARS OF CREDITABLE SERVICE					
		5	10	15	20	25	30
25	20,000	2,500					
30	23,000	3,105	3,450				
35	26,000	3,770	4,160	4,550			
40	30,000	4,650	5,100	5,550	6,000		
45	32,000	5,280	5,760	6,240	6,720	7,200	
50	33,000	5,775	6,270	6,765	7,260	7,755	8,250
55	33,000	6,435	6,930	7,425	7,920	8,415	8,910
60	34,000	7,310	7,820	8,330	8,840	9,350	9,860

The Teachers' Board supports HB 316, and asks for your favorable consideration.

EXHIBIT Fare luce

DATE January 27, 1895

HB 316



## Committee on Public Employee Retirement Systems

Room 138 State Capitol Helena, MT 59620-1706 (406) 444-3064 FAX (406) 444-3036

## 53rd Montana Legislature

SENATE MEMBERS
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THOMAS A. BECK
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RICHARD D. SIMPKINS

COMMITTEE STAFF SHERI HEFFELFINGER RESEARCHER DAVID NISS ATTORNEY

## HG 324 REPORT ON LC 936

## **Purpose of Report**

The Committee on Public Employee Retirement Systems (CPERS) is required by law (Ch. 549, L. 1993) to report to the Legislature on the fiscal and policy implications of each retirement proposal it reviews and to make recommendations for Legislative action. The Committee's recommendations do not constitute formal Legislative action on a bill and the Committee may not prevent a retirement bill from being introduced. This report applies to the proposal as presented to CPERS, not to any changes made subsequent to the adoption of this report. This report is informational and its purpose is to promote fair and consistent retirement policy for Montana's public employees.

## **Proposal Summary**

This proposal extends to members of the Judges', Highway Patrol Officers', Game Wardens', Municipal Police Officers', and Firefighters' Unified Retirement Systems the ability to purchase at actuarial cost one additional year of service for each five years of active membership service. This service may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for early retirement.

## **Issue Summary**

Certain members of the Public Employees, Teachers, and Sheriffs' Retirement Systems have the opportunity to purchase one year of additional service for each five years of active membership service. Although the additional service purchase provisions differ slightly in each system, members of the retirement systems covered in the proposal do not now have any opportunity to purchase additional non-membership service for each five years of membership service.

## **Policy Considerations**

The proposal was initially presented only on behalf of members of the Game Wardens' Retirement System (GWRS). Tom Schneider, representing the Montana Public Employees Association, and Representative Chase Hibbard worked on developing this proposal for FYHIRIT Thutteen

DATE January 07, 1895

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ECTOR: RESEARCH AND REFERENCE DIVISION

MONTANA LEGISLATIVE COUNCIL STAFF: ROBERT B. PERSON, EXECUTIVE DIRECTOR • DAVID D. BOHYER, DIRECTOR RESEARCH AND REFERENCE DIVISION GREGORY J. PETESCH, DIRECTOR, LEGAL DIVISION • HENRY TRENK, DIRECTOR, LEGISLATIVE SERVICES DIVISION

GWRS. Because the issue was one of equity among the retirement systems, CPERS decided at its December 2, 1993, meeting that the one-for-five service provision should also be made part of the other retirement systems.

## **Fiscal Considerations**

Because members covered by this proposal must pay the full actuarial cost of the additional service, there is no fiscal impact on the retirement systems or on contribution rates. Notably, however, the cost of purchasing service in these retirement systems may be prohibitively high for most members.

## **Effects on Other Systems**

Although this proposal is aimed at equalizing benefits, there will still be an inequity in the way the additional service may be utilized in PERS because, under PERS provisions, the one-for-five service may be used to help offset the amount that retirement benefits are actuarially reduced because of early retirement.

## **Committee Recommendations**

Amendments: None.

Recommended Action: DO PASS (adopted unanimously)

Note: This report was prepared by Sheri Heffelfinger, Researcher, Montana Legislative Council based on the minutes of the December 1-2, 1994, and December 29, 1994, CPERS meetings.



# Committee on Public Employee Retirement Systems

Room 138 State Capitol Helena, MT 59620-1706 (406) 444-3064 FAX (406) 444-3036

### 53rd Montana Legislature

SENATE MEMBERS DON BIANCHI CHAIRMAN THOMAS A. BECK VICE CHAIRMAN JOHN R. HERTEL BOB HOCKETT HOUSE MEMBERS
JERRY L. DRISCOLL
MARJORIE I. FISHER
PATRICK G. GALVIN
RICHARD D. SIMPKINS

COMMITTEE STAFF SHERI HEFFELFINGER RESEARCHER DAVID NISS ATTORNEY

### HS 325 REPORT ON LC 146

### **Purpose of Report**

The Committee on Public Employee Retirement Systems (CPERS) is required by law (Ch. 549, L. 1993) to report to the Legislature on the fiscal and policy implications of each retirement proposal it reviews and to make recommendations for Legislative action. The Committee's recommendations do not constitute formal Legislative action on a bill and the Committee may not prevent a retirement bill from being introduced. The purpose of this report is to promote fair and consistent retirement policy for Montana's public employees.

### **Proposal Summary**

This proposal includes general housekeeping revisions to the retirement systems administered by the Public Employees' Retirement Division and was forwarded by the Board.

The Division submitted the following summary of the proposal's provisions:

- -- Incorporation of new federal requirements under the American's with Disabilities Act into the disability determination process utilized by this retirement board.
- -- Establishing the 1st Judicial District as the venue for appeals of administrative decision of the board.
- -- Clarifying the definition of "deputy sheriff" necessary because of previous errors in reporting members.
- Removing erroneous statutory requirement for investment of Social Security Account in long term investments. Clarifying the dates and manner in which the balance of the Social Security Account will be transferred to the state General Fund.
- -- Correcting the current statutory language describing the manner in which the actuarial reduction will be calculated for PERS survivor's benefits.

DATE January 27,1996 HB\_325 Exempting the Public Employees' Retirement Board from the prohibition of using mailing lists and providing a mechanism whereby the Board can use the list on behalf of non-profit organizations, for a fee, and then utilize the fees generated to increase the Board's ability to communicate with retired members of the systems.

### **Policy Considerations**

Two policy issues were raised by CPERS members: (1) the designation of the 1st Judicial District as the place of venue for judicial review of final administrative decisions of the Public Employee's Retirement Board; and (2) allowing the Board to utilize their mailing lists of retirement system members for the purpose of mailing materials on behalf of non-profit organizations.

Some CPERS members were concerned that the designation of the 1st Judicial District as the place of venue for review of the Board's decisions placed a burden on the person bringing the complaint because that person, if the person lived outside of Helena, would have to pay an attorney's travel costs to Helena. Testimony by Linda King indicated that most cases are filed in Helena anyway and that the bill was just formalizing a process that had already been taking place.

Regarding the use of retirement system mailing lists, Linda King presented testimony indicating that the Board would charge a fee to cover the cost of any non-profit mailing and would be able to us the money to enhance the Board's communication with its members. The Board has little or no budget for such mailings. Linda King also assured the Committee that the Board would never lose control of the mailing list and that membership information would still be guarded as confidential.

#### Fiscal Considerations

None.

**Effects on Other Systems** 

None.

#### **Committee Recommendations**

Amendments: None.

Recommended Action: DO PASS

(adopted with one "No" vote on establishing the First Judicial District as the place of venue for appeals of PERS Board

decisions)

## TESTIMONY IN SUPPORT OF HB 325

## on behalf of the PUBLIC EMPLOYEES' RETIREMENT BOARD

Presented by
Linda King, Administrator
Public Employees' Retirement Division

Changes in interpretation of state and federal laws through decisions in the courts, along with changing requirements of federal tax law require on-going fine-tuning of our public retirement systems. Rather than clog the Legislative process with several small proposals, the Board has requested one "general revisions" bill which will make several "housekeeping", but necessary, changes. None of the proposals will have an actuarial impact -- none require increased funding. These changes include:

- -- Amending Section 19-1-202, MCA to correct a previous drafting oversight in a bill enacted by the 1986 special session. The oversight left a reference to 19-1-602 in statute when the substance of the 1986 bill actually required changing this reference.
- -- Amending 19-1-602, MCA to clarify that the **Board of Investments is required** to invest the social security account as part of the state's unified investment program (rather than any set requirement to invest the moneys only in long-term investments which would, in fact, cause this short-term account to lose money.
- Designating the 1st Judicial District as having jurisdiction and venue for judicial review of final administrative decisions of the Board. Since reviews of administrative decisions are a series of briefs between (usually Helena-based) attorneys and the courts and do not involved appearances by plaintiffs or witnesses, it will save the retirement systems much expense and will serve to standardize legal opinions on administrative questions, to have such decisions reviewed in this district. This amendment does not affect the right of members to initiate suits or other proceedings against the Board in any state court.
- -- Prohibiting independent contractors from being members of PERS. The current "exemption" in statute is meaningless since a contract provision that an "employer and employee relationship exists for a limited purpose of being a member of the PERS" not only contradicts state and federal employment law, but is contradictory to federal prohibitions against persons who are not public employees being allowed to participate in public plans.

EXHIBIT fifteen

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HB 326

- -- Clarifying the calculation of PERS survivorship benefits. The actuarial reduction currently described in statute results lower benefit than is actually paid by the system. The "error" came about when the definition of "actuarial equivalent" was placed in statute (as required by federal law) without carefully reviewing the need to adjust the language in some existing sections of PERS law which used the term with actuarial reduction. This change will not result in different benefits -- it will correctly describe the process always used.
- Clarifying the definition of "deputy sheriff" for purposes of determining eligibility for membership in the Sheriffs' Retirement System. The amendment does not change the intent or enforcement of current law; it is necessary to clarify persons not eligible for membership in this system. Over the past several years persons who should have been reported to PERS have been erroneously reported to SRS. Since such mistakes are not usually found until the person applies for retirement, hardship may occur for the employee and the employer. With this clarification, we expect to eliminate this confusion.
- Allowing the Board to utilize their mailing lists of retirement system members for the purpose of mailing materials on behalf of non-profit organizations for a fee. The fees will be placed in a special revenue account and appropriated back to the Board for use on behalf of the members of the systems. The Board intends to utilize these funds to enhance the number of communications with both active and retired members without increasing their use of trust funds for this purpose. Continued privacy protection for members will be assured because:
  - -- The actual mailing lists containing the names and addresses of retirees will not be shared with any organization.
  - -- The division will approve mailings for conformance to the law and will actually address and mail the materials on behalf of eligible organizations for a fee.
  - -- Since the Legislature must appropriate the level of expenditures authorized from the special revenue account, a reasonable limit will eliminate the potential for over-utilization of this "service" at the expense of other necessary agency operations.
  - The mailings will be accomplished within current staffing and administrative budget authority -- the additional revenue generated will both pay for any agency resources utilized in accomplishing the mailing and will generate sufficient funding to further the Board's goal of increased communications with members without increasing trust fund expenditure.

- Amending the disability provisions of their systems to conform with provisions of the Americans with Disabilities Act. Because this federal law requires employers to make accommodations for persons with disabilities, the Board must now take those accommodations into effect when determining whether a member is "totally a permanently disabled" from performing their current job.
- -- Providing for automatic conversions of disability retirement to service retirement when a member reaches normal retirement age. Because disability retirement benefits are "ancillary" benefits under federal law, some federal courts have determined that spouses of disabled members are eligible for survivors benefits when the member dies prior to receiving a retirement benefit. Because our systems were not funded with this possibility in mind, this amendment will limit the potential for such an occurrence and the funding which would be required to pay dual forms of benefits.

None of the proposed changes will require any additional funding; they are designed to minimize the potential need for increased contributions in the future.

#### PROPOSED ADDITIONAL AMENDMENTS:

Since the bill was originally drafted, another technical problem has come to the Board's attention and they request your indulgence to include another area of public pension law for additional technical corrections in this bill. The offered amendments will:

Provide a legal mechanism for the transfer of contributions (as well as service) between the various public pension plans without requiring a member to take a refund and suffer negative tax consequences by so doing. Under current statutes, provisions are only made for members to purchase service credits in one system for service which has been refunded from another system. However, due to the tax-deferred nature of employee contributions and accumulated interest, actual receipt of a refund could cost the terminating member at least 20% of their account value, leaving little to pay for the cost of purchase that service credit into another public system. The amendments proposed herein solve that problem at no cost to the systems or to individual members.

#### HB 325

#### **BILL ANALYSIS**

Bill Title: HB 325: "An act generally revising the laws relating to certain retirement systems

<u>Purpose of bill</u>: The purpose of this bill is to make several general revisions to retirement systems and the social security account administered by the public employees' retirement board. Each revision will be discussed separately.

## <u>I</u>. Designating 1st Judicial District for judicial review of final administrative decisions of the Board.

<u>Purpose</u>: This amendment will reduce the board's cost when an administrative decision is judicially reviewed because of reduced travel and lodging costs and will eliminate the need to hire additional temporary legal staff to supplement the current legal staff which is shared with other agencies. In addition, the 1st Judicial District deals with more cases involving administrative law and would have more expertise in administrative law matters.

#### Pro and Cons

Pros: Will reduce travel costs for staff and legal counsel.

Will eliminate the possibility the board may be required to hire temporary legal staff to handle out of town commitments.

Administrative hearings (contested case) are presently heard in Helena, so this amendment would be consistent with current administrative practices.

Places judicial review in the 1st judicial district where there is more experience with administrative law.

Cons: Members not living in the 1st Judicial District may be somewhat inconvenienced when requesting judicial review of the administrative decision.

Alternatives to Legislation: Present system will continue.

<u>Financial Impact</u>: No funding is required for this legislation.

Prior Legislative History: No Previous legislation.

Additional FTE's: None.

Examples of Harm: There is no harm which would result from passing or not passing this legislation.

<u>Interested Persons and Their Positions</u>: Interested persons include all active and retired members of the retirement systems. Members requesting judicial review of an administrative decision would prefer the review to be held in the judicial district in which they live.

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#### 2. Prohibiting independent contractors from being members of the PERS

<u>Purpose</u>: to prohibit contractors from becoming members of the retirement system. The present statute allows some contractors to become members if their contract contains a provision which specifies "an employer/employee relationship" for the limited purpose of PERS membership. This should end funding disadvantages caused by certain contractors making membership elections and eliminate the potential for the federal government determining the PERS to not be a "qualified plan."

#### Pros and Cons

Pros: -- Prevents contractors from "illegally" becoming members of the public employees' retirement system. Under the current law, certain contractors can elect to become members, but when their contract is renewed in the future they may elect not to be members, which may be disadvantageous to the system. Typical is the doctor who begins working for the state under a contract as a PERS member at 55 years of age and, after accumulating five years of membership, retires and takes the PERS provision out of his contract, but continues to work for the state doing essentially the same job. There is the possibility this could happen with any independent contractor.

The current practice of allowing independent contractors be members makes determining the actuarial requirements of the system more difficult predict and therefore less accurate, because current statutes allow independent contractors to choose membership advantageous to themselves, but more costly to the system.

Cons: ?

Alternatives to Legislation: Present system will continue.

<u>Financial Impact</u>: No funding is required. Maintaining "qualified plan" status will protect the continuing tax-deferred nature of these benefits.

<u>Prior Legislative History</u>: Legislation in 1979 allowed independent contractors to become members of the PERS if the contract specifically states an employer-employee for purposes of retirement (Sec. 1, Ch. 149, L. 1979). Prior to 1979 independent contractors were not allowed to join PERS.

Additional FTE's: None.

<u>Examples of Harm</u>: Passing this legislation will allow the actuary to make more accurate assumptions about the funding requirements of the retirement system. Not passing the legislation will continue the present practice which is detrimental to the system and makes determining actuarial assumptions less accurate and future funding requirements less certain.

<u>Interested Persons and Their Positions</u>: The interested persons are future independent contractors who may wish to join the retirement system. Their position would be they are working for the state so they should be allowed to join the PERS. Because they are "independent" contractors, they are not employees of the state.

#### 3. Clarifying the calculation of the PERS survivorship benefit

<u>Purpose</u>: Current statutory provisions do not correctly describe the calculation of the survivorship benefit paid to survivors (beneficiaries) of PERS members; these proposed revisions will result in the letter and the intent of the law becoming the same.

Prior to 1974, PERS statutes specified a survivor would receive a benefit based on the service or early retirement benefits of the member (if the member were eligible for service or early retirement at the time of death). In 1974, the statute was amended to extend survivorship benefits to the survivors of all vested members. The survivors of members not eligible for service retirement would receive actuarial equivalent of the service retirement.

However, the formula specified in statute for the "early" service retirement benefit is not a "true" actuarial equivalent of the "normal" service retirement benefit (the value of the early retirement benefit is deliberately set by statute to be higher than the "true" actuarial equivalent). Therefore, if the "true" (as now defined in statute) actuarial equivalent is used to compute the survivorship benefit, it is reduced below that which the member was entitled under the law as originally enacted and calculated.

This amendment will correctly describe the calculation of the monthly benefit to which a survivor is legally entitled. It will be based on

- -- the member's service retirement benefit, if the member was eligible for service retirement;
- -- the member's early retirement benefit, if the member was eligible for early retirement; or
- -- the actuarial equivalent of the member's early retirement benefit, if the member was not eligible for service or early retirement.

#### Pro and Cons

Pros: Statute would accurately reflect the originally intended calculation of the survivorship benefit.

Cons: A very strict interpretation of the current statute could require current survivorship benefits to widows and orphans be reduced and would also require the retirement division to collect previous overpayment of survivorship benefits. The resulting benefit reductions would be challenged in court and found to be illegal.

<u>Alternatives to Legislation</u>: If the legislation is not passed, the retirement division would be required to seek a ruling on the current statute to determine if reduced survivorship benefits should be paid, if past survivorship benefits were erroneously calculated, and if past overpayment should be collected. Such an action would be both expensive and time consuming.

<u>Financial Impact</u>: None. However, if the statute is not amended, additional funds will probably be required to recalculate all survivorship benefits and to collect past overpayment. The PERS is funded to pay the cost of survivorship benefits as they are presently calculated.

Prior Legislative History: Prior to 1974, the survivorship benefit was based on the members eligibility for retirement. The statute was amended in 1974 to allow a survivorship benefit that was

the actuarial equivalent of the accrued service retirement of a member with 10 years of creditable service (Sec. 7, Ch. 190. L. 1974). The number of years of creditable service was changed from 10 to 5 in 1977 (Sec.1, Ch. 89, L. 1977).

Additional FTE's: None.

Examples of Harm: If not passed, then survivorship benefits currently being paid will have to be reduced and previous overpayment must be collected.

Interested Persons and Their Positions: Recipients of survivorship benefits. Their position would be that the current statute should be amended.

4. Clarifying the definition of deputy sheriff for purposes of determining eligibility for membership in the sheriffs' retirement system

<u>Purpose</u>: This clarifying amendment is necessary because on several occasions Counties have erroneously reported jailers, communications officers and other individuals not eligible for membership in the Sheriffs' Retirement System (SRS). Such errors on the part of counties over many years has caused hardship to individuals being erroneously reported and could have the potential of creating unfunded liabilities for the retirement system.

The effect of this amendment is to more clearly provide that only full-time, professional law enforcement officials are eligible for membership in the SRS.

#### Pros and Cons

Pros: Will improve assurance to the SRS that appropriate, actuarially required employer and employee contributions will be made to the system during a deputy sheriffs' entire career.

Will provide more certainty to counties and sheriffs' department employees regarding whether a particular employee belongs in the SRS or in the Public Employees' Retirement System (PERS).

Promotes the original intent of the SRS, that professional law enforcement officers have a different and more remunerative retirement system than office and clerical workers.

#### Cons: ?

<u>Alternatives to Legislation</u>: Confusion regarding the definition of deputy sheriff has already resulted in administrative contested cases. Without this clarifying legislation, additional interpretation and litigation would be required on an individual case basis.

Unfortunately, these methods of clarification often happen only near the end of an individual's career, when they might be eligible for SRS retirement but not for PERS retirement. Any decision adverse to membership in SRS creates a tremendous potential hardship for the employee, the employer and SRS.

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HB 325

Financial Impact: None.

Prior Legislative History: Original definition enacted in 1974 (Sec. 2, Ch. 178, L. 1974)

Additional FTE's Required: None.

Examples of Harm: Erroneous reporting of clerical workers, jailers, and communications officers by counties has the potential to cause individuals to pay higher contributions to a system throughout their careers and, when the error is ultimately learned, could result in financial hardship to the individuals inaccurately reported. Because of differing retirement eligibility dates and benefit amounts between the SRS and PERS, individuals could make adverse career decisions.

A current example of potential harm to the individual member and the retirement system follows: The Public Employees' Retirement Board has been asked to recognize as SRS service the service of a clerical worker in a sheriff's department who was not even trained in law enforcement. As part of a subsequent legal dispute with the employee, the county could be required to pay back pay for a number of years. While contributions would be paid on these amounts, employee and employer contributions to SRS through most of the employee's career were made on a percentage of the much smaller clerical staff salary. This would leave an enormous liability which was not properly funded.

#### Interested Persons and Their Positions

Members of the Sheriffs and Peace Officers' Association have reviewed and approved the proposed change. The Department of Justice has informally indicated approval, noting that membership in SRS on the basis of training standards provides more incentive for proper training.

<u>Problems with October 1 Effective Date</u> A retroactive applicability date is necessary to provide immediate clarification to counties and sheriffs' department employees of original intent of the law.

## 5. Allowing the retirement board to utilize mailing lists of members participating in the retirement systems for purposes of mailing materials on behalf of third parties for a fee.

<u>Purpose</u>: The amendments will specifically allow the public employees' retirement board the option of utilizing a resource available to them, by sale of the use of a mailing list of retirement system participants, to provide funding for administrative services, such as increased communication with participants, without increasing costs to participants, employers or the state fund.

The mailing lists would not be released to the buyer, so the buyer could not release information on the list to others. Instead, the buyer would purchase use of the lists for mailings, which would be conducted by the public employees' retirement division of the department of administration.

The bill allows the public employees' retirement board to restrict the use of such mailing lists so that retirement system participants are not deprived of their right of privacy concerning confidential information nor inundated with excessive mailings, particularly as concerns commercial interests, individual political candidates and ballot issues, or other specific political issues.

#### Pros and Cons

Pros:

Will provide a new funding source for administration beneficial to retirement system participants (such as increased communications), without cost to the participants, the employers or the general fund.

Increased funding would allow more frequent communication with the retirement system participants regarding changes in the system and member rights and responsibilities.

Is designed to protect the privacy of retirement system participants.

Cons:

Allows the public employees' retirement board discretion to establish limits on mailings. The exercise of this discretion may be subject to constitutional challenge as violative of equal protection.

<u>Alternatives to Legislation</u>: Currently, the retirement systems have limited funding for communications with participants in the systems. Funding now allows only one newsletter to members per biennium. This level of communication would continue unless an alternative funding source is found.

Funds for additional member services, such as an additional newsletter each biennium, could be made available from the pension trust funds as a cost of administration or by direct appropriation from the general fund. In either case government would pay the cost of these additional member services.

Alternatively, the public employees' retirement board can take administrative action which has the same effect as this legislation, without clear legislative approval. Such a course of action may not be definitely prohibited by current law, but that action subjects the board to the unnecessary risk of being in violation of a law punishable by misdemeanor sanctions.

<u>Financial Impact</u>: There would be no financial impact. Fees generated by sale of the use of the mailings would be appropriated to a special revenue account and the Board would be given spending authority from this account to both pay for the individual mailings and to provide increased member information services for retirees.

<u>Prior Legislative History</u>: Previous Legislatures have allowed agencies to mail materials paid for by third parties.

Additional FTE's Required: None.

Examples of Harm: Without this legislation, the public employees' retirement board, which is committed to providing additional communications to participants in retirement systems administered by the board, is exposed to the risk of criminal misdemeanor sanctions. Sale of use of mailing lists without sale of the lists does not appear to be prohibited by the law here amended, but the may be read otherwise, exposing the board members to criminal sanctions.

The public employees' retirement board is committed to providing these communications because of their determination that misunderstandings by system participants are more likely without more regular communication of necessary information.

This legislation simply legitimizes a creative way to provide additional retirement system services without cost to the general public.

#### Interested Persons and Their Positions

This legislation is supported by retiree groups who currently have no means of communicating with other retirees.

6. Conforming the disability provisions of retirement systems to the provisions of The Americans with Disabilities Act

<u>Purpose</u>: The amendments will provide the board with authority to consider whether the member is able to perform the essential elements of the position after the employer makes accommodations required by the federal Americans with Disabilities Act (ADA), when determining if an applicant is totally and permanently disabled.

#### Pros and Cons

Pros:

Will provide the board with authority to collect and consider information related to ADA requirements when processing a member's application for disability retirement.

The bill places no additional requirements on employers, since ADA provisions are already implemented.

The changes are purely administrative and require no additional funding.

Cons:

None.

Alternatives to Legislation: Do nothing, resulting in inconsistencies and disparities between definitions of disability in federal and state law.

Financial Impact: None

Prior Legislative History: None.

Additional FTE's Required: None.

<u>Examples of Harm</u>: The Board can not accurately determine whether members are "totally and permanently disabled" from performing their current jobs without reviewing the results of required accommodations on the part of employers. Erroneous disability determinations represent huge liabilities to the pension trust fund and will require increased employer contributions.

#### Interested Persons and Their Position: ?

<u>Problems with October 1 Effective Date</u>: The ADA is already in effect and all employers are currently required to be in compliance. This law will formally provide the board authority to consider and apply the requirements of the ADA when implementing Montana law.

7. Requiring conversion of the disability retirement of a member to a service retirement (without recalculating the benefit amount) when the member reaches normal retirement age.

<u>Purpose</u>: Recent interpretations of federal law in the courts (outside Montana) have required the payment of separate and additional "survivor's benefits" to the beneficiaries of disabled members when those members died. The reasoning was that since the disability benefit was a supplemental - but not the main -- benefit promised by the system, the member's beneficiary has a legal right to the survivor benefit promised by the system when the member dies prior to receiving the retirement benefit. Automatic conversion to service retirement status will limit the system's potential unfunded liabilities for paying a survivor's benefit and a disability benefit.

In addition, conversion of a member's disability retirement to a service retirement upon the member reaching service retirement age will eliminate the obligation for retirees to undergo continuing medical and earnings reviews and will make Medicare the primary insurer (instead of the former employer's group plan).

#### Pros and Cons

Pros:

Will further limit potential unfunded liabilities to the system which may occur due interpretations of federal law which have granted additional survivor's benefits to beneficiaries of disabled members.

The earnings limits placed on members under disability retirement will be removed.

The member will not be required to undergo an earnings review each year.

The number of members on disability retirement will be reduced, therefore reducing the administrative burden on the board and division.

Cons:

A few relatively young members with duty-related disabilities and who have significant outside earnings may pay higher income taxes due to the ending of the tax exemption on a portion of their monthly benefit.

Alternatives to Legislation: Do nothing; additional funding may be required for some systems depending upon court interpretations of federal law.

<u>Financial Impact</u>: Without this change, federal law may be interpreted by the courts to require the payment of separate (and at times, higher) survivor's benefits to the beneficiary of a disabled member upon the member's passing. Since such additional benefits were unanticipated in the systems, this would cause unfunded liabilities.

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Relatively young persons (less than Social Security retirement age) who had previously received duty-related disability benefits and who have significant outside earnings will also be required to pay taxes on a portion of their retirement benefit which is currently exempt from federal taxes. This impact is expected to be negligible.

<u>Prior Legislative History</u>: In 1989, the legislature enacted Ch. 138, L. 1989 which allowed the Board the option to convert from disability to service retirement status when the Board decided that a disabled member would no longer be eligible for disability review (PERS, Highway Patrol Officers' and Game Wardens' Retirement Systems).

Additional FTE's Required: None.

<u>Examples of Harm</u>: Without this legislation, unanticipated survivor's benefits could be awarded to beneficiaries of disabled members. (Courts in other states recently have interpreted federal laws to require death benefits be paid when the member dies prior to receiving a service retirement benefit.) Conversion to service retirement status will limit the potential liability to pay separate, and unfunded benefits in such cases.

Interested Persons and Their Position: Disability retirees would no longer have their benefits reduced by outside earnings nor would they be required to undergo continuing reviews of their medical conditions and financial records. The few persons who would be impacted by the ending of the tax exemption on their monthly benefit would be those with significant outside earnings.

Employers with group insurance plans would experience a cost savings.

Problems with October 1 Effective Date: July 1 is the beginning the plan year.

**8.** Clarifying the types of investments that the board of investments is required to invest in for the social security agency account.

<u>Purpose</u>: The purpose of this amendment is to remove the restriction which requires the Board of Investments to invest the Social Security Agency Account in only long term investments.

#### Pro and Cons

Pros: The Board of Investments would have the option to select the investments which would provide the greatest return for the account. The Board of investments would still be required to meet all requirements for investments as provided in statute.

Cons: None.

<u>Alternatives to Legislation</u>: The account would be invested in long term investments which at the present time are not providing as much return as other types of investments used by the Board of Investments for other funds.

<u>Financial Impact</u>: If passed, a higher rate of return and a reduction in cost to the general fund to meet the obligation of the Social Security Administration.

<u>Prior Legislative History</u>: An amendment to the statute 1967 added the requirement the account be invested in long term investments (Sec. 1, Ch. 109, L. 1967.).

Additional FTE's: None.

Examples of Harm: If invested in long-term investments the fund will lose value when short-term funding needs require cashout of securities regardless of market conditions.

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