

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN ETHEL HARDING, on March 1, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Ethel M. Harding, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Mike Foster (R)
Sen. Don Hargrove (R)
Sen. Vivian M. Brooke (D)
Sen. Bob Pipinich (D)
Sen. Jeff Weldon (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Council
Gail Moser, Committee Secretary

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

Committee Business Summary:

Hearing: HB 316, HB 324, HB 325
Executive Action: HB 316 BE CONCURRED IN
HB 324 BE CONCURRED IN

{Tape: 1; Side: A; Approx. Counter: 56.5}

HEARING ON HB 316

Opening Statement by Sponsor:

REP. DAN HARRINGTON, House District 38, Butte, stated HB 316 was a result of the study of retirement systems performed during the previous interim. He explained the bill provided for purchase of actuarial cost of a membership service certain services performed out of state private teaching service employment while on leave or time spent in injury related leave. A person could buy up to five years if they had been teaching at a private school or

teaching out of state. **REP. HARRINGTON** added the legislation was actuarially sound and would cost the retirement system nothing.

Proponents' Testimony:

John Malee, Montana Federation of Teachers, stated prior to 1989, the same opportunity was given to teachers to buy five years in private schools and out-of-state employment, etc. He expressed the Federation believed HB 316 was appropriate. He added the only cost to the retirement system would be the administrative costs to implement the computerized system.

Phil Campbell, Montana Education Association, stated the Association wanted to go on record in support of the legislation, and reiterated HB 316 carried no cost to the retirement system.

David Senn, Teachers' Retirement Board, presented and paraphrased his written testimony (**EXHIBIT 1**).

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. MIKE FOSTER referred to Exhibit and asked if "service while on leave" would apply to a teacher who was granted a one year leave of absence by the School Board. **Mr. Senn** replied HB 316 would apply in that situation. He added House Bill 316 would apply anytime a contributing member had a break in service.

SEN. DON HARGROVE questioned if there would be additional costs to the retirement system based on the number of people who would take advantage of the benefit. He noted HB 316 may result in more people in the retirement system than there would be without HB 316 and wondered if there would be an increase in the administrative maintenance due to the increase in the number of members in the retirement system. **Mr. Senn** clarified there would not be an increase in the number of members; HB 316 would only apply to members who had at least 5 years of credible service in the system. **SEN. HARGROVE** stated the affect of HB 316 would be members retiring after 25 years of service instead of 30 years service; wouldn't that cause an aggregate increase. **Mr. Senn** agreed there would probably be more people retiring because they could purchase additional services and that would cause some additional administrative effort in calculating the cost and checking for eligibility. However, there would not be increase in workload. The only effect would be there would be no decrease in 20 years as there would have been without HB 316.

SEN. MACK COLE asked what type of people would be purchasing the benefit and what would be their advantage in doing so. **Mr. Senn** replied currently people who were nearing retirement were looking

at how they could maximize their retirement to obtain the best benefit for their investment. He added people that were considering transferring to Montana were looking for benefits in the system which would credit them for their out of state experience. **SEN. COLE** asked how many people would take advantage of the provisions in HB 316. **Mr. Senn** explained at any given time the Department had about 10% of the membership applying to purchase additional services.

Closing by Sponsor:

REP. HARRINGTON stressed HB 316 was actuarially sound and any member taking advantage of the provisions in HB 316 would bear the cost.

HEARING ON HB 324

Opening Statement by Sponsor:

REP. DICK SIMPKINS, House District 49, Great Falls, stated HB 324 would standardize retirement systems with no additional cost to the systems. He distributed (EXHIBIT 2).

Proponents' Testimony:

Tom Schneider, Montana Public Employees Association, stated the interim committee which studied the retirement system was charged with setting up a system of equality. He explained HB 324 was necessary because some agencies have people who belong to PERS and have the availability of buying one for five benefits while some agencies employees belong to different retirement systems which do not provide the one for five benefit. House Bill 324 required all retirement systems to provide the availability of one for five benefits. He added HB 324 was actuarially sound.

Linda King, Public Employees Retirement Division, Administrator, expressed the Division's support of HB 324. She reiterated the bill was actuarially sound because the cost would be borne by the members wishing to purchase the benefit, not the retirement system.

Opponents' Testimony: None.

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. SIMPKINS closed without further comment.

HEARING ON HB 325Opening Statement by Sponsor:

REP. DICK SIMPKINS, House District 49, Great Falls, handed out a summary sheet prepared by the interim committee on retirement systems (EXHIBIT 3). He explained HB 325 was a housekeeping bill for all retirement systems. He read the proposal summary on Exhibit 3 and related it to the correlating section of the bill. He asked the Committee members to pay particular attention to the statement of intent.

Proponents' Testimony:

Linda King, Administrator Public Employees Retirement Division, handed out EXHIBITS 4 & 5. She paraphrased EXHIBIT 5.

Art Whitney, President of the Association of Montana Retired Public Employees, read his written testimony (EXHIBIT 6).

Jim Smith, Montana Sheriff's and Peace Officers Association, conveyed to the Committee that members of his organization attended and participated in the meetings of the interim committee on retirement and supported HB 325.

Dean Riggin, State Fireman's Association, expressed support of HB 325 and agreed with the previous testimony.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. JEFF WELDON referred to the issue of venue and referred to Representative Simpkins' comments regarding the one or two appeals of the administrative decision of the Board. He asked what venue had been selected in those cases. Ms. King reported to her knowledge there had not been an administrative appeal filed outside of the First Judicial District. The provision for venue had been requested by the attorney for the system because he believed it should be in the statute. SEN. WELDON speculated that Ms. King's Department did not anticipate an administrative appeal of that nature being affected by the decision. Ms. King replied that was correct, but the provision would preclude the possibility of someone wanting to do it in the future.

SEN. WELDON asked what sort of mailings would be allowed under HB 325. Ms. King replied the Department could put ads in their newsletters or send mailings for organizations which met the terms of HB 325. Organizations which would be considered would have to have a tax exempt status from the federal government, be

non-profit, and possess information potentially beneficial to retirees. The Department would not consider any organization that wished to target senior citizens as potential customers or influence them politically.

SEN. BOB PIPINICH asked if HB 325 passed would the Department be selling the names on the mailing list. **Ms. King** stated no one would have access to the mailing list. She explained the Department would approve the materials to be mailed, the organization would provide the materials to the Department, and the Department would address the materials and mail them. She added any retiree who did not want to be included in the mailings could notify the Department and would then no longer receive the mailings.

SEN. FOSTER asked Linda King for clarification on the mailing process and that the actual lists of names would not be made available to other organizations. **Ms. King** said that is correct.

Closing by Sponsor:

REP. SIMPKINS drew the Committee's attention to Page 2, line 15, and the statement of intent which reads "participants are neither deprived of their right of privacy concerning confidential information nor inundated with excessive mailings of commercial interests, individual political candidates and ballot issues, or other specific political issues." He believes the Board will stay within that intent.

{Tape: 1; Side: B; Approx. Counter: 15.4}

Discussion: **Secretary Gail Moser** explained there seemed to be some confusion regarding the Executive Action taken on HB 319 during the February 28, 1995, meeting. She clarified

SEN. WELDON'S motion to amend from two ballots to four ballots carried 4-3 on roll call vote but **SEN. VIVIAN BROOKE** had not been present. **SEN. BROOKE'S** vote could have caused the motion to fail. **Ms. Moser** reported **SEN. BROOKE** had later notified her of a YES vote on the amendment and HB 319.

Mr. Niss explained the Committee had voted for four amendments to HB 63. The Standing Committee Report, however, showed five amendments. **Mr. Niss** explained that five amendments had been necessary to amend another part of the bill to reflect the concept amendment proposed by Senator Foster.

EXECUTIVE ACTION ON HB 316

Motion: SEN. PIPINICH moved that HB 316 BE CONCURRED IN.

Discussion: SEN. WELDON noted there was a cost of \$3,600 to enhance the computer that would be necessary to implement HB 316.

Vote: The MOTION CARRIED UNANIMOUSLY on oral vote.
SEN. LYNCH will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 324

Motion/Vote: SEN. KEN MESAROS moved that HB 324 BE CONCURRED IN.
The MOTION CARRIED UNANIMOUSLY on oral vote.
SEN. MESAROS will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: 11:10 a.m.



SENATOR ETHEL HARDING, Chairman



GAIL MOSER, Secretary



TINA PRICE, Transcriber

EMH/gem/tp

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE _____

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[illegible]

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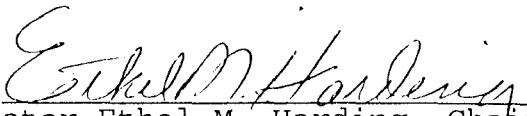
SENATE STANDING COMMITTEE REPORT


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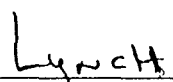
MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 316 (third reading copy -- blue), respectfully report that HB '316 be concurred in.

Signed:


Senator Ethel M. Harding, Chair


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

481130SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 1, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 324 (third reading copy -- blue), respectfully report that HB 324 be concurred in.

Signed: Ethel M. Harding
Senator Ethel M. Harding, Chair

PN Amd. Coord.

SN Sec. of Senate

MESAROS
Senator Carrying Bill

481131SC.SPV

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

AGE AT PURCHASE	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.



Committee on Public Employee Retirement Systems

53rd Montana Legislature

Room 138 State Capitol
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THOMAS A. BECK
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BOB HOCKETT

HOUSE MEMBERS

JERRY L. DRISCOLL
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RICHARD D. SIMPKINS

COMMITTEE STAFF

SHERI HEFFELFINGER
RESEARCHER
DAVID NISS
ATTORNEY

HB 324
REPORT ON LC 936

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 03-01-95

BILL NO. HB 324

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

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

53rd Montana Legislature

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RESEARCHER
DAVID NISS
ATTORNEY

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 03-01-95

BILL NO. HB 325

HB 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.

- 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 use 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)

HB 325**BILL ANALYSIS**

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

Purpose of bill: 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.

I. Designating 1st Judicial District for judicial review of final administrative decisions of the Board.

Purpose: 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.

Financial Impact: 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.

Interested Persons and Their Positions: 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.

2. Prohibiting independent contractors from being members of the PERS

Purpose: 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.

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

Prior Legislative History: 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.

Examples of Harm: 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.

Interested Persons and Their Positions: 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

Purpose: 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.

Alternatives to Legislation: 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.

Financial Impact: 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

Purpose: 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: ?

Alternatives to Legislation: 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.

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.

Problems with October 1 Effective Date 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.

Purpose: 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.

Alternatives to Legislation: 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.

Financial Impact: 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.

Prior Legislative History: 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

Purpose: 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.

Examples of Harm: 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: ?

Problems with October 1 Effective Date: 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.

Purpose: 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 to 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.

Financial Impact: 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.

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.

Prior Legislative History: 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.

Examples of Harm: 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.

Purpose: 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.

Alternatives to Legislation: 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.

Financial Impact: 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.

Prior Legislative History: 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.

9. Providing a mechanism for transferring members contributions directly between the various public pension plans in Title 19.

Purpose: To eliminate the negative tax consequences incurred when members receive a refund of tax-deferred contributions.

Pro and Cons

Pros: Allows transfer of total member contributions (without tax penalty) for persons who become members of another of Montana's public systems

Maintains the qualified plan status of the Montana plans under the IRS code

Cons: Reduces federal tax collections slightly

Alternatives to Legislation: Maintain the current requirement that members must withdraw their total contributions from one system prior to being eligible to qualify the service into another Montana public system. The previously tax-deferred portions of the refund will be subject to a 10% federal tax penalty and 20% federal tax withholding. This reduces the amount of contributions which a member has to transfer into the new system, requiring either additional out-of-pocket expenditures or the qualification of less service into the new system.

Financial Impact: Members will not be required to pay federal taxes on transfers.

Prior Legislative History: Interest on members contributions has always been tax deferred due to the qualified plan status of the Montana public systems. Member contributions became tax-deferred beginning in 1985 for most systems.

Additional FTE's: None.

Examples of Harm: Without a means of transferring contributions as well as service between systems, members will not be able to retire with full credit for their public service.

TESTIMONY IN SUPPORT OF
HB 325

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 02-01-95

BILL NO. 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.
- **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 American 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 and 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.
- **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.

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 03-01-95

BILL NO. HB325

NAME ART WHITNEY

ADDRESS 2010 JEROME

HOME PHONE 443-2939 WORK PHONE SAME

REPRESENTING Assoc Nat Retired Public Employees

APPEARING ON WHICH PROPOSAL? HB-325

DO YOU: SUPPORT X OPPOSE AMEND

COMMENTS:

AMRPE Supports HB-325 because
it represents good government and
will be beneficial both to the
Public Employees Retirement Board and
to Retirees in the Public Employees Retirement
System.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE WED 83-01-25

SENATE COMMITTEE ON STATE ADMINISTRATION

BILLS BEING HEARD TODAY: HB316 / HB324 / HB325

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Tom Schneider</i>	<i>MP&A</i>	<i>HB324 325</i>	<i>X</i>	
<i>W. Whitney</i>	<i>AMRPE</i>	<i>HB325</i>	<i>X</i>	
<i>Linda King</i>	<i>PERD</i>	<i>HB324 + 325</i>	<i>✓</i>	
<i>John MALEE</i>	<i>M.F.T.</i>	<i>316</i>	<i>X</i>	
<i>DEAN RIGGIN</i>	<i>MSFA</i>	<i>325</i>	<i>X</i>	
<i>Phil Campbell</i>	<i>MEA</i>	<i>HB316</i>	<i>X</i>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY