

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on February 4, 1997, at 10:00 a.m., in Room 331

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 36, 1/31/97; HB 96, 1/31/97
Executive Action: HB 36 BCI; HB 96 BCI;
SR 2 ADOPT; SR 3 ADOPT

HEARING ON HB 96

Sponsor: REP. ROYAL JOHNSON, HD 10, BILLINGS

Proponents: Mark Cress, Administrator, State Personnel
Division, Department of Administration
James Penner, Investment Officer, Montana Board of
Investments, Department of Commerce
Sam Prestipino, State Employee

Opponents: None

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 10, BILLINGS, reported that there was a very long hearing in the House on this bill, but it did not have anything to do with what the bill tries to do, that it had to do with how notice was given to those people who will be affected by

this legislation. He stated that he has no quarrel with the people who said notice was not properly given, but he does not give notices, and that would have to be worked out somewhere other than in this bill. He indicated that HB 96 will give more flexibility and options for people employed by the State of Montana, and he believes they should be able to do that for them. He pointed out that, although the Committee will hear technical testimony, it boils down to the fact that, currently, the Plan has one provider who does the administration of the fund, that another provider does part of the investments, and participants have to stay in the investment portfolio offered by that provider, and they would like to change administrators of the Deferred Compensation Plan. He then referred the Committee's attention to item # 7 of the Fiscal Note, (**EXHIBIT 1**) and pointed out that it reflects savings in excess of \$314,000 in the first year, increasing in the second year, and indicated that they reviewed the administration of that Plan, noting that they are charged with doing the best job they can for employees of the State of Montana, and this is a savings in the administration.

He reported that the administration will be able to look at the mutual fund market (he displayed a copy of the Sunday, January 26, 1997 *Helena Independent Record*), and have the opportunity to look at a great many mutual fund options. He indicated that they would look to those people who rate mutual funds by appreciation, safety, investments, etc., and give employees a whole new set of options. He reported that there are currently 35 funds, which will be reduced to 20 funds selected by people who review funds all the time, throughout the United States, that they will pick out the top performing funds in each division, giving those options to employees, and offering their assistance. He stated that he thinks it is a real advantage, that representatives of the Board of Investments can report how well their investments have performed, and this will expand the investment options for participants. He added that the choices will be narrowed down to the best, that almost every private pension plan has exactly the same options, and people who work for the State should have the same options as everyone else in the country. He remarked that he thinks this is a great way to go, and it was far-sighted of the administration to offer this opportunity. He asked that the Committee not get tied into how participants were notified, that it was published in the State Bulletin and the options were explained, noting that they want to do a better job and let people know what they are getting and how, and what their choices are, adding that it seems to be a real progressive idea and he hopes the Committee will consider it.

Proponents' Testimony:

Mark Cress, Administrator, State Personnel Division, Department of Administration, reported that they have responsibility for administration of the State's Deferred Compensation Plan, and that they do that in conjunction with the State Employee Group Benefits Advisory Council, who advises them on the letting of

contracts. He indicated that they administer contracts, that the Plan is provided through product vendors, and those contracts expired December 31, 1996, that they were in the process, through last year, of re-bidding those and hiring new vendors, and their plans are that those vendors will take over administration of the Plan April 1, 1997. He added that they would like to give the Plan this flexibility as part of that conversion. He stated that the Deferred Compensation Plan is under Section 457 of the Internal Revenue Code, and is essentially the only option that state governments have, that they are excluded from 401K's that many private employers offer, but pointed out this is similar to those kind of plans. He added that, as part of the Plan, they offer a selection of mutual funds and, on page 2, line 11 of the bill, existing statutory language sets out the instruments available for investment options, which includes a variable annuity contract with an insurance company. He stated that this is the single way they can offer mutual funds, that Nationwide Insurance Company provides a selection of mutual funds, and they purchased that variable annuity product, which has 38 mutual funds. He noted that not all are good mutual funds, that some perform well, and they pay Nationwide 95 basis points on the assets for that contract. He referred to page 2, lines 13-18 of the bill, and reported that this will allow them to deal directly with the mutual funds and avoid that 95 basis point fee, which is nearly 1% of assets, or at least the majority of that fee, and that it appears, given the amount of assets they currently have, that they can get some expenses refunded from those mutual funds, if they can deal with them directly. He pointed out that the biggest advantage is the reduction of fees, and another advantage is that they would be allowed to select the best mutual funds, that they would consult with investment experts from the Board of Investments, and their vendors, to pick the best performing mutual funds. He added that there probably would not be as many choices as there are now, that currently there are 35 to 38, and they are talking about reducing that to 20, but indicated that they believe, in the current 38, there are probably 10-12 good choices, and they would like to have 20 good choices, plus eliminate the 95 basis point fee that participants currently pay. He reported that all of the expenses of this program are paid out of the participants' fund, and there is no other State money involved in supporting the program.

Mr. Cress referred to the language on page 2, lines 23-25, which provides that the assets in the fund be set up in a trust or custodial account for the sole benefit of participants and their beneficiaries, noting that this is how it is currently handled, but the law says those assets are property of the State, subject to the State's creditors, explaining that this is what Federal law used to require, but that the Pension Simplification Act changed that law, and they have to have this language in place by January 1, 1999. He urged the Committee's support of HB 96, stating that it allows them to make definite improvements in the Plan for employees, particularly as the Plan grows in the future.

James Penner, Chief Investment Officer, Montana Board of Investments, Department of Commerce, reported that he is a State employee, a participant in the Deferred Compensation Program, and also serves on the Advisory Council referred to by **Mr. Cress**. He added that he has 29 years of investment experience, he is a chartered financial analyst and, in the last 8 1/2 years, has served as Chief Investment Officer for the Montana Board of Investments. He pointed out that the Committee has heard about the bill's objective to reduce fees, noting that 95 basis points is almost 1%, and explained that, if an employee has \$10,000, that is a savings of \$95 per year, adding that there are a lot of employees in the Deferred Compensation Plan who have \$10,000. He indicated that it allows them to bypass the intermediary, which is the insurance company, and go directly to the mutual fund. He reported that, currently, Nationwide Insurance Company is the provider and tells them the 36 funds they can use, that there is no input from participants, the Board of Investments, or other outside investors in those 36 choices. He reiterated that there are approximately 4,000 mutual funds to choose from, and this bill will allow them to look at all 4,000, that it will allow the participants to have some input, and allow them to use the new vendor and the Board of Investments, as well as Morning Star, which is a rating service for mutual funds, to look at it, and narrow it down to 20 best choices, based on some criteria. He indicated that they will look at how much risk a mutual fund has, using what is called a "Sharp Ratio", which is an accepted industry standard for measuring risk, and they will also look at returns, not just over the last three months, but performance over a period of time. He added that they will use Morning Star, and look at the portfolio management, at how long the manager has been there, and they will also look at current participation and, if a fund is currently being used by participants, that fund will be given preference, as long as it is performing well. He added that the 20 choices will ultimately be reviewed by the Advisory Council, based on fiduciary standards and an analysis of risk and return. **Mr. Penner** then pointed out that this bill will not make everyone happy, that there will be participants whose favorite fund will not be among those 20 chosen, noting that this is true of the 36 they currently offer. He added that this bill will also not eliminate all of the fees, only the 95 basis points, and that it will not provide unlimited choices. He reiterated that there will be no cost to the State, and there will be a significant savings to participants, approximately \$300,000 a year, spread among the participants. He urged the Committee's support of the bill.

Sam Prestipino, State Employee, indicated that he is a substantial participant, that he is looking very closely at deferred compensation as a retirement supplement to his State retirement, and other things, and it is essential that he get the best return for his investment. He reported that, at nearly \$100 in basis points on \$10,000, he is paying hundreds of dollars per year in fees, and elimination of those fees would satisfy him greatly because he would have a greater return. He added that,

by not being under the auspices of Nationwide Insurance, noting that the 36 mutual funds now offered are their selection, not the participants', he would certainly be more interested in 20 funds with a greater return and, regardless of whether or not he has one now, he would be very interested in going for the top performing funds. He pointed out that anyone in the investment business, whether in a personal IRA or in a deferred compensation plan, if they have an allocation strategy, is not going to put all of their money at 7% in a fixed account, that they will vary it between stocks, bonds, etc. He reported that a bond fund through Nationwide reported earnings of only .5% for all of 1996, and pointed out that, if he had invested 25% of his money in bonds, that is not a very good return, and certainly not one that would keep up with inflation, noting that there is a lot of better stuff out there. He pointed out that, by the Board of Investments and the State fund selecting better funds, he will have the opportunity to participate in a bond fund that will do much better.

With regard to notification, he stated that he works at the Department of Transportation, and has for about 12 years, and that he received the benefits newsletter in the spring, in which he was notified that they had a consultant. He stated that he agrees with the recommendations to get out from under the auspices of Nationwide, to diversify, and give the participants some options because, obviously, it will ultimately be to his benefit because he will make more money. He indicated that he also received a detailed benefits bulletin in the fall, which explained the proposed changes and gave him an opportunity to respond. He added that he called the benefits bureau, that an informational briefing was held at the Department of Transportation in January and he attended that briefing, so he thinks he is well-informed on what will happen with this legislation. He noted that, since that \$314,000 is partially money out of his pocket, he would strongly urge the Committee to support this legislation.

Questions From Committee Members and Responses:

SEN. DELWYN GAGE asked **REP. JOHNSON** if "state or political subdivisions" is refers to counties, and those types of groups, and if they will participate in this as well, noting that testimony only referred to State employees.

REP. JOHNSON responded that State employees are already covered by this, but this will allow county and municipal employees to participate as well, adding that they should have the same benefits and opportunities as everyone else.

SEN. GAGE pointed out that current law includes them, and asked if they are participating under current law. **REP. JOHNSON** answered that there are none participating at this time.

Mr. Cress responded that most cities and counties have their own deferred compensation plans, that this would not change their plans, but would give them the ability to participate in this.

SEN. GAGE asked if "department" refers to the Department of Administration. **Mr. Cress** replied yes.

SEN. GAGE asked **Mr. Penner** if, in evaluation of risk, and the kind of mutual funds, they look how much they have in the different specialized areas.

Mr. Penner responded that they have broken the investment universe down into eight categories, which include bond funds, a balanced or blended fund, which is some bonds and some stocks, aggressive stocks, a social responsibility category, and an aggressive growth and a more conservative, or large cap, but that it is not broken down by industry. He added that the volatility or risk is what Morning Star evaluates, that the size of their "bets" is a major factor in the volatility or risk of a particular fund.

CHAIRMAN DON HARGROVE noted that he appreciates all of the information about risk factors and the 20 versus 36, and asked **Mr. Cress** if all this bill does is allow the Board of Investments to deal in mutual funds and investment funds.

Mr. Cress responded that the Board of Investments supports the Department of Administration in establishing these contracts, that it gives them the flexibility to deal directly with the mutual funds.

CHAIRMAN HARGROVE asked if how that is done, whether they use ten funds or a thousand funds, is not really affected by this bill. **Mr. Cress** answered that is correct.

CHAIRMAN HARGROVE referred to testimony that the State can not participate in 401K funds, and asked **Mr. Cress** why that is.

Mr. Cress responded that the Internal Revenue Code restricts participation of State governments in tax deferred plans to these 457 plans, which are similar to 401Ks, but have a different set of regulations and limits, differing slightly from 401Ks.

CHAIRMAN HARGROVE asked why that is. **Mr. Cress** replied that he is not sure he knows the answer to that.

CHAIRMAN HARGROVE asked if this is voluntary participation by each individual.

Mr. Cress responded yes, that is correct, that they make their own election as to whether they want to defer any of their salary into this fund, and can choose the investment options they want to go into.

CHAIRMAN HARGROVE asked if there is a point of diminishing returns where they have to have a certain number of participants to make this worthwhile, and if that is part of their analysis.

Mr. Cress replied yes, adding that, currently, about 4,200 State employees are actively deferring, and about 6,000 have accounts, and there are approximately \$125 million in assets held in accounts. He pointed out that one issue in the Nationwide Variable Annuity contract was that there are some funds that have very few participants, and hardly any money, and it would be nice to provide a fund that more people would participate in.

SEN. GAGE referred to line 21, page 1, which states that the total deferred can not exceed their annual salary, and can not exceed the amount permitted under the IRS codes. He asked **Mr. Cress** to tell the Committee about the Internal Revenue Code limit.

Mr. Cress answered that, under 457 plans, they are limited to \$7,500 a year, or one-third of their total compensation, whichever is less, noting that one-third comes to about 25% of their salary. He added that the new Pension Simplification Act, passed by Congress this fall, allows that to be indexed, and they expect that it may go up starting, perhaps, in 1998.

Closing by Sponsor:

REP. JOHNSON stated that he thinks this bill does something that they truly want to do for State employees, that it is a voluntary plan, it will help their retirement, and will also help the State take care of those retirements. He pointed out that, although not discussed, there are two options to use fixed income. He referred to testimony that a bond fund had a terrible year, and reported that most investments had a pretty good year. He added that it is his understanding **Mr. Cress** spoke to **SEN. FRED THOMAS** about this bill, and is sure that he would be very capable in carrying it.

{Tape: 1; Side: A; Approx. Time: 10:29 a.m.; Comments: None.}

HEARING ON HB 36

Sponsor: REP. DAVID EWER, HD 53, HELENA

Proponents: Carroll South, Executive Director, Board of Investments

Opponents: None

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, HELENA, reported that he is the Senior Bond Program Officer for the Board of Investments, but that he wants to make it clear that this bill is brought at the request

of the Department of Commerce, and specifically pertains to the Board of Investments, but does not affect anything he personally does in his role as Senior Bond Program Officer for the Board of Investments. He indicated that he does the municipal finance programs for the Board, and this bill affects the investment side of the Board of Investments, adding that **Carroll South, Executive Director, Board of Investments** and **James Penner, Chief Investment Officer, Board of Investments** are in attendance today.

REP. EWER stated that the Board of Investments is charged with the fiduciary responsibility of investing most of the State's money, including all of the State's various pension programs. He explained that, as part of the mix of assets, some are real estate, and they are seeking clarification that the Board not only has the clear authority to buy real estate assets, but it has the clear authority to sell them. He stated that he does not think this issue would have come up, if not for the fact that State government acquires real property assets. He indicated that there have been some interesting discussions and debates on other issues versus the Land Board, which is a very separate phenomena from the Board of Investments, that the Board of Investments, in its fiduciary role, has the right and responsibility to look at investments such as real estate. He noted that there are essentially only two changes, and referred to page 2 of the bill, "the board may execute deeds of conveyance transferring real property obtained through investments. Prior to transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser." He indicated that most of the Board's investments in real estate is as a secondary market, that he is aware of only one direct equity investment as far as real estate, adding that this is very different than other investments that the State makes, and he thinks this is well-directed.

REP. EWER pointed out that the House Committee made one change to make sure that, before there is a transfer of equity or real estate directly held by the Board of Investments, the Board shall obtain an appraisal by a qualified appraiser. He indicated that he did not fight that amendment, that he did not think it was necessary, and will not ask this Committee to remove it, as the Board is comfortable with it. He pointed out that the Board of Investments has been given, by the Legislature, the authority to invest monies under the Prudent Expert Rule, and that this is a more liberal standing, because of it's expertise, than the Prudent Man Rule, which requires an individual to invest as if it were that person's own assets, arms-length, prudently, as they would do with their own money. He explained that the Prudent Expert Rule is a different standard, and says not only can they make prudent decisions but, because of their expertise, they can make decisions that the "prudent man" is really not qualified to make, so the Board has been charged with and given the authority to invest under the Prudent Expert Rule. He added that this bill clarifies that, not only can they purchase, but they can also sell, subject to the provisions of this bill.

Proponents' Testimony:

Carroll South, Executive Director, Board of Investments, distributed copies of a memorandum (EXHIBIT 2), and explained that he wrote this memorandum to Dave Lewis, Director, Office of Budget and Program Planning, shortly after they discovered what they considered to be a fairly serious problem in State law. He stated that this is the second attempt to fix a problem resulting from a 1976 Attorney General's opinion, "Arguably, if the Board of Investments has the authority to invest in first mortgages, that it should also have, by implication, the authority to foreclose and dispose of the real property involved, including the authority to execute a deed of conveyance. However, no such specific authority exists, therefore, once title to real property passes to the State of Montana, its administration, control and subsequent disposition comes under the direction and supervision of the Board of Land Commissioners." He reported that, in 1997, (Mr. South misstated the year, and has confirmed that he meant 1977) the Legislature attempted to address this problem and solve it, and the Board of Investments has been operating under the philosophy that it was but, when they researched the law very carefully last summer, they discovered that the authority for the Board of Investments to sell property it forecloses on relates only to mortgages it purchases from the Board of Housing. He stated that, to the best of his knowledge, the Board of Investments has never purchased any mortgages from the Board of Housing, but that it does have a very large mortgage portfolio, approximately \$165 million, nearly 3,000 mortgages it owns in the State of Montana. He indicated that, over the last 20 years, the Board has foreclosed on property, and sold the property, thinking they had clear legal authority to do so. He added that this legislation is an attempt to make it clear that, when the Board of Investments forecloses on a mortgage it holds, it also has the authority to sell that property and does not have to go through the Board of Land Commissioners. He pointed out that the bill amends not only the investment portion of State law under Title 17, but also amends two sections of law relative to the Land Board, which is necessary because, in the description of State land, land acquired by the Board of Investments has to be excluded. He indicated that, to avoid the problem that occurred in the House, the Board of Regents is also mentioned in the State land section of law, noting that the Committee is probably aware of the dispute the Board of Regents is having with the Land Board, and stated that this bill does not impact that in any way, explaining that existing law provides an exclusion for the Board of Regents, which is somewhat in dispute at this point in time. He pointed out that, more importantly, the Board has just recently acquired, for investment purposes, the outright acquisition of a building, noting that, once the Board begins to deal in equity real estate with an outright purchase, it becomes critical that the Board have the authority to dispose of that in the same way that it would dispose of a stock or a bond for strategic investment purposes. He stated that, obviously, the Land Board supports this legislation, the Governor authorized it,

and he is the Chairman of the Board, and that they would ask the Committee's support.

Questions From Committee Members and Responses:

SEN. FRED THOMAS asked **Mr. South** if this will clarify in law something that is not allowed by the Constitution.

Mr. South answered no. He referred to page 2, subsection (5)(c), and pointed out that existing law spells out the primary authority of the Board of Investments, adding that the law clearly states that the Board is to determine the type of investments to be made. He reported that they have legal opinions to the extent that the Board of Investments can make any kind of investments which are not precluded by the Constitution, or by State law, noting that there are preclusions in State law relative to investing any funds, other than pensions and equities. He stated that, to the extent that law prevents them from making certain kinds of investments, they would not do it, but indicated that they believe the broad authority allows them to make any kind of investments not precluded by the Constitution or law.

SEN. THOMAS indicated that the reason for the law is that the investment has become real estate, is real estate, or they got real estate back by default, and this is trying to clarify that they can sell that land. He pointed out that the question is, does the Constitution allow this? He asked if it has become something other than an investment, as in real estate to the State, pointing out that, if the State's assets are invested and become real estate owned by the State, this would clarify that they can sell that real estate without going through the State Land Board.

Mr. South confirmed that is correct, and then stated that, particularly as it relates to pensions, which are the funds that participate in these kinds of investments, the State Constitution was recently amended to "build a bridge" around the State pension plans, to say they are not State funds, and the State can not mess with or tamper with those in any way so, to say that a building purchased by the Board for investment is State property, really stretches the legal interpretation of that, because, essentially, it is not. He noted that, if it was, the Legislature could take the building and sell it.

SEN. THOMAS asked if these investments are just in the pension funds, or all the funds of the State, as mentioned by **REP. EWER**.

Mr. South stated that is true, that the Board of Investments has the authority to invest all funds of the State, unless law provides otherwise. He indicated that, currently, the law provides for the Science and Technology Board to invest \$23.6 million of the Coal Trust but, other than that, the Board has to invest all State funds, and all State funds are fully invested.

He added that, if they are not invested in stocks and bonds, they are invested in mortgages and, currently, the two large pensions, which total more than \$3 billion, purchase the mortgages. He noted that those pensions also purchased the building the Board recently purchased.

SEN. THOMAS then asked **Mr. South** if no mortgages are vested with other than pension funds.

Mr. South responded that is correct, and then clarified that they have an in-state investment program operated with the permanent Coal Tax Trust, that the Legislature authorizes them to invest 25% of that fund in Montana investments to spur the economy. He noted that, in the course of making those investments, they accept mortgages as collateral but, in that instance, they are not acting alone, that they can only lend money to businesses in participation with banks up to 80% so, if the building used as collateral is foreclosed, technically, they only have 80% of it and the bank has the other 20%. He added that the mortgages owned by the pensions are 100% owned, that, in many cases, they are backed by a Federal agency and, if they foreclose, the Federal agency just pays them off.

SEN. GAGE indicated that, for any particular real estate investment, he would assume they do not pool funds, asking if they are identified by a particular fund.

Mr. South explained that pension mortgages are 55-45, that the building they purchased was 50-50, with the Teachers Retirement and the PERS.

SEN. GAGE asked about the distribution of profit or loss. **Mr. South** replied it is a prorata share.

SEN. GAGE asked if they have any need for an effective date other than October 1st. **Mr. South** indicated that October 1st is fine.

SEN. VIVIAN BROOKE asked **Mr. South** if he has found that purchasing mortgages or, in this case, purchasing buildings is a direction they might be emphasizing more than stocks and bonds.

Mr. South responded that, if Montana's pensions were compared to large pensions in other states, their equity real estate is nothing. He reported that the building they purchased was the IBM building in Helena, that it was purchased from an out-of-state corporation at \$4.8 million which, at the time of the purchase, was .17% of the assets of their large equity real estate holdings.

{Tape: 1; Side: A; Approx. Time: 10:44 a.m.; Comments: End of Tape 1, Side A.}

He stated that their policy is to be very selective, to stay in Montana and, if an investment-grade building comes up that will

yield at least 8% or more, which is the actuary requirement of the pensions, to look at it, noting that they have, with other buildings, but this is the only one they have purchased.

SEN. THOMAS indicated that his only concern is that, with the Land Board and the University System, and the problems that have arisen, he does not want them to clarify something and take the wrong path and, fifteen years later, people want to know why they did not do that right. He stated that he wants to make sure that they have no problems, or they do not feel there are any problems.

Mr. South explained that the IBM building, because it was purchased by pensions, belongs to the participants under Federal law, and under the State Constitution, that it does not belong to the State of Montana, noting that is a little more ambiguous with the Board of Regents.

Closing by Sponsor:

REP. EWER pointed out that they touched on a lot of issues, and stated that it should be acknowledged that the Board has a lot of portfolios, that they have written policies on those, but there is nothing to prevent the Board from changing the policies or making investments, unless they are Constitutionally prohibited, reiterating that the Board operates on the Prudent Expert Rule, that it would make no sense for the Board to take State money and invest it in real estate, that it would be very foolish. He stated that there is an element of trust that he thinks the Board deserves with its staff, and they have already shown that with the Prudent Expert Rule, noting that they have raised very important issues and, given the debacle with Fort Missoula, he thinks there is a heightened sense of sensitivity with the Board staff.

EXECUTIVE ACTION ON SR 3

Amendments: None

Motion/Vote: **SEN. BROOKE** moved that SR3 BE ADOPTED. The motion CARRIED UNANIMOUSLY.

COMMITTEE DISCUSSION

There was discussion among the Committee members regarding what bills are ready for executive action. **David Niss** reported that he needs to discuss HB 123 with **SEN. GAGE** before the Committee takes executive action.

CHAIRMAN HARGROVE indicated that **Rick Day, Director, Department of Corrections** will provide information for the Committee's review before the Committee considers executive action on SR 14.

EXECUTIVE ACTION ON HB 96

Amendments: None

Motion/Vote: SEN. GAGE moved that HB 96 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY. SEN. THOMAS will carry HB 96.

EXECUTIVE ACTION ON HB 36

Motion: SEN. THOMAS moved that HB 36 BE CONCURRED IN.

Discussion:

CHAIRMAN HARGROVE referred to the memorandum from Mr. South to Mr. Lewis, noting that a good point was made on the land, but that he thinks the distinction is that it is never really public land, whereas, what the Regents deal with probably always is.

SEN. THOMAS indicated that he thinks they probably get close, and this is an area they are going to have to watch, adding that the Constitution is unspecific, that it is kind of broad.

SEN. BROOKE indicated that it was her understanding they only use retirement pension funds for this.

SEN. THOMAS explained that testimony was that, only in the pension funds do they invest 100% on these mortgages and, whereas they invest the Coal Permanent Trust Fund, that is State assets and, if they do the same thing there, they have acquired real estate property, that the State may become the owner of the property through a default. He added, if that happens, on the loans that they can make out of that fund, they only participate up to 80%, and are not completely the owner. He noted that he thinks the reality of what they are doing is fine, that it is the theory of having a problem that is potentially there, and they will have to watch what they do.

Vote: The motion that HB 36 BE CONCURRED IN CARRIED UNANIMOUSLY. SEN. THOMAS will carry HB 36.

EXECUTIVE ACTION ON SR 2

Motion: SEN. THOMAS moved that SR 2 BE ADOPTED

Discussion:

SEN. THOMAS pointed out that, in the long-run, the Committee may want to consider what the opponents of the bill opposed, which is one of the concerns he has, that, when the Federal government comes due to "pay the piper" on all the Social Security funds they have borrowed, and there is a need to repay at least a part of those monies, versus defaulting on them and throwing the

economy into some sort of a gigantic problem, they are going to have to look at assets, and the bulk of the assets most of us can identify is general lands held by the Federal government West of the Mississippi. He pointed out that opponents were fearful of land being sold, and indicated that he thinks it would be safer to have this land in our hands than the Federal government's hands, that we are a debt-free state, as probably all other states are, but the Federal government is not debt-free, that it is in up to its eyeballs and that, to protect this land that we talk about treasuring, he thinks it would be in far greater hands here than there. He noted that they talk, in Washington, D. C., about balancing the budget, but they should talk about creating a surplus so there is money to pay off these borrowed monies, although that is not really going to happen, and he asked what are they going to do. He stated that, if there is a fear about selling land, it is surely by someone who owes tons of money to someone else, it is not by someone that does not owe money to other people. He stated that this is not going to happen, probably, not in our lifetime, noting that he thinks there is some theory that not only is based on the past, but on the future, and the future is that a debtor owns this land, a debtor controls this land now.

CHAIRMAN HARGROVE remarked that is fascinating, that he has never heard that argument before, and it makes a lot of sense. He stated that his concern is that, in the last session, there was a bill to make it possible to sell State land in Daniels County, that the Senate talked about it for five minutes, and they did it. He stated that it scared him, noting that it must have failed in the House, and commented "Boy, just all of a sudden, one late evening, and we were starting to sell off State land", which is his great concern. He indicated that, in fact, Daniels County is unique enough and, although he voted against it, he can certainly see a good rationale that maybe thinking people would do that, and not just look at the macro reasons for opposition. He said that he had never really considered the argument that **SEN. THOMAS** just put forth. He reported that, when he attended the Western States Legislators Conference, this issue came up and there was considerable discussion regarding the difference between management and control of State lands, and ownership. He stated that he would strongly endorse, before he heard **SEN. THOMAS** speak to the Committee, having management and control by the State, because the State can do better, that he thinks whoever said it is correct, that there is not exactly a one-to-one trade-off between State and Federal lands because State lands are generally more easily managed, those that we have now. He reiterated that he thinks the State could do a better job, and would be more profitable in doing it, adding that another portion of that is the money it takes, and that, as he recalls, the number used for Montana was \$30 million, which is a lot of money. He pointed out that, if the land were to come, that money would have to come, appropriated from the Federal Treasury, otherwise we would have to cough it up, noting that he does not think we would do that, nor would it be a cost-effective exchange.

SEN. THOMAS pointed out that the Federal government receives a ton of money from Federal lands and, if Montana were to own them and manage them, we would be generating money and would probably do a better job of it. He noted that there are a lot of issues to consider.

CHAIRMAN HARGROVE indicated that, although was enlightened by **SEN. THOMAS'** comments, there is a balancing effect on the Federal government, in that he thinks it would be harder for the Federal government to sell Federal lands, noting that, as **SEN. THOMAS** pointed out, there is the potential of need. He said that his inclination is that the bill should make it to the floor, and his intention is to then vote against it, noting that he is fascinated by that rationale, and might even rethink it.

SEN. KEN MESAROS pointed out that there was testimony regarding the dollar amount generated as far as State lands in comparison to Federal lands, stating that he thinks the people can be better served by management that is closer to the people, which would be at the State level. He indicated that he believes a lot of the concerns expressed are fear of the unknown, noting that is normal on a lot of issues. He stated that he has some reservations as far as the practicality and the logistics of a transfer of that nature, but that he does believe they could be addressed and, therefore, he would support this bill, with a few reservations on the practicality side.

SEN. BROOKE referred to the "Whereas" clauses, noting that she knows they don't have to swear that they are all absolutely, positively the gospel truth, but indicated that it does give her pause to support anything that takes that latitude when, as they have heard from testimony, there is a lot of question and debate that these are really actual, noting that the Committee has had the discussion before about the "Whereas" clauses, and it bothers her. She indicated that, as far as management of the land being closer to where the land is, there is probably no question about that, but pointed out that there really is no guarantee that our state would ever invest that much money in the bureaucracy to maintain the level of management we have now, and increase that level of management for these many, many acres. She stated that she has no compunction about getting it out on the Senate floor.

SEN. GAGE indicated that he is not sure to what extent the Federal government reimburses the State of Montana for their properties, based on what that property would generate in taxes if it were in private hands, but reported that he is told that the State of Montana has that same requirement in State statute, and has been appropriating, for years, peanuts for PILT money from the State to these local jurisdictions, that it is his understanding it is something like 25¢ per acre. He pointed out that, if the Federal government is paying considerably more in PILT money, and the Legislature is not willing to appropriate sufficient funds to match that, that would be a loss to the local governments, noting that is an Appropriations matter. He added

that he thinks the Legislature should be looking at that on State lands, anyway, which they are not doing.

SEN. THOMAS pointed out that there are a lot of State properties which local governments take care of, as far as fire, police, etc., noting that he does not know what that amounts to, but it is probably the same ratio as PILT. He then described Ravalli County and the amount of State land and private land, and compared the amount of PILT money versus the revenue generated by the privately held land, stating that the PILT money is not much, considering the amount of land held by the State.

Vote: The motion that **SR 2 BE ADOPTED CARRIED** with **SEN. THOMAS, SEN. GAGE, SEN. MESAROS** and **CHAIRMAN HARGROVE IN FAVOR**, and **SEN. BROOKE** and **SEN. WILSON OPPOSED**.

DISCUSSION - HB 123

Mr. Niss reported that, right after the hearing, the Committee asked questions concerning the in-application of the Montana Administrative Procedure Act, on page 3, lines 22-23, the fact that members of the Advisory Commission will only be reimbursed \$25, and the issue of why the inventory will be taken by the Department of Fish, Wildlife and Parks, on statues, memorials, flags, etc., AND doesn't take into account other buildings in addition to the Capitol.

CHAIRMAN HARGROVE asked who will provide those answers.

Mr. Niss indicated that these questions came up in discussions as to whether the bill needed an amendment, and **SEN. GAGE** suggested amendments to address a couple of those issues.

SEN. GAGE reported that he researched other areas with regard to the \$25 payment for public members and that, in some of those areas, they get \$50, the same as Legislators. He asked the Committee if they are interested in looking at this issue.

CHAIRMAN HARGROVE said that he thinks there are some who get nothing, although he is not sure what the distinction is. **SEN. THOMAS** said that they should be the same, at the Legislator's pay scale. **CHAIRMAN HARGROVE** agreed that they should be the same, but indicated that he was not sure what that should be.

SEN. GAGE pointed out that another question he raised was about the inventory, that it is only in the Capitol, and reminded the Committee that there was testimony regarding some valuable items scattered around, other than in the Capitol, and that, in some instances, those things have disappeared.

CHAIRMAN HARGROVE pointed out that, in the bill, where it refers to "capitol", it is a small "c", and asked if that would mean all

of the buildings associated with the Capitol in Helena, and if a large "C" would mean the Capitol building.

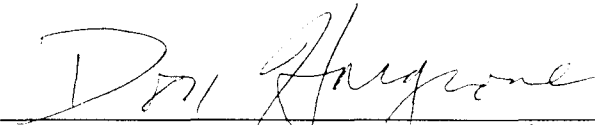
SEN. GAGE indicated that, somewhere in the bill, there is reference to a ten mile area, but that he is not sure if that is the definition of "capitol complex".

Mr. Niss responded that it is "Capitol complex" on page 1, line 19, that the inventory only applies to the Capitol. **CHAIRMAN HARGROVE** clarified that it is the building and grounds. **Mr. Niss** agreed, noting that all it says is "capitol", but that it is a small "c" "a-p-i-t-o-l", which means the building, whether it is capitalized or not.

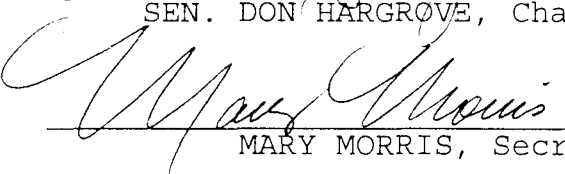
SEN. GAGE stated that they, as Legislators, periodically borrow things from the Historical Society to hang in offices, and there is no reason to believe the same thing does not happen with the Highway building, and other things, and they would do well to have some sort of inventory.

ADJOURNMENT

Adjournment: 11:09 a.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

DH/MM