

## **MINUTES**

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

**Call to Order:** By **CHAIRMAN DON HARGROVE**, on March 17, 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 90, HB 91, HB 496 3/11/97  
Executive Action: HB 389 BCIAA; HB 521 BCIAA

#### **HEARING ON HB 496**

**Sponsor:** REP. GARY FELAND, HD 88, Shelby

**Proponents:** Judy Richman, Employee Toole County Hospital and Nursing Home  
Jerry Morasko, Administrator Toole County Hospital  
Jim Ahrens, President of Montana Hospital Assoc.

**Opponents:** Linda King, Public Employers Retirement Board

**Opening Statement by Sponsor:**

REP. GARY FELAND, HD 88, Shelby, introduced HB 496, which allows employees of county hospitals and rest homes in certain classes of counties to become exempt from PERS.

**Proponents' Testimony:**

**Judy Richman, Employee Toole County Hospital and Nursing Home,** commented they have 41 nurse aides at their facility. Only six have been there for five or more years. Twenty-five have been there less than a year. They would like to be more competitive with other employers in their town. The facility loses all the PERS matching funds they put in for anyone who leaves in less than five years. They would like to pay higher wages. Turnover results in a lot of problems.

**Jerry Morasko, Administrator Toole County Hospital,** presented his written testimony, (EXHIBIT 1). They have to match 6.6% of the retirement for the state. If that employee leaves within 5 years, that money goes back to the state. Their staff has requested pay in lieu of retirement.

**Jim Ahrens, President of Montana Hospital Assoc.,** rose in support of the bill.

**Opponents' Testimony:**

**Linda King, Public Employers Retirement Board,** rose in opposition to the bill because it excludes members from membership. The federal government is going toward more universal coverage.

**Questions From Committee Members and Responses:**

**SEN. VIVIAN BROOKE** asked what nurses aides are paid? **Ms. Richman** explained their starting salary is \$5.62, which is a probationary salary for the first six months. After that they go up to \$5.82. Evening shift is an additional \$.25 an hour and the night shift is an additional \$.50 an hour. They are union.

**SEN. BROOKE** asked what the potential was for an hourly wage? **Ms. Richman** said she believed that would be \$8.00 an hour.

**SEN. GAGE** asked how much they rely on the contributions they get from people who never become vested? **Ms. King** stated that in figuring the cost to employers, they determine cost of making refunds to people. This would be very minimal impact on the system.

**CHAIRMAN HARGROVE** asked how many hospitals and nursing homes we have? **Mr. Ahrens** said there are 10 or 12.

**CHAIRMAN HARGROVE** remarked on line 23 it mentioned counties of 3rd, 4th, 5th, 6th, or 7th class. Why aren't all counties included? **Ms. Richman** explained there are 23 county hospitals larger than that which would not be affected by this bill.

**CHAIRMAN HARGROVE** asked if this would have any affect on liability or workers' compensation? **Ms. King** remarked they would still be responsible for workers' compensation.

SEN. BILL WILSON asked what type of increase in hourly wage they were considering? Mr. Morasko stated if they decided to opt out, they would not only get their 6.7% that they have to pay, but also the hospital's 6.7%. That would be about 13% of their wage.

SEN. BROOKE remarked this class of people is not interested in retirement.

Mr. Morasko explained it is open to employees. Current employees in the system cannot opt out. This is only for new employees.

SEN. WILSON stated that what they would pay now and what they would pay down the road, if they chose to buy back the retirement, would be significantly different.

Ms. King stated that a buy back is based on the salary at the time. The contributions they would have made at the time, plus interest that would have accrued. The rest depends on what the employer has for a policy.

*{Tape: 1; Side: A; Approx. Time: 10:24 a.m.; Comments: None.}*

Closing by Sponsor:

REP. FELAND stated that a lot of young people aren't that concerned about retirement. However, later on they can buy it back. Right now six and seven are exempt classes. This should only affect two or three hospitals.

HEARING ON HB 90

Sponsor: REP. BILL WISEMAN, HD 41, Great Falls

Proponents: Tom Schneider, Montana Public Employees Assoc.  
Tom Bilideau, Montana Education Assoc., and  
Montana Federation of Teachers

Opponents: None

Opening Statement by Sponsor:

REP. BILL WISEMAN, HD 41, Great Falls, introduced HB 90. This comes from the retirement committee. One of the things they constantly battle is inflation. One of the things that is happening in the retirement world is that private industry is moving away from defined benefit and moving to defined contribution. They cannot take a defined benefit away from anyone. About three years ago, the State of Washington put in a new plan for new employees which stated that the State of Washington's contribution would continue to be a defined benefit plan but the new employees could have their share of the plan go into defined contribution plan. They were also allowed to convert the employee's share if they wanted to.

An example of defined benefit plan is social security. You work for so many years and you get a retirement for life. The employee has no choice of where the money is invested. There is no portability. Once the beneficiary dies, that is the end of the money.

A defined contribution plan gives complete management of your money. You are offered a menu of investments and you decide where you want your money. It can be changed. There is complete portability. When the defined contribution employee retires, he gets a check. Most people have it rolled into an IRA. When the beneficiary dies, the money goes to the heirs.

The \$80,000 on page 2 only pays for the actuarial work for PERS. He tried to amend this in the House. They will be receiving two figures from the actuarial. One is the cost of converting PERS entirely over to defined contribution. The other figure will be the cost of only converting the employees share to defined contribution.

There are about seven plans they are looking at. He would like to spend an additional \$60,000 and get around 16 figures, so the 1999 Legislature would have a menu.

#### Proponents' Testimony:

**Tom Schneider, Montana Public Employees Assoc.,** stated that he has spent the last 40 years in the Montana Retirement System. He is also an actuary. The biggest change from defined benefit to defined contribution is shifting the risk from the employer to employee. Another change is that it shifts the responsibility from the employer to the employee. PERS has both a defined benefit and a defined contribution plan. The defined contribution side of the PERS plan can be improved. Currently it is a fixed income plan. There are no variable options and it takes five years to vest.

He would like to add an option into PERS so that people can manage their retirement account. It is important that the state pay for the study.

**Tom Bildeau, Montana Education Assoc., and Montana Federation of Teachers,** MEA has long supported a financial planning program for their own membership. Their view is that three legs are needed for any retirement plan. You need social security, a defined benefit program and private investment savings.

This bill encourages greater uniformity between the systems. There are eight different PERS systems. Each has a different defined benefit program.

This bill is written in an open format which allows looking at all options. You don't get everything that is promised with a defined contribution plan, depending on the details of those

plans. With two years to study this and make a good look at it, they can provide for the long term retirement interests of employees. They may be cutting this short with \$80,000, but it will give them a good starting point.

*{Tape: 1; Side: A; Approx. Time: 10:46 a.m.; Comments: End of Tape 1, Side A.}*

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. WILSON asked what the makeup of the committee would be?

REP. WISEMAN assumed it would be like the interim committee they had, which was balanced with a mixture of House and Senate members.

SEN. GAGE asked if teachers could opt out of social security?

Mr. Bilideau clarified that in the late 1950s social security was opened on a nationwide basis to local government and states. They allowed local government and state employers the election to enroll their members in social security or to stay outside the system. Among teachers, there are some states that made the election not to go with social security. Montana allowed local school boards to make that election. About 95% of teachers in Montana are employed by districts that made the election to enroll their teachers in social security. There are a couple of cases where once enrolled districts made the election to drop out of social security. They made that election on the guarantee that the employer contribution then going to social security, 7% of their wage, would be invested in a 403(b) private annuity option. They have discovered that once you are in and then drop out of social security, they don't let you back in. Many of the individuals are not making a matching contribution to those privately held accounts. If the employee doesn't put in the money, then the employer doesn't put in the money because these are matching contributions. These has not left much of a substantial retirement annuity.

CHAIRMAN HARGROVE commented that three or four of the eight plans are outside of social security. Mr. Schneider explained that law enforcement plans are all outside of social security because they were not allowed in social security in 1955 and could not opt in until 1973. Anyone in social security cannot opt out. Since 1986, everyone pays into Medicare. The employees who were working in 1986, don't. Anyone who was employed prior to 1986 as a highway patrol officer does not have Medicare coverage. Those who became employed after 1986 pay 1.45 % and are covered by Medicare.

Closing by Sponsor:

REP. WISEMAN stated that one of the most dangerous things they could do would be to offer folks a defined contribution plan

without good education. Ten to fifteen percent of our high school get some type of personal financial education. We are graduating financially illiterate students.

#### HEARING ON HB 91

Sponsor: REP. BILL WISEMAN, HD 41, Great Falls

Proponents: Tom Schneider, Montana Public Employees Assoc.

Opponents: None

#### Opening Statement by Sponsor:

REP. BILL WISEMAN, HD 41, Great Falls, introduced HB 91 which extends the sunset for two years. If HB 90 passes, we will HB 91 to pass the sunset to 1999.

#### Proponents' Testimony:

Tom Schneider, Montana Public Employees Assoc., rose in support of this bill.

Opponents' Testimony: None

#### Questions From Committee Members and Responses:

CHAIRMAN HARGROVE asked why there were two bills?

REP. WISEMAN explained there was a fear that 90 would not pass and they still needed the interim committee to work another two years.

*{Tape: 1; Side: B; Approx. Time 11:00 a.m.; Comments: None.}*

#### Closing by Sponsor:

REP. WISEMAN closed on HB 91.

#### COMMITTEE DISCUSSION - HB 394

Mr. Niss explained that REP. GRINDE has proposed amendments which Greg Petesch has put into proper form. George Oshinski put them into a grey bill. His concern with the amendments is an alternative enforcement provision within the bill. Anyone violating any lobbying requirements proposed in the bill, would be subject to the Commissioner of Political Practices Enforcement pursuant to Title 5, Chapter 7, Part 3, which is a very long and deterring enforcement provision because it provides for both civil and criminal enforcement. To that REP. GRINDE has added the enforcement provisions for the new ethics section of the law applicable to legislators, state employees and elected officials.

This enforcement section provides for extremely different penalties and also for enforcement by the Commissioner of Political Practices. If a person files a complaint with the Commissioner of Political Practices, he has no discretion to decline to prosecute.

The amendments delete the reporting requirement for state lobbying.

**EXECUTIVE ACTION ON HB 521**

**Amendments:** HB052102.adn (EXHIBIT 2)

**Discussion:**

Mr. Niss stated that the effect of the Department of Revenue amendment would have been to severely limit the application by preventing the new residency determination, in lines 19 and 20, from being used in all those local government purposes. We require "residents" within counties and within other political subdivisions for all manner and types.

This amendment places some limits on the new method of determining residency in lines 17 and 18. The Department was concerned that if a person claims a residence for any purpose, could be used against them. If someone had a drivers license and fishing license from Alaska, he could then claim not to be a Montana resident for purposes of taxes. The amendment would limit this to claiming a residence in Montana for any purpose.

**Motion/Vote:** CHAIRMAN HARGROVE moved to ADOPT HB052102.adn.  
The motion CARRIED UNANIMOUSLY.

**Discussion:**

Referring to the underlined language on 19 and 20, Mr. Niss remarked that the issue there is whether there is a conflict between the new language in (3) and existing language in (6). The problem is (6) is not limited to any one act.

SEN. GAGE explained that the intent of the bill is if a person claims to be a resident of Montana by purchasing a resident fishing license or by registering to vote, etc., he is a resident for all purposes. Currently this is handled by intent. This gives the Department of Revenue the ability to require that person to file as a resident taxpayer.

SEN. WILSON commented that when he campaigns people tell him they don't vote here. People at Malmstrom may own a home and buy a fishing license in Montana. What is going to catch them?

CHAIRMAN HARGROVE remarked that a lot of people stretch the rules and are not residents of Montana. SEN. WILSON commented that when this person bought a hunting license and said he was a resident, the Department's computers would cross-reference that

the person said he was a resident, even though he is not. He may vote in Colorado. This bill would have enough of a hammer to make him pay taxes in Montana. **CHAIRMAN HARGROVE** explained the other side of that is he will pay \$800 rather than \$20 for his hunting license. He felt that military stations in Montana are allowed residency in Montana.

**Mr. Niss** felt there may be a specific provision applicable to persons in military service who have a residence to vote in other states, but have a drivers' license in Montana.

**SEN. WILSON** asked what would be typical of the person in Gallatin County? Are they people who have a business in California?

**CHAIRMAN HARGROVE** said that was very possible. He has friends who live there most of the year who explain to him that they pay their property taxes and live here most of the time, shouldn't they at least be able to get an inexpensive hunting license.

**SEN. THOMAS** stated what these people don't do is they don't pay state income taxes. They will become residents in states that do not have income taxes.

**SEN. BROOKE** felt our voting residency is conducive to helping people have more access to vote. There is a large student population in her district. This is totally different for residency to get in-state tuition. This is two different things. Access to voting implies that they are residents.

**Mr. Niss** explained that military personnel stationed in Montana aren't allowed to buy their licenses as residents unless when they entered service their home of record is in Montana. **SEN. THOMAS** asked if someone on Malmstrom who was not a resident of Montana prior to entering the service and he registered in Great Falls to vote, could that be construed to be an act in determining his residence status? **Mr. Miller** stated he was not real clear on voter requirements. The active duty military person at Malmstrom would be taxed for income tax purposes by their state of original domicile. If they are able to register to vote that would create some confusion.

**SEN. BROOKE** questioned if they are a resident of Montana, would they pay state income tax? **Mr. Miller** explained that active duty military is not taxed in Montana. If they are from Montana and are stationed in Montana, they are not taxed.

**SEN. THOMAS** commented that retirement is. So they do not pay a state income tax. **Mr. Miller** stated that **REP. RYAN** was frustrated with regard to Fish and Game, and licensing of vehicles. That was the reason for this legislation. They came forward with their amendment because they didn't appreciate the difficulties created for some local jurisdictions. The amendment the committee just adopted will address their concerns as well as local concerns.



SEN. WILSON asked if this bill would increase revenues? Mr. Miller stated this will be one more tool. This is a subjective method of weighing intent.

Motion: SEN. GAGE moved to AMEND HB 521.

Discussion:

SEN. GAGE explained that he would strike the new language on lines 19 and 20.

Vote: The motion to AMEND HB 521 CARRIED UNANIMOUSLY.

Motion/Vote: SEN. BROOKE moved that HB 521 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

*{Tape: 1; Side: B; Approx. Time: 11:41 a..m.; Comments: None.}*

EXECUTIVE ACTION ON SR 12

Motion/Vote: SEN. THOMAS moved that SR 12 BE ADOPTED. The motion CARRIED UNANIMOUSLY.

COMMITTEE DISCUSSION - HB 496

Steve Browning remarked that the question was raised about county hospitals and nursing homes. Both Sheridan and Ennis are hospital districts, but are not county districts. The employees of those facilities are not in PERS. There is relatively little impact. Maybe six or so may be affected. Ennis is non-profit, which became a hospital district because they get a three-mill levy. There are about 14 hospital districts in the state.

EXECUTIVE ACTION ON HB 389

Amendments: HB038901.adn (EXHIBIT 3)

Discussion:

CHAIRMAN DON HARGROVE pointed out that this bill by REP. BRUCE SIMON has about \$6 million worth of public notice requirements with regard to rulemaking, and that there have been a number of amendments. He stated that the emergency rules is probably appropriate and, if that is, it seems that the changes to Sections 12 and 13 are still good, and that he believes that the amendments would delete everything except Sections 11, 12 and 13. David Niss stated that he has taken out Section 12, also.

CHAIRMAN HARGROVE asked Mr. Niss to explain the amendments. Mr. Niss reported that the amendments change the title and strike everything down to page 9, line 23, and leaves in current Section 11, that, with the amendment, it would now be Section 1,

Emergency or Temporary Rules. He indicated that, on page 10, the amendment also returns that middle sentence to current existing language, that it strikes the new language "immediate" and new language "upon petition by any person." He added that it leaves in all the rest of the new language on lines 8 through 12, that it strikes all of current Section 12. He explained that Section 12 is being stricken from the bill because he understood **SEN. GAGE's** intent was to take out everything but the emergency rule provisions, and current Section 12 does not apply to emergency rules. He then indicated that the big change is in subsection (8) at the bottom of page 11, lines 27 through 30.

**CHAIRMAN HARGROVE** asked, when he says strike Section 12, if he means current law, or just the changes.

**Mr. Niss** replied that he is taking that section out of the bill, that it is not a repeal, but is being stricken from the bill. He further explained that this is being done because the new language, which is mostly in lines 29 and 30, is not connected to emergency rulemaking, that it has a different purpose than the changes that **SEN. GAGE** wanted to accomplish in deleting the rest of the bill. He added that he has left in Section 13 because the language, particularly lines 21 through 27 on page 12, do concern emergency rulemaking and the language provides a new date for the effective date of an emergency rule. He explained that, currently, in the notice filed with the Secretary of State's office, and published in the *Montana Administrative Register*, agencies can state only an effective date following publication of the *Montana Administrative Register*, and the new language would allow them to state in the *Montana Administrative Register* that it is effective upon filing with the Secretary of State, which is prior to the time that most people would see the notice in the *Montana Administrative Register*, and agencies could already have rule effective at that time, which they can not do now.

**Motion:** **SEN. GAGE** moved that HB038901.adn BE ADOPTED.

**Discussion:**

**SEN. GAGE** stated that he does not have a problem with Section 12 not being in the bill, and indicated that he would agree to segregating the amendments.

**Mr. Niss** stated that Section 12 is stricken in the amendments, that it would be stricken unless the Committee wanted to change one of the paragraphs of the amendments.

**CHAIRMAN HARGROVE** asked **SEN. GAGE** if he will move the amendments as they are. **SEN. GAGE** responded he will move them as they are. He added that he is assuming these amendments will be rejected in the House.

**CHAIRMAN HARGROVE** responded that he spoke with **REP. BRUCE SIMON**, and told him the bill would be pretty unrecognizable, and had the feeling that he expected it, although he did not really say. He added that he thinks **REP. SIMON** is just happy to have something survive so that he does not lose another bill, but that this may not be true and he does not know. He noted that there may be a Conference Committee on this bill.

**Mr. Niss** reported there is a very interesting history to this, that he heard about it in talking with another staff person. He indicated that this bill was actually tabled in the House by an extremely strong vote, and was pulled out of committee by the floor, and the way he interprets that is that the floor voted the way that they did because they did not hear all of the testimony in opposition in the House committee.

**Vote:** The motion to **ADOPT HB038901.adn** **CARRIED UNANIMOUSLY.**

**Motion/Vote:** **SEN. THOMAS** moved that **HB 389 BE CONCURRED IN AS AMENDED.** The motion **CARRIED** with **SEN. THOMAS, SEN. GAGE, SEN. MESAROS AND CHAIRMAN HARGROVE IN FAVOR,** and **SEN. THOMAS AND SEN. BROOKE OPPOSED.**

#### **COMMITTEE DISCUSSION - HB 90**


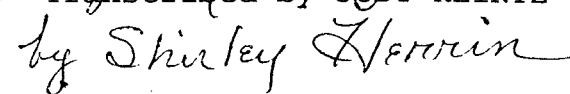
**SEN. THOMAS** offered a motion that **HB 90** be concurred in. **SEN. GAGE** explained that funding could be handled by charging so much per member on payroll, to fund the other seven, or they could have a payroll tax. **SEN. THOMAS** was not in favor of a payroll tax, and withdrew his motion.

ADJOURNMENT

Adjournment: 11:59 a.m.

  
SEN. DON HARGROVE, Chairman

  
MARY MORRIS, Secretary

  
Transcribed by JUDY KEINTZ  


DH/MM