

MINUTES

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

Call to Order: By CHAIRMAN DON HARGROVE, on March 24, 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 Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 142; HB 121; HB 217;
3/18/97
Executive Action: HB 394

HEARING ON HB 142

Sponsor: REP. BETTY LOU KASTEN, HD 99, BROCKWAY

Proponents: David Evenson, Montana University System
Kathy Crego, University of Montana, Missoula
Jody B. May, Montana State University, Bozeman
John Wing, VALIC
Gary Mauger, Teachers Insurance & Annuity
Association-College Retirement Equities Fund
Tom Schneider, Montana Public Employees Assoc.

Opponents: Linda King, Public Employees Retirement System
Tom Bilodeau, Montana Education Assoc.
Terry Minow, MT Federation of Teachers/MT
Federation of State Employees
SEN. SUE BARTLETT, SD 27, Helena

{Tape: A; Side: A; Approx. Time Count: 10:02 AM; Comments: N/A.}

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, BROCKWAY. Today, for your consideration, I bring you HB 142. It is just the expansion of the optional retirement system within the University to take in classified employees as well as the faculty that is included. There are a few things that I would like to share with the committee. One is an amendment (EXHIBIT 1) that I hope you would consider. The other is a letter (EXHIBIT 2) that deals with funding for retirement systems. The last is a letter (EXHIBIT 3) that addresses the constitutionality of portions of HB 142. I will not take a great deal of your time giving you my understanding of this. There are others who will speak more eloquently on this bill. I reserve the right to close. Thank you.

CHAIRMAN HARGROVE asked the sponsor if she were supporting the amendments. REP. KASTEN stated that she was supporting only one amendment (EXHIBIT 1).

Proponents' Testimony:

David Evenson, Montana University System. We are in support of HB 142 with the amendment. I will go briefly through this "bullet sheet" (EXHIBIT 4) on the amendment. HB 142 is the result not of something the Board of Regents decided on, but by a group of employees, classified staff, in the University System. They drew up a petition and requested the Board to support this kind of legislation. They were looking for an expansion of the Optional Retirement Plan that would cover them and not just the faculty and senior administrators. The Regents felt that it was reasonable. (He then explains the amendment as shown in (EXHIBIT 4).

Kathy Crego, Director of Human Resource Services, The University of Montana-Missoula. I will give my testimony and hand in a written copy (EXHIBIT 5). We are in support of HB 142 with the amendment and are here as an advocate for the classified staff. I offer written testimony from four employees. The first letter (EXHIBIT 6) is from Nancy Bernius, President of Staff Senate, U of M. The second letter (EXHIBIT 7) is from Linda Schimmelpennig, Research Specialist, U of M. The last letter (EXHIBIT 8) is from two employees Heidi Zielinski and Michael Zielinski.

Jody B. May, Payroll Director, Montana State University-Bozeman. One of the things that I do is to counsel employees on retirement and encourage them to save more money. I have been a classified employee for 20 plus years and am a representative of our classified employees on the Inner-Unit Benefits Committee. I

will not reiterate what **Ms. Crego** said, but I strongly support this bill and would ask for your continued support.

John Wing, District Manager, VALIC. I have been employed by VALIC for 15 years. Ten of those years were as a representative and five in a management capacity. I am a native Montanan, born and raised on a farm north of Harlem. I attended and was graduated from Montana State. VALIC is an organization that specializes in providing retirement annuities, services and funding vehicles to employees, primarily of not-for-profit organizations. We are one of the only specialty companies to commit to the more rural areas, such as Montana and Idaho in providing face to face service for our clients. We currently have six Montana-based representatives and four in Idaho. For the University System we provide services and funding vehicles for the 403B tax-deferred annuity program which is a voluntary program that employees use to save for supplemental retirement income. We currently provide services to approximately 500 Montana University System employees which approaches 10% of the entire population of the University System.

In my years of working in the retirement planning area, I have found that people are very interested in managing and controlling their own retirement issues. I have often heard their frustrations regarding their lack of ability to manage or control their social security investments as well as their main retirement plans. It seems to me that if it were not for the staff members' own interest, you would not be considering this legislation at all. The staff, which keeps the universities functioning, has asked to have the same retirement options as the faculty. They want to be able to manage this portion of their retirement plan. We have provided educational materials at seminars and workshops. Most recently, we had a telecast on retirement in conjunction with the college and university personnel association covering all aspects of retirement planning including an in-depth discussion of social security and the proposals to fix the social security situation. We had an excellent attendance throughout the state. At that program and others that I have offered, approximately 75% of the people who take advantage of these programs are university staff. They are among the most careful and thoughtful investors we work with. With a bill of this nature, the responsibility for wise decision-making lies with the individual and not with the state. My experience with this is they want and seek this responsibility and the educational resources available.

The question of affordability has been discussed. We live in a time when people move and change jobs many times during a career. A primary advantage of a defined contribution plan is that it allows people to move that plan from employer to employer without loss of benefits. It can shift from public to private, from public to public or rolled into an IRA. A defined contribution plan provides for maximum flexibility as people change direction in their careers. This is a major benefit for these people.

You have the opportunity to allow for expansion of an already existing system. This is not a creation of a new retirement system. There is already a system in place; the transition should be as smooth as possible and as inexpensive as possible. Given the fact that you have another bill that you are considering, HB 90, which looks at PERS as a whole system, this is a good idea. In the interim, you have an experienced-based happening with this small transition which should lend some good experience for the overall picture in a couple of years. The legislation should be passed because the staff has requested it and because it is important that people be able to maintain continuity in their retirement plan. Those who would be adversely affected by this legislation have the option not to be a participant. It is voluntary. Thank you for your time and consideration.

{Tape: a; Side: A; Approx. Time Count: 10:41 AM; Comments: N/A.}

Gary Mauger, Assistant Vice President, TIAA-CREF. I have worked in the retirement business for about 15 years. TIAA-CREF was founded in 1918. Today we are a 501C, not-for-profit, institution that provides retirement benefits for colleges, universities and research facilities throughout the U.S. We are the largest pension system in the U.S. We manage assets in excess of \$180 billion. As a retirement company we deal primarily in a defined contribution retirement plan like the one that is being proposed here today. We have 1.7 million individuals who are accumulating benefits, many like the ones being discussed here. We have an additional 250,000 who are retired and are receiving benefits from TIAA-CREF at over 6,000 institutions within the U.S. This represents about 90% of all universities and colleges within the U.S.--both private and public systems. We have been in Montana since 1988. This plan was originally passed in the Legislature in 1987.

The current plan is basically as follows. There is a 12% contribution contributed equally by both the employer and employee. This is 12% of the total salary. The employee is the one who controls this type of retirement plan. He or she has the opportunity to determine how those funds will be invested within 9 different investment vehicles that range in risk and performance from very, very conservative where principals and interest are assured all the way to those accounts that may bring greater returns as well as greater risks. The employee makes the decision and changes can be made as time goes along. The degree of control does not end at that time. When they retire they also have continuing control over how those funds will be paid out. In fact, TIAA-CREF offers about 60 combinations or choices of combinations of options available to people who are retiring. This allows them to essentially customize what they would like to do at the time of retirement.

We have provided an extensive array of educational material for both on-campus meetings and through written and electronic media

to all our participants to make informed and educated choices on how to allocate contributions and what choices are available to them and how best to proceed.

Concerning unfunded liability, under the PERS system as presently constituted, there is a 13.4% contribution made up by the employee and the employer equally. Ten point three percent of that 13.4 goes to the normal cost; that is the amount of contribution that goes to fund current benefits for current participants. The remaining 3.1% is used to amortize or to pay off the unfunded liability or what is referred to as past service cost. At 3.1% as presently constituted, this will pay off the current unfunded liability in 10.94 years. The unfunded liability of any defined benefit plan like PERS will vary from year to year. That is based on changes and assumptions that may occur. There may be investment returns that are greater or less than what was assumed or there may be other differences in assumption such as employee turnover, etc. There are ways that this unfunded liability can be addressed. One would be for the Legislature or the funding organization to step up and pay a greater percentage and bear the funding. In other words hold the amortization period, or the number of years in which the debt will be paid off, constant. Most states do not do that; however, they tend to hold the funding level fixed and allow the amortization period to vary. It is normal to vary. PERS has indicated previously that they are concerned and want to keep this unfunded liability amortization period within or under 30 years or less.

HB 142 comes down to this. The amendment you have before you offers to pay 1.4% to the PERS system for 30 years. It is our belief that this is an actuarial equivalent to 3.1% for the 10.94 years as presently constituted. You have a letter (**EXHIBIT 2**) from our actuary, **Michael Heller**, wherein he reviewed his methodology with **Mr. Alton Hendrickson, PERS actuary**, in how he arrived at this 1.33%. **Mr. Hendrickson** agreed that the methodology that was used was correct. He also agreed that funding over the 30 years would be appropriate and agreed in principal, at least, that the ball park figure would be in the 1.3 to 1.5% range. We feel that the 1.4% as proposed would be an appropriate level.

It is important to note, in the bill itself, there is a safety valve, if you will. After a few years experience in this, there is a portion of the bill that calls for a study of the current funding in order to determine if the 1.4% or whatever is finally determined, is appropriate. And that could be adjusted sometime in the future. Thank you for the opportunity to come before you today.

Tom Schneider, Montana Public Employees Association. We represent approximately 1200 classified employees in the Montana University System. It is nice to be a proponent, but in this case I have a couple of concerns which I would like to address.

The first one is that the petition that was signed at the U of M clearly stated that we would have an optional retirement bill and it would be optional. This is not optional. It is only optional for the people currently in the University System and it completely cuts off any future employees from being in PERS. That is a major concern. Secondly, if you look at page 2, line 19 and 20, you will see some new language which says, "the appropriateness of permitting terminated participants to transfer funds in their optional retirement program annuity contracts from another qualified plan". That actually was a commitment by the University System to the interim committee on retirement programs because one of our major concerns was that people who are in staff positions are not like faculty. They probably will not leave the university and go to another university that has a TIAA-CREF program. They simply have to, at the current time, leave their money in TIAA-CREF. We would like the University System plan changed so that people could roll over into other qualified plans and carry their dollars with them.

As to our support for this bill, all of our TIAA-CREF members have an option. Obviously, those who want to stay in PERS may do so. Those who want to go into TIAA-CREF may do so. I cannot oppose a bill that allows this option and I do have members who want to go into TIAA-CREF and I support them and the bill because of that. One reason for this support is that 600 out of 915 people at the University of Montana have 6 years of service or less. Out of 925, 825 have less than 8 years. What that tells us is there is a major turnover. I have an idea that we are bringing in a high level of female employees who are not committed to 25 or 30 years of service. These people could benefit under this kind of program. We feel that TIAA-CREF has a very valid program. With the above disagreements, we feel that this is a very good bill. We do demand that it is actuarially funded. I feel that it takes 3.1% to do that. When you hear HB 121 which deals with TIAA-CREF and the University faculty, it is apparent that the cost of pulling people out of these systems is more expensive than many would like you to believe. It is convenient that if you use the 1.4% and add it to the 12%, that happens to equal 13.4% which is the current contribution rate into PERS; therefore, it would have no extra cost. I have a small problem with that.

We have been involved with this issue for the past year. There are many people in the University System that think we oppose this bill. I do not oppose this bill, but I think I have a right to raise the issues that I have raised. The committee should look at those issues when they pass this bill. Finally, I would reiterate that this bill has to be coordinated with HB 174 which would give the campus police the right to opt into the game warden retirement system or newly named Game Warden Law Enforcement System. That is a desire of the campus police and we would ask that the coordinating clause be added to this bill.

{Tape: 1; Side: A; Approx. Time Count: 10:41 AM; Comment: N/A}

Opponents' Testimony:

Linda King, Public Employees Retirement Board. When this bill was first heard in the House, I opposed the bill on behalf of the Board because the funding provided and the period over which it was proposed to be paid would not have allowed unfunded liabilities of the University Systems to be amortized over an actuarially sufficient time period. I will present my testimony and hand in a written copy (EXHIBIT 9). I would also like to submit a letter from **Alton Hendrickson**, (EXHIBIT 10). Thank you.

Tom Bilodeau, Montana Education Association. I would like to give my testimony and hand in a written copy (EXHIBIT 11). There are six points that we oppose this bill on.

{Tape: 2; Side: A; Approx. Time Count: 10:49 AM; Comments: THE TAPE WAS TURNED IN THE MIDDLE OF MR. BILODEAU'S TESTIMONY.}

Terry Minow, MT Federation of Teachers and MT Federation of State Employees. We rise in opposition to HB 142. We do support HB 90, that will study public employee retirement systems with the goal of improving portability and rate of return. We are willing to consider some combination of defined contribution and defined benefit plans and we believe HB 90 opens that door. At this time, however, we feel we must oppose removing one part of the system of PERS because we are unsure of the impact on the remaining members of PERS. The bill extends the unfunded liability for those needing assistance. We are concerned that any improvement in PERS benefits will be less likely during that extended unfunded liability period. There are a number of unanswered questions raised by this bill. Who will choose to leave the system and who will choose to stay? Should this option be available to all state employees and not just those in the University System? Is it appropriate to require all new University System employees to belong to the so-called optional retirement program? As a society, what is the purpose of the retirement system? Is the purpose to get the highest return on the individual's dollar invested or is it to provide a safety net? As you know, these questions are being raised on the national level in regard to social security and its restructuring. The discussions are appropriate. We believe HB 90 is the best way to go. Thank you.

SEN. SUE BARTLETT, SD 27, HELENA. I apologize to the proponents because I had these hearings down for Wednesday and I would have spoken with them sooner. I chaired the committee on Public Employees Retirement System over the interim and I voted against this proposal in committee. I have not changed my mind. I would like to walk through briefly the set of reasons why. When the people on the university campuses signed the petitions asking for

this, it clearly indicates that their belief was that they and future employees of the University System would have the choice between going into Optional Retirement Plan or going into PERS. It is true that the current employees will have a one-time choice. Beyond that, any new employees do not have that choice. This would affect all units of the University System, not simply the campuses in Missoula and Bozeman. There are, as **Mr. Bilodeau** pointed out, some issues about how portable the investments through TIAA-CREF might be if you are not going to another employer that has a TIAA-CREF plan. I would say TIAA-CREF has a stellar reputation. There are questions about what kind of measures would be taken to cover the unfunded liability that is left in PERS and I would point you to the next bill that you will hear to get a more thorough understanding of how changeable and complex that might be. Someone pays, one way or the other.

HB 90 which was heard on the Senate Floor on Saturday is the approach that I prefer. It would look at PERS as a total system including those people in classified staff positions. It is to develop a plan to move to a more hybrid type of system. I would suggest to you that there are classified staff on campuses who would more appropriately belong in the Optional Retirement Plan but that doesn't mean that all classified staff would more appropriately belong in the Optional Retirement Plan if a more hybrid system is developed for PERS.

My final point is that I think the Regents have met their responsibility in bringing this legislation forward. They were asked to do so by their classified staff. They have done so; they have worked in strong support of the bill and they have met their obligation. The responsibility of the legislature and of this committee is somewhat different. We need to look at retirement systems as a totality and as a whole and make determinations on that basis for all state employees. I don't believe this bill is an overall benefit to the retirement system. Thank you.

{Tape: 2; Side: 2; Approx. Time Count: 11:09 AM; Comments: N/A.}

Questions From Committee Members and Responses:

SEN. DEL GAGE asked **Mr. Evenson** that if the original bill had 1.4% over 46 years, why suddenly is 1.4% over 30 years actuarially sound? **Mr. Evenson** stated that the 30 year requirement is a policy decision made by the PERS board. In the original bill when it was drafted, and since talking with actuaries, he found that when you have a 30 year amortization period, some of the factors would then **(lost the words in noise)**. It really isn't a significant advantage to extend the time beyond 30 years. The 1.4% over 30 years will raise essentially the same money as 3.1%.

Howard Green, Senior Counsel, TIAA-CREF rose to answer this question. The reason for the change was to mirror the ORT bill which was a 46 year period. We took the 1.4% which was available, knowing there would be a study, and we did not have all the information at that time to make a determination as to what it should be over a given period of time. Since then, we have the information. Our actuary did some work on it and he estimated that 1.33% over 30 years is the actuarial equivalent of 3.1% over 10.94 years. We are saying that it is not that the University System pays less, it is they pay less but over a much longer period of time. There is an actuarial equivalence. We have been given a letter today from **Alton Hendrickson** and it is not inconsistent with **Mr. Heller's** account of their conversation at all. What **Mr. Hendrickson** said is that he sees no reason for it to be longer than the 11 years but he told **Mr. Heller** that there is no actuarial reason why it can't be 30 years. What **Mr. Heller** did then was to have an actuary conversation with **Mr. Hendrickson** and, by the way, **Mr. Hendrickson** said off the top of his head, "I would imagine that over 30 years, the rate would be about 1.5%." **Mr. Heller** then explained to him all of the calculations, etc. **Mr. Hendrickson** then said yes that would be a good way to do the estimate and if that is how you did it, that would get you to a number that would be in the ball park. We are not disagreeing with anything in this letter. The 46 year issue is no longer an issue. We are agreeing that 30 years is fine.

SEN. VIVIAN BROOKE said that one of the main arguments for this optional defined plan was its portability. There was testimony that perhaps these funds were not as portable if it were not in the same system. Is this true? **Mr. Green** replied that it depends on how portability is defined. Right now the Board of Regents has decided that they do not wish to have people be able to transfer their money out of TIAA-CREF and into another qualified plan. The legislation now has them consider this. In terms of portability though, the plans mesh together. If you are in TIAA-CREF and you leave the University System and go into the private sector and go into another plan, at this moment you may not be able to take your money and roll it over into that plan. But your money that is invested in TIAA-CREF grows. And the money you put into your new plan grows as well. People might like to roll their money into one plan for simplicity. And the University System may be considering that. But in terms of actual dollars, it doesn't make a difference whether your money is in one plan or two plans. What doesn't mesh is a defined contribution plan and a defined benefit plan, they are radically different.

SEN. BROOKE said that right now there is a PERS and a Board that governs that. And granted, this is a person's individual retirement option or plan; does TIAA-CREF have that openness? And do you have a Board that governs your internal workings and are you audited? **Mr. Green** said that yes they were audited and there is a Board that oversees the company. There is a committee that oversees investments. The Board is made up of various

people, actual participants in TIAA-CREF. Many are university people from around the country. They are a non-profit company.

SEN. BROOKE stated that there was testimony regarding the survey that was done with the employees of the U of M and there was implication that the plan would be an on-going optional plan, not just for one year. Why was this bill crafted so that option was eliminated? **REP. KASTEN** stated that the question would be better answered by someone from the university exactly why. All the testimony that was brought before the interim committee and the testimony that she had heard before the House indicated that the real need was to have an optional plan. So the fact that they cannot go back into PERS, they must have realized that they asked for an optional plan as the faculty had. Because of the adverse selection that happens when you have some going into PERS and some going into an Optional Retirement Plan, you are going to create more cost for the system. She was not sure that they didn't understand it would be totally optional and that they couldn't have any plan they wanted at any time. This plan is very much like the faculty plan. The only difference is that the faculty often stays within TIAA-CREF when they move. That won't be the case if a person goes to another university or if they move to the private sector.

CHAIRMAN HARGROVE asked if the optional choice would only be at the beginning and would not be an option for those hired afterwards? **REP. KASTEN** said the option would be for those already in the University System. They could stay in PERS or opt for TIAA-CREF.

SEN. GAGE asked about page 5, line 25; it talks about a way to amortize the unfunded liabilities. Why use July 1, 2027 on page 6, line 2? **Ms. Linda King** said that the amendments in the House State Administration Committee were requested by the Public Employees Retirement Board and it put the amortization period at no more than 30 years because that is the Board's requirement. For actuarial reasons, it also required all private plans and it is a requirement for public pension accounting now as well that the amortization schedule be no more than 30 years. That doesn't mean that each year you can reduce how much you pay; it has to be amortized and has to decrease over time, not stay at 30 years forever. That date for PERS was requested by the Board to be the appropriate date. They crossed out the date that was 46 years.

A TIAA-CREF person spoke on this question saying that **Ms. King** is correct. TRS had the age at 46 years originally. The reason that the plan is not optional for new employees is that in the original plan, he believed TRS had requested that and the University System went along with that. The 30 year period that you see is a PERS. His company says, fine, but if 3.1% is good over 10.94 years then it is not good over 30 years. It is an over payment. What is good over 30 years is about 1.4%.

{Tape: 1; Side: B; Approx. Time Count: 11:22 AM; Comments: N/A.}

Closing by Sponsor:

REP. KASTEN closed. I appreciate you taking the time to listen and asked very good questions. I know it can be contentious but it is something that has to be discussed. **SEN. BARTLETT** did not agree with putting this bill before you, but then **SEN. BARTLETT** and I didn't agree on lot of things and that is why I agreed to carry this bill. First of all, it is something that employees at the university wants. It was initiated by them. So whether you think it is a good policy or not, when people want it, and it is available without putting in a new program, it is just attaching an option to what is already there, perhaps we should listen to what people want. Remember, defined benefit as defined now is 50% of salary. Many people are saying you are going to have to have 80% of your salary in order to have the standard of living that you want to continue. Hopefully, raising what you earn by 1% can be a large difference in your retirement plan. Another thing, defined contributions are becoming more attractive. Why, the difference is in our work force. More want personal responsibility. More want the ability to have some portability. But you can't have it both ways. You can't have one faction saying we need the safety net and on the other hand people saying they want complete portability. Somewhere between those two stands there is a balance. I believe that this bill for the time being is putting that balance in. Also, remember, with that balance, it is under the authority of the Regents to change whether they want to make that portable at any time. HB 496 asks to be out from under PERD. The Wall Street Journal talks about Great Britain looking at their complete retirement system and going to a defined contribution. The employee now stays on an average of 8 years. The 1.3% would fund the plan for a little less than 11 years. If that is true you don't need that same amount to amortize the same plan for 30 years. If you doubt the constitutionality, **Greg Petesch** would love to come up and talk to the committee. If you have any doubt about one letter in conflict with the other, we would like to address your concerns. The things that **Mr. Bilodeau** brought up were rather a bit of smoke and mirror stuff.

Study? Study? We study things to death and never have to make a decision. It is time to make some decisions. I hope that you will consider this. I would advise you there is a new fiscal note. I hope you have the new one. The retirement board has particularly dug its feet when asked for numbers and people to work with us. All through the interim committee when asked for specifics, we were not given specifics. We were always told, oh we are in the process of developing new numbers and as soon as we have them you can have them. That is why the disagreement on the 46 years and other things. I hope you will understand the funding and if you have any questions, I and the others would be happy to work with you. Thank you again for a good hearing.

{Tape: 1; Side: B; Approx. Time Count: 11:27 AM; Comments: N/A}

HEARING ON HB 121

Sponsor: REP. DICK SIMPKINS, HD 49, GREAT FALLS

Proponents: David Senn, Teachers Retirement System
Dave Evenson, University System

Opponents: None

Opening Statement by Sponsor:

REP. DICK SIMPKINS, HD 49, GREAT FALLS. Today you have before you HB 121 which sets the rate of payment that the university people have to pay into PERS. You have heard some of this on the previous bill. I hope they explained that the unfunded liability is the rate of money the employer and employee are putting in. Thirty years has been set as a limit of saying that the fund is actuarially sound. The problem we have now is when the University System was set up with the Optional Retirement Program. They were told they not only had to put into their retirement system, but they also had to reimburse the Teachers Retirement System to bring their portion of the unfunded liability under control. Mr. David L. Senn will give you the background and exact figures. It is an increased expense to the University that they have to repay the TRS. After going through all of this, the University has agreed to the rate and the TRS Board has agreed to the rate and the time table so there is harmony, etc.

There are amendments (EXHIBIT 12). I do support these amendments.

Proponents' Testimony:

David L. Senn, Teachers Retirement System. I will hand out my testimony (EXHIBIT 13).

{Tape: 2; Side: A; Approx. Time Count: 11:36 AM; Comments: MR. SENN FINISHED HIS TESTIMONY ON TAPE 2.}

Dave Evenson, University System. We are proponents of the bill and the amendments. I will cover some key points of my testimony and hand in the written copy (EXHIBIT 14).

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. DEL GAGE asked what kind of things can TRS invest in? Mr. Senn said that the investments are handled through the Board of Investments. Currently, about 35% of the investments are in

equities and stocks and 65% in bonds and cash equivalents. **SEN. GAGE** continued with a supposition of stocks dropping in value and interest rates going up. He then asked if TRS would be back asking for an increase in the above figures or maybe an increase in contributions or both. **Mr. Senn** said that he assumed not. With current assumptions that they will average 8% over the long run, there will be years that less is made and some years that more will be made. They do not plan to ask the employer contribution rates be adjusted in order to compensate for those fluctuations.

Closing by Sponsor:

SEN. GAGE closed for **REP. SIMPKINS**.

{Tape: 2; Side: A; Approx. Time Count: 11:43 AM; Comments: A ONE MINUTE BREAK WAS TAKEN.}

HEARING ON HB 217

Sponsor: REP. ERNEST BERGSAGEL, HD 95, MALTA

Proponents: Hugh Jesse, University of Montana
Tom O'Connell, A & E Division
Marilyn Wessel for Bob Lashaway, Montana State
University, Bozeman

Opponents: None

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, MALTA. I have for your consideration HB 217. This is a bill that was brought to me by the Board of Regents. The request was that we raise the authority for the constructing of buildings to \$150,000. The purpose of this bill is to offer them the opportunity to do some of this work without coming to the Legislature for approval. This will be my opening and my closing in the interest of time. There are those who will speak to the bill and answer questions. Thank you.

Proponents' Testimony:

Hugh Jesse, Director, Facility Services, University of Montana. The U of M is in support of this bill. The new limits are in keeping with the inflation of our time over the past 30 years. It will allow us to react faster to smaller projects and reduce the costs. It will allow for a larger group of contractors in the pool for the smaller projects.

Tom O'Connell, Administrator, Architecture & Engineering Division. I, too, rise in support of HB 217. The bill does a

couple of things that make jobs easier for both those bidding the projects and for those requesting the bids. It raises some of the bidding limits so that there is less red tape for both the contracting agency and the contractor. It does not change in any way the way in which the work would be done. It would still go through private contractors. It simplifies the process. The other point is to correct a mistake made in 1993 on HB 674. This bill went through the Legislature and removed the Board of Examiners from involvement in signing off on change orders and contracts, etc. Somewhere during that process, the Board of Examiners involvement was left in regarding negotiated contracts. The Board of Examiners is in support of removing themselves from the construction statutes. This bill would also correct that error. Thank you.

Marilyn Wessel, representing Bob Lashaway, Montana State University-Bozeman. We have been working on this bill for awhile. We are in support of HB 217. Thank you.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: No closing.

{Tape: 2; Side: A; Approx. Time Count: 11:48 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 394

Amendments: CHAIRMAN DON HARGROVE MOVED TO AMEND HB 394.

Discussion: CHAIRMAN HARGROVE said that the amendments have been approved by REP. LARRY GRINDE and there have been a number of conversations with the University. David Niss, Legal Counsel, explained the amendments (EXHIBIT 15) hb039401.adn, March 21, 1997. The most important portion of the amendments is on page 1, lines 19 through 24. Those amendments in conjunction with others strike all of the requirements for pre-notice of lobbying by agencies to the legislative committee involved and turn it into a reporting of past expenses somewhat similar to the lobbying reporting requirements now administered by the Commissioner of Political Practices. The times at which those reports are to be submitted to the Legislative Finance Commission are there in that body of amendments at the bottom of page 1.

Federal lobbying is completely stricken from the bill. The other thing that is stricken from the bill is the reporting of lobbying expenses for elected public officials, but public officials who are appointed by the Governor would still have to report the same way as agency directors would. The amendments would make the reporting requirements apply to members of the Board of Regents as they are all appointed by the Governor as well as the traditional heads of the 16-18 major departments of state

government. There is also a new administrative penalty provided for on page 3 which is to be enforced directly by the Commissioner of Political Practices in a hearing pursuant to the Administrative Procedure Act to be distinguished from civil or criminal enforcement. The dates of the reporting requirements are included in the last 6-8 lines on the bottom of page 1.

CHAIRMAN HARGROVE asked if it will now, with the exception of the limited, correspond to what is done by a regular lobbyist? **Mr. Niss** explained that some discussions about whether the \$5,000 floor for submission of reports by the garden variety lobbyist should also be applied to state agencies and at the **Representative's** request that that floor not be included.

SEN. VIVIAN BROOKE asked if the appointees of the Governor follow the rules of the lobbyist. **Mr. Niss** said yes.

SEN. KEN MESAROS asked if the Commissioner of Political Practices has sufficient authority for rule making to cover this bill? **Mr. Niss** said the last amendment allows the commissioner to adopt rules to implement Section 4.

SEN. MESAROS asked if there had been any modification of the fiscal impact? **CHAIRMAN HARGROVE** said that it was a little less onerous and he suggested that there was some lessening on the fiscal effect. **Mr. Niss** said yes because all the federal material has been stricken. The original requirement for pre-approval has been stricken.

SEN. DEL GAGE asked **Mr. Niss** to talk about the Board of Regents and the appropriate elected state officers. **SEN. GAGE** also noticed in the technical note that the judiciary is one of the agencies that is included in the bill and wondered if they have to request permission from the Governor and also wondered if this may pose a separation of power issue. **Mr. Niss** responded about the language in the technical note. It states "request permission from the Governor". If what that is talking about is the approval to engage in lobbying that was in the original bill, that now does not apply to anyone, let alone the judiciary.

Vote on Amendment: THE MOTION TO AMEND HB 394 CARRIED with **SENATOR BROOKE** and **WILSON** voting NO: 4-2

Motion: **CHAIRMAN HARGROVE** MOVED HB 394 BE CONCURRED IN AS AMENDED.

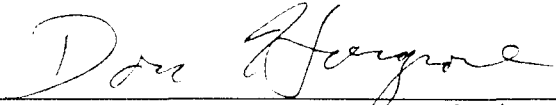
Discussion: **SEN. BROOKE** had concerns with the whole intent of the bill. **CHAIRMAN HARGROVE** said that the intent of the bill is that anyone who registers can be a lobbyist. But anyone can come in and testify and they do not need to be a lobbyist. The bill would limit a department if they wanted to all come over together and lobby the legislators on an issue in the hallways, etc. People who are on government time and are not registered as a lobbyist would be prohibited by this bill as acting like a

lobbyist. **Mr. Niss** added that unless they are registered and licensed with the Commissioner, they would not be allowed to assume a lobbyist role. It really demands that those who will act in a lobbyist position be licensed and registered. Then they would be required to report the amount of money spent.

Vote: THE MOTION TO MOVE HB 394 BE CONCURRED IN AS AMENDED
FAILED with SENATORS GAGE, BROOKE AND WILSON voting NO: 3-3

ADJOURNMENT

Adjournment: 12:01 P.M.



SEN. DON HARGROVE, Chairman



MARY GAY WELLS, Secretary

DH/MGW