

## **MINUTES**

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

**Call to Order:** By **CHAIRMAN DON HARGROVE**, on April 10, 1997, at 10:12 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  
Angie Koehler, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: None  
Executive Action: HB 142, SR 17

#### **EXECUTIVE ACTION ON HB 142**

**Motion:**

**SEN. VIVIAN BROOKE:** MOTION TO TAKE HB 142 OFF THE TABLE.

**Discussion:**

**SEN. KEN MESAROS:** I have received a lot of correspondence on this and was certainly one to support putting it on the table. At this time I think we could further discuss it or review it.

**SEN. BILL WILSON:** I concur with **SEN. MESAROS** that there does need to be more discussion and some things need to be cleared up, but I will still oppose the motion.

**Vote:**

**MOTION CARRIES 4-1. SEN. WILSON VOTES NO.**

**Motion:**

**SEN. BROOKE:** MOTION TO ADOPT AMENDMENTS HB014212.ASH.

**Discussion:**

**SEN. HARGROVE:** This is so new I haven't seen it. Are you ready to give us an outline of what it does?

**David Niss:** Two sets of amendments have been drafted since the one I passed out yesterday or the day before. Both of these were generated by **Sheri Heffelfinger** and myself pouring over the drafts and finding obvious flaws or things we didn't understand.

**Ms. Heffelfinger** would then have telephone discussions with TIAA/CREF's counsel in New York, **Mr. Howard Green**. The latest of those telephone conversations occurred this morning, hence the draft brought to you this morning. (EXHIBIT 1)

On page 2, line 23 - in the bill we're amending the current law regarding membership in the optional retirement program (ORP). Subsection 1 (a) address members of the Teacher Retirement Program and Subsections (b) and 2 (a) address persons who are or are eligible to become members in PERS. The bill, as written without the amendments, sets forth the dates by which the election, either to remain in PERS or join the optional retirement program, have to be exercised. For current members or new hires before January 1, 1998 in Sub (b) beginning on line 3, the date is set out there. Lines 6, 7 and 9 - when the elections for persons who are members of PERS on the date the bill becomes effective, July 1, 1997, who are members of the public employees retirement system may exercise that election.

In 2 (a) below that is the current requirement for mandatory membership in the ORP. It is this Subsection that I think we can say the most important amendments are being made to. The first of those is the language "except as provided in Subsection 6" would be inserted right before the small "a" on line 12. Before the "." at the end of line 15 we would insert the amendatory language in paragraph 11 of your copy of the amendments. That creates two exceptions from that current mandatory membership in the ORP.

The new Subsection is on page 3 of your draft of amendments. That provides for a delayed implementation of the membership in ORP by the Board of Regents. That's the first new exception. The second new exception at the end of line 15 is the "or unless" amendment at paragraph 11 of your amendments. It may be the most important one because that exception from the mandatory membership provides that a person who is eligible to be a member of PERS, in the future, may elect to join that system and not join the ORP. For future hires for persons who may be eligible to join PERS, paragraph 11 turns it into a true option.

**SEN. HARGROVE:** An oversimplified summary and one of the many concerns the Committee members had was that those coming into the system would no longer have an option so that last change you're talking about provided that option. Much of it in part 6 says the Board of Regents can delay it and/or will have studies. Classified employees that have been talking to me would not find that in the least acceptable.

**SEN. BROOKE:** I did want to get some information about the actuarial soundness of this continuing option. Was part of the discussion of the amendments about providing this option that is now in amendment 11? Does this change the figures we are working with, as far as the PERS system itself?

**David Niss:** It may and I think that is part of the reason for the requirement for the studies in new Subsection 6.

**SEN. BROOKE:** I would welcome any comments from either PERS or TIAA/CREF.

**SEN. HARGROVE:** If I may, I believe the question is, what are the actuarial implications if they allow a true option for all classified employees hired or unhired?

**Linda King, PERS:** In situations when there's an ongoing option there is generally adverse selection against the system which will mean that, if the University system pays the full actual costs for their members, the cost will probably go up for the system as a whole. It certainly would not appear to be a reasonable assumption to think that it would go below 3.1. It would probably go above 3.1, but it will take studies to determine that. It will be an ongoing situation as long as the option is involved.

**SEN. HARGROVE:** In your opinion, do you think that a somewhat credible fiscal note would be prepared?

**Ms. King:** Doing a study six months into it isn't going to tell us a thing. We certainly can't tell you right now. We'll probably be more than 3.1, but we can't tell you until we have actual experience and see what will occur on the choices that have been made over a period of time. **Mr. Senn** has some experience about what occurred when his program was switched and was first optional.

**SEN. HARGROVE:** **Mr. Senn**, could you give us a subjective opinion?

**Dave Senn, Teachers Retirement System:** When TRS was amended to offer TIAA/CREF to the University faculty, faculty coming in after the enactment of the optional retirement plan could select either TRS or TIAA/CREF. They would look at these choices and TIAA/CREF would help them make decisions as well. We found we were getting the older people that were closer to retirement so we did have adverse selection. They were going to retire very

shortly after they started working. We didn't get younger people who would work a career where you would be able to collect contributions and earn interest over a longer period of time. That's basically how adverse selection happens, but it takes time to evaluate that. I don't think we could get a definitive answer in a Fiscal Note for this Session. It will take several years to see what kind of experience you do have. I would project that you will see people making very intelligent decisions, much as the testimony you heard on the bill. They are smart enough to choose the right system for themselves so you will get adverse selection against the TRS, or the PERS system in this case.

*{Tape: 1; Side: A; Approx. Time Count: 10:27 p.m.}*

**SEN. HARGROVE:** From what you just said, having it studied for another two years really wouldn't make much difference as far as what we would know about it.

**Mr. Senn:** That's correct. We did a study every two years. The first time we had about 16 months worth of data to work with, which is a very small data base, and could determine no adverse impact yet. Four years was still a little short evidenced by the fact that we reduced the rate to 2.5 and we're now increasing it to 4 percent after about eight years of experience. It really does take some time to develop those assumptions and to look at what kind of experience you're having. Until then, all you really know is what the system looks like as a whole.

**Dave Evenson, University System:** This debate of adverse selection and impact on the retirement systems is an old debate. I will point to an actuarial study that was done by the Legislative Auditor on behalf of the legislature. We asked the actuary to segregate that issue, whether or not the adverse selection will have an impact on the unfunded liability. We all assume that the adverse selection would be there and it is. The actuary said that if you have a mandatory program and you force people into the ORT, that will have an effect of some loss of contributions. When you make it a true option you have people choosing the PERS system and the unfunded liability contributions are a part of their formula and, in essence, it's cheaper for the system to have an optional plan. It really doesn't create the financial catastrophe that you might assume. That was a bit of surprise. I can't find it on short notice, but I would offer this report as some evidence to support what I'm saying.

**SEN. HARGROVE:** Could you give us a quick outline, under a true option, where the money comes from and where it goes? Who pays into and who pays how much?

**Mr. Evenson:** Okay. All the contributions to the system are under federal tax code 414H which means the employee and employer contributions are characterized as employee contributions and that is pre-tax. The formula for PERS is currently 6.7 percent from the employee and 6.7 percent from the employer. That sums

up to 13.4 percent. That is of some significance in these systems only for the reason that when an employee leaves early they are entitled to their contributions of 6.7 percent plus interest that might have accrued over time, but they forfeit the employer share that goes into the fund. If you look beyond that, the normal cost which is the predicted cost of the average employee who comes to work, what does it cost for them to fund their retirement in the future. That has been declared in the PERS system as something like 10 percent or so.

**Ms. King:** It's 10.3 percent.

**Mr. Evenson:** The cost of an active employee is less than the total contribution and the residual, the 3.1 percent that we're talking about is actually available to pay the unfunded liability. The unfunded liability is caused by either an experience that wasn't predicted as adverse or the granting of benefits that people haven't had time to pay. It would be like granting an increase in benefits to retirees. There are a lot of ways to slice this thing, but in essence, it's 13.4 percent for the PERS system. The ORP is a 12 percent plan. We're looking at 6 percent from the employee and 6 percent from the employer that is immediately vested with the employee and they get 12 percent of that money. That, in effect, becomes the employee's money that stays with them through whatever career they have. The residual or the difference between the 12 and 13.4 percent, originally in the bill, was to be given to PERS to offset some of the loss of contributions. We had it designed so it was a zero sum plan. It was no more expensive for the University to offer the ORP than it was to have somebody enrolled in PERS. Now there is a suggestion that we increase the cost to PERS by going beyond the 13.7 percent for employees choosing ORP.

**SEN. HARGROVE:** How come this bill wasn't originally presented with the true option?

**Mr. Evenson:** That was a judgement we made when the bill draft was presented to us. This was an old argument and we originally told our employees at the University that we'd like to make this like the faculty. We were arguing with TRS about this actuarial impact of the ORP on their system. We looked at what was happening to the faculty coming in and over 90 percent were choosing the ORP anyway. It had no real effect so, by making it mandatory, there was no grumbling or negative response from our faculty. I have not yet received a complaint that the ORP for new employees is mandatory for faculty at any of the University units. There is somewhat of an escape valve in the current law which says that if you have current membership in TRS you have the option to continue with your existing system. You're not forced to change. We thought we were taking away an argument in opposition to the ORP by making it mandatory and we got somewhat sidetracked because now that became an issue because it wasn't optional. It was just a wrong guess on our part. From our perspective, making it optional is fine. It enhances the program

from the University system's perspective. We see that it does no financial harm to the systems or to us.

**SEN. HARGROVE:** Mr. Schneider, can I get your thoughts?

**Mr. Schneider, Public Employees Association:** We don't disagree with the faculty and the Committee has to know, under the law when it changed for the faculty, there was a two-year period where it was completely optional so they were able to develop some data. The biggest difference is the fact that the faculty pretty much travel from campus to campus. The chances of faculty coming in and having been in TIAA/CREF is pretty good because they only service campuses. This is also true of new faculty that had not been faculty somewhere before and leaving the U of M or MSU or some segment of the University system and going to another campus.

We're dealing with a different type of employee. If you take the high tech employees you are probably again dealing with a class of employees that were either in TIAA/CREF and came to the University system or will leave here and go to another campus and be able to move that with them. We're also talking about cooks, janitors, secretaries, a whole class of people who probably, unless they stay with the University of Montana, are never going to move to another form of employment with TIAA/CREF. They may well move to another form of employment with a qualified type of deferred or defined contribution plan and that's why we asked from the beginning that there was rollover in the University plan which we have been told the Regents can do. TIAA/CREF does it. It's not something that TIAA/CREF says you can't do. It's the University plan that doesn't allow it. We want to be sure we accomplish these goals. One thing you could consider is putting a four-year sunset on the full option so that the Legislature has to visit it in four years and can take a look at the actual facts of hiring and turnover in the University system - see how many people chose TIAA/CREF versus PERS and how many people left and went to another university setting. You could do something with this amendment to assure that could be done. We totally support the amendment because we believe there is a large number of people on the campuses who will not go somewhere that has TIAA/CREF and that's our concern.

**SEN. HARGROVE:** A question for Ms. King. With HB 90, the extension for two years is to study a defined contribution versus defined benefits or the movement for the classified employees which is basically what we're talking about here. Am I right or wrong? If that's the case, couldn't they still make recommendations to the University system or the Legislature as to what they think this has done or should do or how it should be adjusted?

**Ms. King:** To answer your first question, HB 90 was not to study a transfer from, but to look at adding to the current hybrid nature of the PERS plan. PERS in this state, unlike teachers is

a hybrid plan. It's not a straight, defined benefit plan. It has defined contribution elements to it and when the interim study committee looked at this issue, they asked an independent consultant to evaluate the two systems because there was disagreement in testimony before that committee about the benefits offered and what was better. The evaluator's recommendation as a whole was that since PERS was a hybrid plan it might make more sense for them to look at ways they could easily increase the portability of PERS. That is where HB 90 came from. The intent of the bill was not to convert PERS from a DB to a DC, but to expand on its hybrid nature to make it more portable. If you leave it optional, any new, more portable plan that is PERS could fit as an option for University classified staff. If you make it more hybrid, it will increase the cost of the system somewhat.

**SEN. HARGROVE:** Where would that money come from?

**Ms. King:** It would have to come from the employers, possibly some employees, but no unfunded liabilities that would be created could be paid for by employees. The problem you might have is that you would, in fact, increase the cost to the University system for funding a more hybrid PERS plan and their ORP. Maybe it is a good idea if you add a sunset as **Mr. Schneider** suggested. I would suggest that it not be too soon, just like I suggest that the first study be made more than six months down the road. People get really tired of studies that don't tell you anything. Give it enough time and chance so you have some real data.

**SEN. HARGROVE:** Could the HB 90 study address this question?

**Ms. King:** That would be up to the Committee. I would assume that it could.

**SEN. DEL GAGE:** To clarify, I'm assuming that as far as actuarial soundness there is a specific amount of people that we're talking about in regard to this bill. Is that true? What would that figure be if 100 percent of those people had an option of going with TIAA/CREF and decided to do that? Do we know how many are under PERS and how many are under TRS?

**Ms. King:** No. This bill is only affecting the PERS members. They are only technical amendments and are not changing the TRS program.

**SEN. GAGE:** How many people are we talking about if 100 percent of those who are currently employed decided to leave PERS?

**Ms. King:** I believe it's on the Fiscal Note.

**SEN. GAGE:** I don't remember seeing it or hearing it in testimony, but it may well be there. A number of people called us during the Easter break and without exception the ones that I talked to said they were of the understanding that there was

going to be an option for new employees in the bill. I guess many of them evidently had not seen the bill as it was introduced because they were a little bit surprised there was not an option for new hires.

**SEN. HARGROVE:** I didn't find one that had seen the survey and knew that a petition had been a part of it.

**Mr. Schneider:** That's because the petition was only at the UM campus. The petition never did appear at MSU.

**SEN. GAGE:** All of the ones I talked to were from the UM.

**Ms. King:** Our estimate of the number for Fiscal 1999 would be about 2,500 people.

**SEN. HARGROVE:** In the entire University system.

**Ms. King:** That are classified that are currently in PERS.

**SEN. GAGE:** So new employees would have no effect on the actuarial soundness at all? It may have an effect on cost to administer, but not the actuarial soundness.

**Ms. King:** That's where the adverse selection would come into effect, when they have an option. The assumption any actuary would make is that there would be, but we won't know exactly what that would be until we have a significant period to study it, not just a few months.

*{Tape: 1; Side: A; Approx. Time Count: 10:45 p.m.}*

**SEN. BILL WILSON:** You were talking about under PERS they contribute 6.7 percent from the employee and the employer and if one were to quit early and cash out, it's the employee's contribution plus interest they may have earned. Under TIAA/CREF, are they going to get a better deal if they quit? I think it was 6 percent employee contribution and the employer matches that. If they cash out and go into some other line of work and do not go into a related retirement system, do they get that portion or do they forfeit as they do under PERS?

**Mr. Evenson:** The nature of a defined contribution plan is that the money, when contributed, is immediately vested. That means they can have ownership up to 12 percent and that is portable. We have some strings on that because it is retirement money. It's not like a savings account. You have to, in effect, retire at some point in the future to get your money as an annuity under our current Board of Regents program. You're entitled to the employee's share under the PERS system. It's somewhat of an artificial distinction useful for the purpose of identifying the pool of money that belongs to the employee and moves with them. The tax law views it as all the same. It's all employer money because it's contributed pre-tax. The advantage of a defined

contribution plan is people who are mobile do have retirement benefits that travel with them. The PERS plan is an excellent program. The only hitch on that is that it works best for people who stay 20 to 30 years with one employer. They are then entitled to a good retirement benefit.

**SEN. WILSON:** Where I'm going with this is I'm talking in terms of a refund. What if they want out early? Did I understand you to say that, if they cashed out, they would get that other portion of money or does that also stay behind? If they wanted to cash out under PERS, they get what they contributed plus interest with no employer match. Is TIAA/CREF better in that sense, refund wise?

**Mr. Evenson:** As I said, the qualifying of this plan under the tax laws say, in effect, that you cannot "cash out" under the TIAA/CREF option. You have to shelter that money for retirement. True, you can retire at virtually any age under that program provided you're working for an employer who doesn't have an optional style program. The average employee today, I'm told, is going to have 5 to 7 different careers. It's not going to be very typical for the average person to work for one employer for a lifetime. Under those circumstances, that kind of employee is better off in the ORP because they're moving from employer to employer. The career employee is equally well-served in either program, but PERS is designed to reward the career employee and keep them there for 30 years which is an advantage in some cases for the State.

**SEN. GAGE:** Under the amendment, the Board of Regents would have the option, at their discretion, whether to make this optional plan available to these people. Do you have any idea at this point what the upper figure might be for transfers and for the actuarial contribution that the University system would have to put into this that would say to the Board of Regents, that's too tough, we can't make that available?

**Mr. Evenson:** There is concern on the University system's part with the current level of budget. Any program that increases our costs is going to have either be paid by tuition or reduction in staff which is a pretty tough pill for us. If the costs were too high, the ability to delay the implementation might prevent some disagreeable decisions that would impact students in their system. That amendment is designed to do that. How many people will slap the ORP to their current classified employees? We don't know. The typical estimate is 15 percent of people will select an option when presented to them and we base that on some historical experience, but we don't know because I was told by the UM that as many as 40 percent of the classified staff over there are not vested. These would be ideal people to select the ORP so the number could be higher. I would guess it would range between 15 and 40 percent of eligible people selecting this option. The actual cost of that transfer, in one essence, is

neutral. The unfunded liability to PERS is a relatively fixed number. It's not going to vary.

**SEN. GAGE:** If this were to go through with these amendments, you would probably poll those people to find out exactly how many are going to make that change if you give them the opportunity?

**Mr. Evenson:** Yes, we would do that. The financial implications to the University system would be shared with that classified staff. I think many of those people, seeing the realities of the budget if they turn out to be true, might forgo the option until some point in the future when the financial picture looks better. Most of those people do not want to harm the University system and they view themselves as employees of the system and part of the community. The secretaries and cooks have as much loyalty as any of our faculty, I believe.

**SEN. GAGE:** For your nonclassified people, do you have a pay plan of some sort?

**Mr. Evenson:** Yes, we do. Our classified employees typically are under the State pay plan and they get the same rates as other State employees. The faculty, of course, have a different arrangement. I'm sure you're aware of that.

**SEN. HARGROVE:** PERS does, in fact, allow a certain amount of contribution. My feeling at this point is that most of this amendment is not a happy thing and I assume that this has been done to kind of give us something to go on if we want to. My communications are, and **SEN. BROOKE** just showed me an extremely large petition that she has received that says they don't even care whether it's optional. To me, it's important that they are optional and I think most of them feel that it is an option for the new hires. This business of allowing the Board of Regents to have an option and to have a bunch of studies is exactly what they don't want.

**SEN. BROOKE:** The full option became the issue of contention or issue of debate. In order to assuage that and draw some more votes to the bill, the full option was put in. Then that bumps up the question of the actuarial soundness. In order to kind of put an insurance plan on that actuarial soundness we've gotten all these studies. I'm very much opposed to giving the Board of Regents the discretion to do this when we have, in our structure, a Committee that's going to do it. That was the debate. Is the Committee going to do it or are we going to do it? Now we have a third entity saying they're going to do it. That's very contradictory to what I think the bill was intended to do which was to give the employees the straight out option at the time the bill was effective. That puts us back to the drawing board I would think.

*{Tape: 1; Side: B; Approx. Time Count: 10:55 p.m.; Comments:  
Turned tape over.}*

**SEN. HARGROVE:** As far as amendments are concerned, there would only be one and that would be to make it a true option for everybody. We could let that go out to the floor and let it be debated a little bit whether they think our University is going to eat us up with requests for money and so on in the future or not. It's a pretty subjective thing. The other would be to put it out as it is now and I'm sure that would be received poorly. We need to think about what we're going to do with the amendment, either alter it or vote this one down and submit a different one.

**SEN. MESAROS:** There have been several comments made that I agree with bits and pieces of. Almost unanimously, the calls and correspondence that I received were from people that wanted full option. I believe there is a lot of misunderstanding of this of people that are looking at this piece of Legislation and they're anticipating something different than what this bill originally did. The full option is an important aspect to address. I dislike the portion of the amendments that have studies. We have a study group that is going to review these issues.

**SEN. GAGE:** Assuming that 2,500 of those people at an average salary of \$10,000 decide they are going to make the change, that's something like three quarters of a million dollars additional cost to the University system. I'm not sure I would like to see tuition rates cover that if they decide to go with the plan. I would rather give them the option of saying that's too tough at this point and we don't think we can handle that kind of additional cost in our system.

**SEN. FRED THOMAS:** I'm kind of confused on this issue and wanted to see if this gentlemen could address it.

**Gary Mauger, Assistant Vice President, TIAA/CREF:** What I'm hearing is correct. I think there is some confusion over what the purpose of these studies are. Frankly, they were to pinpoint the appropriate contribution to PERS. We have already heard that there is a possibility of adverse selection against the PERS program based on the fact that there is a true option. We also have heard that it takes some time for that experience to develop and mature so that you can identify exactly what experiences have occurred under the plan. The pure purpose of these studies is to identify what the contribution should be that is paid, the fair actuarial calculation that is done so that the PERS system is not harmed in any way actuarially. It's not to determine some broader question or issue. That is essentially what has occurred in the TRS system as well.

**SEN. BROOKE:** Can the PERS Board do a study like this without this bill?

**Mr. Evenson:** Every two years the PERS system does an actuarial study to check the soundness of their system. I would answer yes, they can do that, but what we're suggesting here is they

segregate the issue and pinpoint it to make sure we're extra careful that we're doing the correct amounts.

**SEN. GAGE:** In response to that, unless this bill is passed with maybe a delayed effective date or something, why would they spend that extra money? Why would they go that extra step just to study this as a part of their every two year study?

**Ms. King:** This is an after-the-fact study to reset the 3.1 percent number. My comment earlier was, in six months, we aren't going to have any decent documentation by which to set it so I would suggest delaying that first one and not doing a meaningless study. This is a study of actual experience so we can pinpoint what that rate should be. I fully agree with these amendments in terms of the studies needing to occur so we can set the appropriate rates. My one concern is the first one is too soon.

**SEN. HARGROVE:** Who can speak to amendment number 15?

**Larry Fasbender, TIAA/CREF:** One of the problems right now, as you're well aware, is that the University system doesn't know what its funding is going to be. There is going to be some cost to the University system as far as this particular bill is concerned to pay those unfunded liability costs. We are attempting to set it up so that, after the Session is over, if they don't get funded or funded at a level they don't think is going to allow them to absorb some of these costs, they could delay the implementation of this particular program. That's why we set it up so the studies would be done at a period somewhat appropriate for the time that they would implement. If they were going to implement at such a time that you would only have six months to have a study, I would imagine they would delay that so you would have a longer period of time to study after implementation. The first study may not occur until 2001. That's part of the reason the language is as long as it is. It accommodates that moving target you would have as far as implementation is concerned.

**SEN. HARGROVE:** In essence, it says the Board of Regents can delay it forever.

*{Tape: 1; Side: B; Approx. Time Count: 11:05 a.m.}*

**Mr. Fasbender:** That's an option that is there. I would think, as far as the employees are concerned, there would be some pressure to have this implemented sooner. Of course, the Board of Regents is going to have to make that decision whether or not the interest and pressure of the employees is great enough to find the money to cover those costs.

**SEN. HARGROVE:** That portion gives me a lot of trouble. **SEN. GAGE'S** concerns about what the University is going to do for money also gives me concern.

**Tom Bilodeau, MEA Research Director:** On the question of doing studies, TRS does studies. They're in law and it was found necessary to do those studies on a periodic basis after-the-fact to determine what is the appropriate costs. The amount of reimbursement needed from the University to TRS has varied over time although it is generally the phase-in of additional cost as agreed to. We've already agreed to that again, recently. It's a moving target and a difficult one. You need to study it. Let's assume all the assumptions made for this bill and by PERS about current liability are correct. You know all the people we expect to make transfers and everything else and that we pass the bill with mandatory or optional enrollment, but 3.1 percent is the correct liability payment being made by the University to PERS.

Let's assume the Board of Regents don't get to make an unprecedented election about what kind of pension program is being made available for their employees, unlike any other State agency. Let's assume that's not under discussion right now. What you're seeing from the University is a willingness to pay something more out of budget. If they're going to pay 6 percent to TIAA/CREF on behalf of the ORP enrolled employee and the employee makes their contribution and they're going to pay a 3.1 percent payment to PERS, they are going to end up paying more than what they're currently paying for PERS. If you take all the assumptions as being true and accurate now and forever more, there is a willingness to pay something more. That's peculiar in a fashion. It raises questions about budget capacity within the University and where they're going to find the money to pay for that. It also raises some concerns for other employees of the University system, possibly some of the money they're going to spend for additional payments to PERS and otherwise is less money available for university faculty pay, materials, programs, etc.

The second concern at this point is you have a series of amendments that most of us have not yet seen that may change later this afternoon or tomorrow. What is being suggested is that with information available to you right now, which could have been provided much in advance of this point, you are being asked to make a bill that was at one time mandatory. You knew that new hires were going to go into the ORP. You're now going to make it optional. The adverse selection issues are valid ones. It's likely to raise the costs. I don't see how it can lower the costs under any scenario. You go beyond that point even and turn the decision making authority, about what kind of pension program will be made available to these employees, over from the Legislature, where historically those decisions have been made about coverage. You made the decision in respect to TRS in the ORP. You didn't turn that decision over to the University system. I don't know if they're going to make that decision based on their budget concerns or some other basis. If they're going to make that kind of decision, and I don't want to speak for people who represent the classified employees, but I would make a demand to bargain it. It certainly seems, if it's going to become an employer decision and it clearly relates to

wages, hours, workman's compensation, I would like to bargain that issue. Similarly, if I was a University faculty person who now sees an additional benefit, something additional being paid on behalf of the classified employees relative to what's being paid on the University faculty's part, I would have some concerns myself although already covered under the ORP and reasonably happy with it, but all of a sudden it doesn't look very fair. It's not the same ORP that's being offered to me.

We have a bill already passed and on it's way to the Governor's desk that we're going to study this for all employees. We're going to look at defined contribution. Maybe that's the full answer, maybe we'll just abandon the defined benefit programs, but we're also going to look at hybrid programs and at adjusting the existing system. We're going to look at the worker compensation issues and the employment patterns of different employee subgroups. We can look at that for all systems. We have \$80,000 budgeted in HB 90 to at least get us a good way down the road. It is a first good step. It's likely to come forward with a bill that many of us would be much happier with.

If this goes through, you turn over the authority to deciding what kind of pension program is made available to employees of the University. What kind of precedent is that over the next two years as we study this issue for all state and local government employers? Is the Billings' school district then going to be able to walk in and say, in respect to my PERS covered employees, we think it should be entirely defined contribution? Maybe Great Falls will think differently. If you want to talk about State Government, do you let one agency of government come in with one idea about how they're going to affect their employees? Do you turn over that decision making authority from this Committee, this Legislature to agency heads, the Governor's office, to other entities of government? Submitted written testimony. (EXHIBIT 2)

**Mr. Schneider:** Can I respond with one thing I think everyone should be familiar with? As you're looking at this and the number of people who are going to switch, you have to understand up front that the only dollars that are going to switch are the employee contributions and the interest. So if I'm a current employee of the UM and I go to ORP, the only thing that comes out of my present account is my contribution and the interest. That will limit a lot of people because, if they have been there for any extended period of time, they are giving up a lot.

This is something we finally got a straight answer to today. Once these people find out there is no refund, period, believe me, you're not going to have a high number of people opting into TIAA/CREF when they go to work at the University system because most people, when they're 20 years old, don't care what happens when they retire. They're going to want to withdraw this money. If the best they can get is their contribution and interest out of PERS versus being frozen into a defined contribution plan, there won't be a lot of people making this choice. Any concern

you have about a high cost to the University system is really not valid because it just isn't going to happen.

**SEN. HARGROVE:** Do you have anything to say about your amendment, **SEN. BROOKE**?

*{Tape: 1; Side: B; Approx. Time Count: 11:15 a.m.}*

**SEN. BROOKE:** It's been enlightening. As I said, I do have a major problem with this Board of Regent discretion, amendment number 15. I don't think that's dealing with employees in a forthright manner. I would not support that amendment. I don't know how to take these amendments apart and offer those that don't deal with Subsection 6. If that's something the Committee would like to do, we can do that.

**SEN. HARGROVE:** With the explanation I have become comfortable. The studies are not going to delay anything. My feeling is, if you were to submit the amendment as you moved it without 15 it would be workable for the time being.

**SEN. BROOKE:** Is that the case? There are other references to Subsection 6 in some of the other amendments.

**David Niss:** That's correct. There are also some in amendment 18 that are geared to the delay.

**SEN. GAGE:** Let me try a motion that may solve everything.

**Motion/Vote:**

**SEN. GAGE:** SUBSTITUTE MOTION TO TABLE HB 142. MOTION FAILS DUE TO TIE VOTE. **SEN. MESAROS, SEN. GAGE AND SEN. WILSON** VOTE YES.

**Motion:**

**SEN. BROOKE:** SUBSTITUTE MOTION TO ADOPT AMENDMENTS WITHOUT 7, 8 AND 15.

**Discussion:**

**SEN. HARGROVE:** It is the same as **SEN. BROOKE'S** original motion with the exception of segregating 7, 8 and 15.

**SEN. GAGE:** Would there be any interest in striking amendment 18, 6 (a)(i)(i)? Their question was why do a meaningless study. In their opinion, this would be a meaningless study because there will not have been enough time to give them sufficient information to base anything on.

**SEN. HARGROVE:** It would not bother me a bit.

**SEN. BROOKE:** That's fine.

Vote:

MOTION CARRIES 5-1. SEN. GAGE VOTES NO.

Discussion:

SEN. MESAROS: I do not have an amendment drawn up, but I'm uncomfortable with this bill. I would like to put a four-year sunset on it.

SEN. HARGROVE: We'll discuss it a little bit.

SEN. MESAROS: I would like to see this have further review. For me, there are more questions than answers around this subject.

SEN. HARGROVE: I certainly understand your concern and that's one way to address it. I would take a different approach in that, the major concern is that we don't trust these folks to be able to make up their own mind and this would kind of go along with that. I don't think that's really the case. They can make up their mind as well as anybody else. I would trust the system and the Legislature.

SEN. GAGE: My comment has to do with the amendment we put on the bill. It looks like there are other areas that we need to amend out of the amendments if we're going to delete reference to that first study.

SEN. HARGROVE: Let's vote on the motion that we have.

SEN. MESAROS: I had not moved it. It was for discussion purposes, but I will move that.

Motion:

SEN. MESAROS: MOTION TO AMEND TO SUNSET FOR FOUR YEARS.

Discussion:

SEN. HARGROVE: SEN. GAGE, counsel says he can address those in putting in the amendments.

Vote:

MOTION FAILS DUE TO TIE VOTE. SEN. GAGE, SEN. MESAROS AND SEN. WILSON VOTE YES.

Discussion:

Ms. King: If you're looking at a sunset realistically, I would suggest that you do it after a period of time where we could tell you the full actuarial costs. You might want to set it after the Board gets to do their study and then you would have real information to deal with.

**SEN. HARGROVE:** My vision of sunsets are that they force an examination, but it would seem to me in this case that whatever is going on in the system would force an examination anyway.

**Mr. Schneider:** That is true. I only wanted to talk about a sunset if we weren't going to make it optional. I wanted it to be optional for at least a period of time to see how many people really took advantage of it. As long as it's optional I don't think we need a sunset because it will be studied anyway.

**SEN. GAGE:** After the HB 90 study is done, there is no question in my mind that this will be looked at again depending on what that study shows.

**SEN. MESAROS:** My concern with HB 90 is in all probability this will be studied, but not necessarily. There is no guarantee.

Motion/Vote:

**SEN. BROOKE:** MOTION TO CONCUR ON HB 142 AS AMENDED. MOTION FAILS DUE TO TIE VOTE. SEN. HARGROVE, SEN. BROOKE AND SEN. THOMAS VOTE YES.

*{Tape: 1; Side: B; Approx. Time Count: 11:29 a.m.}*

EXECUTIVE ACTION ON SR 17

Motion:

**SEN. MESAROS:** MOTION DO PASS ON SR 17.

Discussion:

**SEN. BROOKE:** Page 7, lines 20-23 - regarding realty regulation. That Board has an interesting criteria that I didn't find other places. It has to be evenly divided by political parties. When I interviewed these three people, they were Republicans and they thought all of the members of the Board at this time are Republicans. As far as the actual criteria in law, it's going against that.

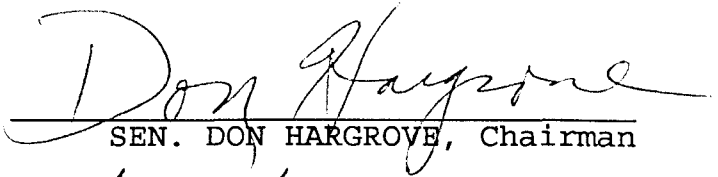
**SEN. HARGROVE:** There was a brief discussion regarding the eligibility of one of the appointments to the Board of Regents.

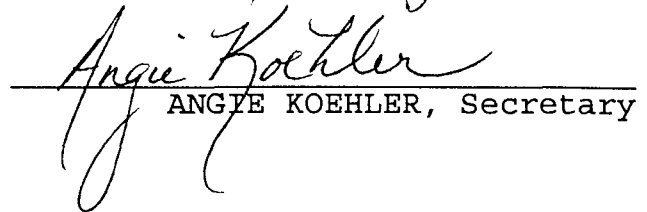
Vote:

**MOTION CARRIES UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 11:35 a.m.

  
SEN. DON HARGROVE, Chairman

  
ANGIE KOEHLER, Secretary

DH/AK