



## State Administration and Veterans' Affairs Interim Committee

### 60th Montana Legislature

**SENATE MEMBERS**  
KELLY GEBHARDT  
VERDELL JACKSON  
LARRY JENT  
CAROLYN SQUIRES

**HOUSE MEMBERS**  
FRANKE WILMER--Chair  
GARY MACLAREN--Vice Chair  
PAT INGRAHAM  
VERONICA SMALL-EASTMAN

**COMMITTEE STAFF**  
DAVE BOHYER, Lead Staff  
DAVID NISS, Staff Attorney  
FONG HOM, Secretary

# MINUTES

June 30, 2008

Room 102, Capitol Building  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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### **COMMITTEE MEMBERS PRESENT**

REP. FRANKE WILMER, Chair  
REP. GARY MACLAREN, Vice Chair

SEN. KELLY GEBHARDT  
SEN. VERDELL JACKSON (after 10 a.m.)  
SEN. LARRY JENT  
SEN. CAROLYN SQUIRES

REP. PAT INGRAHAM  
REP. VERONICA SMALL-EASTMAN

### **STAFF PRESENT**

DAVE BOHYER, Research Director  
SUE O'CONNELL, Research Analyst  
DAVID NISS, Staff Attorney  
FONG HOM, Secretary

### **Visitors**

Visitors' list, Attachment #1.

## **COMMITTEE ACTION**

- The Committee adopted Mr. Niss's recommended changes in MAPA (see Exhibit 20) regarding the statement of reasonable necessity.
- The Committee took action on draft legislation stemming from HJR 46: Election Laws:
  - LC0035 not included in clean up bill; adopt the changes as proposed; amend LC0035 to include 13-19-307(2)
  - LC0059 clarify the mailing of absentee ballots upon death of a candidate
  - LC0106 was tabled until the September meeting
  - LC0060, the effective date was changed; and include 17 counties in pilot project
- The Committee authorize staff to draft legislation for the following agencies' legislation proposals:
  - Secretary of State's proposals 1, 2, 3, 5, 6, and 7 (see Exhibit 7)
  - Commissioner of Political Practices' proposals 2, 4, 6, 7, and 8 (see Exhibit 8)
  - Department of Administration's proposals 1, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 16, 17, and 18 (see Exhibit 9)
  - Montana Public Employees Retirement Administration's proposals 1, 2 and 3 (see Exhibit 10)
  - Office of Budget and Program Planning's proposal (see Exhibit 15)
  - Teachers Retirement System's proposals 1 and 2 (see Exhibit 14)
  - Department of Military Affairs' proposals 1, 2, 3 and 4 (see Exhibit 18)

## **CALL TO ORDER AND ROLL CALL**

00:00:01 REP. WILMER called the meeting to order at 8:33 a.m. The secretary took roll. The minutes of the February 22, 2008 meeting were approved.

## **AGENDA**

### **HJR 46: ELECTION LAWS - Sue O'Connell, Research Analyst, LSD**

00:01:20 Ms. O'Connell gave a presentation of bill drafts that are related to the HJR 46 Study.

#### **LC0035, General Clean up and Clarification**

Ms. O'Connell discussed changes to LC0035:

- Proposed Clarification on Places of Deposit (**EXHIBIT 1**)
- Proposed Clarification on Mailing of Absentee Ballots (**EXHIBIT 2**)
- Proposed Amendment to School Election Law (**EXHIBIT 3**)

Ms. O'Connell said that if the committee wants to include any or all of these changes in LC0035, they need to take specific action to date it and include them.

#### **Questions**

00:05:11 REP. WILMER asked a question about clarification on the date for mailing of absentee ballots. Does that solve the problem that we talked about where a voter could get the ballot three days before the election and not have time to return it.

Ms. O'Connell said that it does and that is where she would work with the Secretary of State's Office more to clarify it. Because the language used to say "immediately", that is what they were doing. If you mailed it immediately after they were printed and the deadlines were laid out in law, it has to be printed 30 days before an election or 20 days for a municipal election.

The next bill that Ms. O'Connell discussed is **LC0059 (EXHIBIT 4)**, defining that the death of a candidate creates an error or omission on a printed ballot.

Ms. O'Connell discussed **LC0106 (EXHIBIT 5)**, allowing election administrators to determine whether accessible voting machines will be available for certain mail ballot elections.

#### PUBLIC COMMENT

00:10:43 **Bob Vogel, Montana School Boards Association**, said that MSBA recommends a small change. Specifically, they have had a number of school districts' election officers talk to them about this point: If a school districts has an equal number of candidates for the positions that are open, they can by acclamation, cancel the election. If there are three open trustee seats and there are two people who file for those seats, and you are beyond the write-in candidate declaration deadline, the sensible thing to do is allow the district to cancel the election.

00:14:48 **Beth Brenneman, Disability Rights Montana**, commented on LC106, accessible voting machines. She said that over the last three legislative sessions, they have been trying to change state law to accurately reflect federal election requirement and federal laws when it comes to disability access to the voting process. The original version of LC106 was an attempt to ensure that people were aware that autoMARK machines were an accessible voting technology in elections. This particular change puts back into an acknowledgment of the fact that accessible voting technologies need to be there for federal elections, but it is inaccurate.

#### Questions

00:22:54 REP. WILMER asked Ms. Brenneman where she would insert the reference to the federal ADA test. Ms. Brenneman said that she would put that reference in subsection (5). It reflects that HAVA requires it in no uncertain terms in federal elections and at every polling place.

REP. WILMER said at the end of subsection (5), insert a comma and say "consistent with the ADA test". Ms. Brenneman said that she would take out that

phrase because it suggests that one could or couldn't do it and make it "shall use unless it is an undue burden under..." and then cite the federal law test. Rep. Wilmer said that the election administrator "shall use accessible voting machine at a place of deposit, unless it is an undue burden according to the standards outlined in ADA." Rep. Wilmer asked if there were any committee members who had any objection to that. There was no objection.

REP. WILMER asked if Ms. Brenneman was proposing to affirm that the law that applies is the federal law. Ms. Brenneman said yes. Rep. Wilmer asked if that would change the election administrators' responsibility. Ms. Brenneman said no.

00:24:52

SEN. GEBHARDT asked what would constitute an undue burden. Ms. Brenneman said that she could not give a number. She doesn't know if the amount of money an election would bring in has ever been used as a test by the courts. What they look to is the budget for running the election and what proportion of the budget of the election would go towards having to use the autoMARK machines.

SEN. GEBHARDT said that part of his question was what percentage of the budget constitutes an undue burden. Ms. Brenneman said that she wouldn't be surprised if it were 40% or 50% of the entire costs of running the election that a court wouldn't find that that is an undue burden.

**Dave Bohyer, Research Analyst, LSD**, said that what this does is flip the responsibility onto the election administrator rather than onto the person who believes that they are affected. Ms. Brenneman said that she does not agree with Mr. Bohyer. She said that the ADA requires that you treat everyone equally and provide equal services under the law. When you do not do that, you have to demonstrate that it is an undue burden to do that. There is an affirmative requirement in the ADA and also in the Montana Human Rights Act to not discriminate, and one of those things is to provide an accessible voting technology for people who are blind or who cannot otherwise read the ballot.

Mr. Bohyer said that he agrees with Ms. Brenneman in that the ADA makes certain requirements to provide access to those who are disabled. He said that what Ms. Brenneman's proposal does is, it puts the responsibility on the administrator, across the state for every election, rather than election by election, district by district. Mr. Brenneman contends that that is a requirement already. There has not been much litigation on this. Rep. Wilmer said that the federal law already requires that. Mr. Bohyer said that is what is at issue, whether the court has said that already. He said there has not been any case law in Montana on

that.

Ms. Brenneman said that federal statutory law says that everyone must be treated the same unless there is an undue burden in doing so. There need not be a case directly on point finding that in Montana, these particular elections have to be accessible. If that is what the committee requires in order to make that determination, Ms. Brenneman said that we can litigate that issue, but that is not a good way to be resolving the issue. This is not going away. This is going to be an obligation for all local governments in the state and we feel it is a very prudent thing to put it into state law.

00:32:45 **LC0060, Mail Ballot Pilot Project**

Ms. O'Connell discussed LC0060 (**Exhibit 6**). She discussed the updated version of the bill and an updated table that listed each section of the bill.

**PUBLIC COMMENT**

00:37:45 **Duane Winslow, Yellowstone County Election Administrator**, said that they have been doing a pilot project on mail ballots since 1985 and putting it into a formal pilot project is a great idea. This will give the Legislature and the people an opportunity to see what mail ballots are.

00:44:09 **Jean Souvigny, Montana Conservation Voters Education Fund**, said that having a comparison to different situations will make the pilot program useful. If data is not collected in 2008 in which to compare that information to data collected in 2009, the pilot program will be less useful. She said that you will hear more opposition to a bill like this in the session if the data isn't collected. One of the reasons they didn't proceed with mail ballot legislation in 2007 was because legitimate concerns had been raised about moving forward with a mail ballot election; how did it affect, for example, the Native American population, the minority, the single people, and low income. If you don't do a comparison, you are not finding out anything as far as whether those people are being disadvantaged. She would encourage that not to be lost in the discussion about a mail ballot pilot program.

00:47:14 **Janice Hoppes, Clerk and Recorder, Pondera County**, said that election administrators can provide all kinds of data from past elections. They keep track of how many voted absentee, how many absentee ballots were returned, how many were sent out, how many military went out and how many were returned, good and bad addresses, turnout, how many used the AutoMark machines. She said that they can provide any past election information that is requested and whether you require that, she will still be gathering that data to compare her

county's status. She said the during the course of the work session, they did comparisons and had a panel that talked about the effect of mail ballots on different demographics.

00:55:28 **Sara Busey, League of Women Voters of Montana**, said that the League of Women Voters strongly supports this bill. She said that it is important to have data. However, rather than comparing data from different elections, you need to find similar demographic counties in that same election year and compare those counties that do polling places with counties that want to do mail ballots and then you can get a reasonable comparison of expense and voter turnout.

00:57:57 **Bob Vogel, Montana School Boards Association**, thanked the committee for including the provision that has the elections limited to those that are administered by the county election administrator. He said that one of the concerns that the SBA has is the ongoing increased costs of running elections, which is a result of the permanent absentee ballots.

#### **Office of Secretary of State's Proposed Legislation - Janice Doggett, Legal Counsel**

01:05:23 **Janice Doggett, Legal Counsel**, discussed proposed legislation from the Office of the Secretary of State (**Exhibit 7**):

- Require post election audits to serve counties
- Streamline filing deadline for candidate filings
- Implement a fee structure and allow for online Administrative Rules of Montana
- Information regarding board and commission appointments made available on the website
- Update notary laws
- Update corporations and uniform commercial code laws for implementation of electronic records
- Implement electronic records management standards and systems as identified by the eRIM steering committee

#### **PUBLIC COMMENT**

01:14:57 **Sara Busey, League of Women Voters of Montana**, said that mandatory random, statistically-valid post-election audits are critical so that voters can be assured that their vote is counted and counted accurately. They commend the Secretary of State for taking the initiative to proposing legislation.

#### **Questions**

01:15:27 REP. INGRAHAM asked if the Secretary of State's Office is looking at the timeframe for post audits between provisional and military absentee counting on

Monday afternoon with the canvassing that has to be done on Tuesday for most counties. The timeframe is very short to put in another process that takes time. She asked if the recount in that timeframe is being considered part of the audit process? Ms. Doggett said that their goal would be to create a process that is not just a task to be completed in a short period of time, but something that is a reasonable evaluation of the systems to determine whether there is accuracy and whether there is security.

01:17:46 SEN. SQUIRES asked when the Secretary of State's Office is going to help counties with costs to deliver an efficient system. Would the Secretary of State Johnson consider it appropriate to provide funds to counties that have to provide the special district elections and the use of the autoMARK machines. Ms. Doggett said that they will be meeting with Harold Blattie, Montana Association of Counties, to discuss funding for county elections.

SEN. SQUIRES requested that the Secretary of State's Office present a report of that meeting the next time SAVA meets.

## **BREAK**

### **Office of the Commissioner of Political Practices - Dennis Unsworth, Commissioner**

01:52:34 Mr. Unsworth gave a presentation on the Commissioner of Political Practices' proposed legislation (**EXHIBIT 8**)

- Proposal 1, requiring mandatory eFiling of required political reporting, was withdrawn
- Proposal 3, adding 24 hours between deadlines to allow CoPP staff to check for errors and allow SOS time to review the certifications, was withdrawn
- Proposal 2, require disclosure of late campaign expenditures by independent committees
- Proposal 4, expand lobbying disclosure laws
- Proposal 5, clarify that ethics complaints and related documents are public records
- Proposal 6, in cases of disobedience of a subpoena issued by the commissioner, the commissioner may apply to the district court for an order to compel compliance with the subpoena
- Proposal 7, require itemization of sub-vendor details for campaign consultant expenditures
- Proposal 8, clarify and authorize use of wire transfers for campaign finance

### **Questions**

01:55:47 SEN. SQUIRES asked, regarding proposal 2, what the penalty will be after the

48 hours. Mr. Unsworth said that the penalty will be the same as it now stands in law.

02:03:03 SEN. SQUIRES asked, regarding proposal 5, if the individual under Montana's constitution, has a right to privacy until examination happens? Mr. Unsworth said that it is a policy in the office and recently was updated that says essentially that it is a decision that the commissioner makes with his attorneys. This is part of the proposal.

02:08:44 REP. INGRAHAM asked, regarding Proposal 8, how wire transfers work now. Mr. Unsworth said that the disclosure is very skimpy. In a case of a complaint, there is a potential that we can find that these wire transfers were in violation of state law and that is the reason for this proposal.

02:09:32 SEN. GEBHARDT asked, regarding proposal 4, what constitutes a lobbying effort that requires disclosure? Mr. Unsworth said that the current law as modified by court action applies just to the act of lobbying the legislature to opposing or promoting legislation or the enactment of legislation. As it stands now, lobbying disclosures just applies to acts that involve lobbying the Legislature or the legislators.

SEN. GEBHARDT asked if that would include all lobbying so that every individual that chooses to lobby the Legislature, every senator and representatives would have to disclose that information to CoPP? Mr. Unsworth said that in Montana law there is a threshold, and if an individual or the organization that they are working for does not spend above a certain amount, then they are not required to register or disclose expenditures.

#### **Department of Administration Proposed Legislation - Janet Kelly, Director**

02:14:36 Ms. Kelly presented the Department of Administration's legislation proposals **(EXHIBIT 9)**:

- Proposal 2, allow state-operated 24 hour care and custody facilities to hire intermittent, on-call workers, was withdrawn
- Proposal 6, revises Mortgage Broker and Loan Originator Licensing Act, was withdrawn
- Proposal 10, revise Title Loan Act, was withdrawn
- Proposals 9 and 12 are in response to the 9-1-1 performance audit
- Proposals 13, 15, and 16 are housekeeping bills
- Proposals 14 and 17 are placeholders and in response to the work they do to staff committees
- Proposals 3, 5, 8 and 11 are bills that deal with Workers Compensation laws



- Proposal 7 is a banking bill
- Proposal 4, changes the law so that breach notification requirements apply to state government
- Proposal 1, addresses deferred maintenance backlog for state buildings

Questions

02:18:38

SEN. JENT asked, regarding proposal 14, what the Montana Unified Volume Cap Bond Allocation Plan Act does. Ms. Kelly said that after September 1, the allocations that had been given prior to that date disappear. Requests for those volume cap dollars are unclear as to the authority of the Governor, whether the Governor could approve or disapprove a bond issuer's request for a certain percentage of that money.

SEN. JENT said that the Department of Administration has four requests regarding Workers Compensation. Proposals 3, 8 and 11 deal with the rates that the State Fund charges state agencies for Workers Compensation. He was interested in the interplay between the Workers Comp Fund and the premiums that state government, as an employer, pays. Ms. Kelly said that all of the bills that they are proposing have to do with the state and our policies, not the private sector.

SEN. JENT asked if the statement in proposal 5, "...amend the Workers Compensation Act to require an injury claim to be filed only when the injury results in a medical assessment or treated by a licensed provider. This proposal excludes occupational disease or death claims...", would just be limited to state government or is that to all claimants? Ms. Kelly said just to the state agencies' policies of which there are 37. They are attempting to change the statute so that state workers would only have to file a claim if they were injured. Currently the State Fund requires state employees to file claims for any work place incident even if they don't go to a provider. It will limit the number of claims that have to be filed and will also extend the time for our state employees to file.

02:25:20

REP. MACLAREN asked if the Workers Comp claim process applies to civilian employees, nonstate employees? Ms. Kelly said she doesn't know State Fund rules and regulations and hasn't spent much time analyzing the law as it pertains to the private sector. The focus at the Department of Administration is just with state agencies as policyholders.

**Montana Public Employees' Retirement Administration and Public Employees Retirement Board - Roxanne Minnehan, Executive Director**

02:27:50

Ms. Minnehan talked about MPERA legislative proposals (**EXHIBIT 10**):

- Proposal 1, update retirement statutes to reflect changes in [federal] retirement and tax laws.

Ms. Minnehan distributed the Legislative Qualification Bill Table (**EXHIBIT 11**) that shows citations that needs to be revised.

- Proposal 2, require employer contributions on working retirees in the systems that currently allow working retirees.

Ms. Minnehan distributed an updated version of proposal 2 (**EXHIBIT 12**).

- Proposal 3, clarify statutes for the retirement systems administered by the PERB.

Ms. Minnehan distributed a document (**EXHIBIT 13**) showing revisions that will be put into the housekeeping bill.

#### Questions

02:32:38

SEN. SQUIRES said, regarding proposal 2, that she thought that when you returned to work for the state, it was on a contract basis. She wanted to know what the intention of proposal 2 was. Ms. Minnehan said that they wanted to allow for the experienced workers to return to work and get retirement-system contributions from them. Ms. Minnehan said that MPERA does not know the extent of retirees who are returning to work, but thinks it is more than just filling in for a short-term basis. They are starting to get that information from the agencies.

**Scott Miller, Legal Counsel, MPERA**, said that PERA assumes that every "employee" is going to make the employee contribution and the employer will make the employer contribution. A good portion of that combined contribution is the normal cost to fund that particular employee's retirement benefit. But a portion of that contribution is also dedicated to reducing the unfunded liability that the system currently has.

02:39:43

REP. MACLAREN asked if these agencies that one hiring retirees didn't figure out that when John Doe retires, it is now a reduced contribution. Mr. Miller said that the agencies should not expect to help their funding by using money that should be paid as contributions to the retirement systems. We are *de facto* taking an actuarial hit every time a retiree goes back to work. The fund is subsidizing them and that is not what the fund is for.

SEN. SQUIRES said that the retiree is subsidizing the retirement system on the

other side because they are not getting any money out of what is going on here. She said the retiree is not getting any increase in his or her pension other than through the GABA process. Mr. Miller said that PERS is not requiring an employee contribution.

REP. WILMER asked if she is correct in that our benefits are, to use Mr. Miller's language, not really paying the retirees but that the retiree is receiving benefits that somebody else who is already retired, has paid into the system. Rep. Wilmer said that what Sen. Squires is saying is that she doesn't benefit from her contributions, but it is 23 or 35 years' of paying into the system that is being paid off. Mr. Miller said that the structures are set up so that the contributions (from an individual employee) that we receive, fund the (individual employee's) benefit. It is different than the Social Security contribution that comes out of your check, which is going to pay somebody's benefits who is retired. That is where the normal costs discussion earlier was focused. We don't need the normal costs because the retiree who has returned to work in a covered position will not be receiving any more retirement benefit, but the systems do need that portion of the contribution that goes toward paying off the unfunded liability.

REP. MACLAREN asked if the actuarial assumption includes an employee contribution as well as the employer contribution and if not, why are we not requiring it? Mr. Miller said that the employee and employer contributions fund two things. One is the normal costs of that particular person's benefit. Since the person has retired (and won't accrue additional benefits by returning to work), we don't need that contribution. The second part of that contribution goes to pay off the unfunded liability, to amortize the unfunded liability or clean it off. We need that portion of the contribution in order to continue making those payments on the unfunded liability. To the extent that we have a bigger population that is retired and not making those contributions, it is going to be more difficult to keep up with our funding schedule to pay off the unfunded liability.

02:45:10 SEN. SQUIRES asked Ms. Minnehan to discuss the rationale as to why the legislation by the unions regarding their retirees wouldn't work. Ms. Minnehan said that the main issue is the technology costs and who benefits from that adjustment. The proposal would require PERA to take a retiree's union dues out of the retiree's benefit check. This would be a benefit accruing to only a very small group and is a huge expense that all of the systems would bear. Our computer system is archaic and they are looking at re-engineering the system but re-engineering is costly and takes about five years to do.

**Teachers' Retirement System and Teachers Retirement Board - David Senn, Executive**

**Director**

02:49:54

Mr. Senn discussed the TRS' proposals (**EXHIBIT 14**):

- Proposal 2, address funding concerns surrounding the first two "return to work" issues
- Proposal 1, comply with federal regulation changes included in the Pension Protection Act of 2006

Questions

03:03:38

SEN. JENT said that way he understands the Pension Protection Act of 2006, if we conform our statute to the provisions of that Act, are we going to have any reduction or increase in any teacher benefits? Mr. Senn that they will not have a reduction or increase.

SEN. JENT asked: when we say we are complying with the federal regulation, is this with the CFRs or is this with the Internal Revenue Code, and is there any congressional move to make this more flexible for the state so that the requirements of each retirement plan can be incorporated instead of making statutory changes? Mr. Senn said that if you look at the Teachers Retirement Act and the Public Employees Retirement Act, you will see the cites to those particular sections of federal law that say we will comply with.

No Public Comment

**Office of Budget and Program Planning - David Ewer, Director**

03:06:30

Mr. Ewer presented a legislative proposal to the committee (**EXHIBIT 15**) eliminating the automatic trigger that decreases the employer contribution for the Public Employees' and the Sheriffs' Retirement Systems.

Mr. Ewer discussed pension bills and why the Legislature doesn't do more bills regarding pension plans. Mr. Ewer discussed the Pension Fund Fiscal Note on HB0159 from 2007 (**EXHIBIT 16**) and the Pension Fund Fiscal Note on HB0131, also from 2007 (**EXHIBIT 17**). He said that OBPP does not do fiscal notes on LCs, that OBPP needs an affirmative action on the form for fiscal notes -- checking the box if a retirement system is affected -- and then OBPP will do fiscal notes on pension plan bills.

Questions

03:19:34

SEN. GEBHARDT asked, if a bill request was submitted today, gets drafted, and needs a fiscal note, when would Mr. Ewer do the fiscal note for that bill? Mr. Ewer said that he will not sign a fiscal note until it has a bill number. **Dave Bohyer, Research Director, LSD**, said that the fiscal note process requires that

either the Speaker of the House or the President of the Senate requests the Budget Office to prepare the fiscal note, which the Budget Office does after the bill is introduced. A bill cannot be introduced until the mechanisms are set up in the House and Senate and that is not done until after the elections. The Budget Office gets the request from the Speaker or the President and then the 6-day response time begins.

Mr. Ewer said that preparing fiscal notes for some bills are huge endeavors and that is why the idea of a draft fiscal note cannot expand. At the same time he cannot say that the Budget Office would not do a fiscal note if the SAVA committee's pension fiscal note should say "has it been reviewed". It is disingenuous to say has the bill been reviewed and you haven't seen a draft fiscal note.

REP. WILMER said that Mr. Ewer's offer is to do draft fiscal notes for LCs having to do with retirement proposals. Mr. Ewer said yes, by an affirmation motion by the committee.

#### PUBLIC COMMENT

03:25:47

**David Senn, Executive Director, Teachers Retirement System**, said that the legislature and SAVA need to be clear on what you want a fiscal note on and what the bill does. If you need a fiscal note, TRS will need to see the same kind of material the staff of the Budget Office is seeing. Keep in mind that OBPP or TRS may come back saying that they don't have enough information in order to start. Be very specific on what you need in order to get a draft fiscal note that will answer your questions.

03:27:16

**Roxanne Minnehan, MPERA**, said that she reiterates what Mr. Senn said. The Public Employees Retirement Board has a policy that MPERA staff won't do a fiscal note until they have a bill draft because of the different iterations of "drafts" and the costs of going to the actuary for information. MPERA also needs to see the draft in order for the actuary to cost out the proposal. Ms. Minnehan said that, regarding Mr. Ewer's first proposal of eliminating the trigger, the Board voted to support that because triggers are not good to have in statute.

#### Department of Military Affairs - General Stan Putnam

03:30:18

General Putnam discussed the Department of Military Affairs' proposed legislation (**EXHIBIT 18**):

- Proposal 1, preclude a court from considering military service as a detriment to the best interest of a child and to establish custody procedures when a parent receives military service orders

- Proposal 2, mandating state active duty pay and expenses to be drawn on appropriated funds
- Proposal 3, adopt the most recent applicable federal military laws
- Proposal 4, create a state special revenue account to be used for the preparation to purchase land necessary to meet the Montana National Guard Mission requirements

#### Questions

03:37:37 REP. INGRAHAM asked General Putnam if he has had any conversations with the courts, if there is such a thing as "expedient", and if there is, how can it be addressed? General Putnam said that their legal staff has indicated that there is a process in order to expedite. His understanding is that if the timeline is too short, they can also put that into abeyance.

03:39:48 REP. INGRAHAM said, in regard to Department of Military Affairs Proposal 2, that she understands that the Governor has the discretion to call upon the funds, and it is her understanding that DNRC controls the fire suppression funds. General Putnam said that when the National Guard is deployed to work on fires, they work under the auspices of DNRC. The disaster fund is still there and presumably in a normal year, they will continue to draw the funding for their efforts off of that. However, they don't know who else is going to draw off of that. In a bad fire year, they foresee that they could get to a point that that funding is no longer there. What they want to do is broaden the capability to use whichever account is there and has funds available in order to pay those soldiers so that DNRC doesn't have to pull the soldiers off the fire line in the heat of a fire season, or bring the Legislature back into special session to avoid that.

03:42:04 SEN. GEBHARDT said on proposal 4, instead of putting that money into the special revenue fund, why doesn't General Putnam put it into an enterprise fund where he can gain the interest on the money. General Putnam said that they haven't considered that, but will in the future.

#### PUBLIC COMMENT

03:44:30 REP. WILMER said that Dan Antonietti, speaking on behalf of veterans, supports all four proposals from the Department of Military Affairs.

#### **LUNCH**

#### **Proposed Legislation for Retirement Plans - Rep. Gary MacLaren**

05:11:11 REP. MACLAREN discussed his proposed legislation regarding retirement plans **(EXHIBIT 19)**. The Defined Benefit (DB) and the Defined Contribution (DC) plans

are in place and the question is, why not look at requiring new employees to go into the DC plan.

#### COMMITTEE DISCUSSION

SEN. GEBHARDT said that we've had that discussion in the past. The argument against it is that you have two people working side by side; someone who went to work the day before the cutoff, and someone who went to work the day after. The person who went to work the day after is being treated unfairly. If we were to do it, that would be the case.

05:15:00 SEN. JENT said that public employment is not private enterprise. Private enterprise exists to make a profit. Public employment exists for an entirely different reason. We need these people and there are some tradeoffs made in salaries, etc., but in return, it is the guaranteed retirement at a specific amount and at a specific date that holds people. He said that he wants to keep it the way it is.

05:17:10 REP. INGRAHAM said that the Defined Benefit plan is the best for the employee. Going to a Defined Contribution is actually better for the government entity because we are paying our costs as we go. We would not have actuarial soundness of the DC Plan as a concern because you have paid as you go and the money is there. With the Defined Benefits, we pay some now but the extension and the costs continue to grow and that is where our actuarially unfunded liability comes from.

05:18:17 **REP. WILMER asked if there was a motion. There was none.**

#### COMMITTEE DISCUSSION ON OFFICE OF BUDGET AND PROGRAM PLANNING'S FISCAL NOTE ISSUE

05:24:44 The committee had a discussion on Mr. Ewer's suggestion of preparing draft fiscal notes on draft retirement bills. The committee also discussed deadlines on accepting proposed retirement legislation for committee review.

**SEN. GEBHARDT moved to accept the offer from David Ewer, Budget Director, to draft fiscal notes on draft retirement plan legislation that might have an impact on the retirement funds. The motion passed unanimously.**

05:53:31 Mr. Bohyer discussed section 5-5-228, MCA, the statute that gives this committee the authority to specify the date by which proposals affecting the retirement system must be submitted to the committee for review.

REP. WILMER asked if the committee would like to have something that says "this proposed legislation does or does not meet the guidelines for soundness used by the committee" or something that says "the committee does or does not recommend this legislation to go forward".

SEN. GEBHARDT said that the recommendation for proposed legislation with fiscal impacts should be based on fiscal soundness and whether we can afford it when we see the real numbers.

There was discussion on the Fiscal Note form. SEN. JENT said that the topic of this discussion is, what do we do after this meeting. He proposes that the committee keep the meeting date of September 15, that those pension bills that are drafted are either put through the statutory process of deciding if they are actuarially sound, etc., and then move on. SEN. GEBHARDT said that we should, with a recommendation from staff, look at a deadline after which bills will not be considered. This committee should follow the statute and do what it is supposed to do, and at the September 15 meeting, try to adopt a schedule that would fit the staff's schedule so that at the next interim, everyone knows in advance how long they have to put their proposals together. REP. WILMER suggested requesting the language in the box on the Fiscal Note dealing with pension funds be changed to reflect the statute and the committee's action.

#### PUBLIC COMMENT

06:16:11 **Tom Schneider, Montana Public Employees Association**, recommended having an actuary on the legislative staff. The legislature needs timely and independent analysis.

06:26:34 **Charlene Suckow, Montana Retired Educators Association and MEA/MFT**, said that they are opposed to any change from a Defined Benefit plan to a Defined Contribution plan in both PERS and TRS, as is MEA/MFT.

#### ADMINISTRATIVE RULE REVIEW on Reasonable Necessity - David Niss, Legal Staff, LSD

06:28:08 Mr. Niss discussed MAR Notice No. 44-2-147 (Amended Statement of Reasonable Necessity) **(EXHIBIT 20)**.

06:50:38 **The motion by Sen. Squires to adopt the language proposed by Mr. Niss in his memo to the committee to change MAPA to the appropriate form was adopted by acclamation.**

**BREAK**



No Public Comment

**EXECUTIVE ACTION ON ELECTION LAWS**

7:04:49      **LC 35, Clarify language on places of deposit**  
**REP. INGRAHAM** moved to leave LC0035 as is and not include the language in the clean up bill and to have LC0035 as a stand alone bill.

REP. MACLAREN moved for a substitute motion to adopt LC0035 with the language changes relative to mail in ballots. After some discussion, REP. MACLAREN withdrew his substitute motion.

07:11:22      **Rep. Ingraham** moved to adopt LC0035 with the changes highlighted in yellow. The motion passed unanimously.

07:12:55      **REP. INGRAHAM** moved to amend LC0035 to include 13-19-307(2), MCA. The motion passed.

07:13:51      **Proposed amendment to school election law.**  
**REP. MACLAREN** moved to include clarification on mailing of absentee ballots. The motion passed unanimously.

After some discussion, **REP. WILMER** moved to direct staff to also make the changes as discussed. The motion passed.

**LC0059 - Clarifying that the death of a candidate creates an error or omission.**

It was decided that LC0059 does not require executive action.

**LC0106 - Allowing election administrators to determine the use of accessible voting machines for certain mail ballot elections**

**SEN. SQUIRES** moved that LC0106 be tabled in order to hear from the Secretary of State's Office until the September 15 meeting. The motion passed.

**LC0060: Mail Ballot Pilot Project**

07:23:36      **REP. INGRAHAM** moved to change the effective date to July 1, 2009. The motion passed unanimously.

**REP. INGRAHAM moved that the SAVA committee send a letter to the Clerk and Records Association and to the Election Administrators to encourage their participation in data collection for comparison purposes in 2009 and 2010. The motion passed unanimously.**

07:32:19 There was discussion regarding Section 4 of LC0060. SEN. GEBHARDT said that the language in the bill should make the present polling places the collection points in each county. He has concerns about requiring the two counties (Phillips and Carter County) that need only two polling places to add two more.

There was a question on approving the Mail Ballot Pilot Program as a bill. REP. WILMER said that the committee had directed staff to prepare an LC for the Mail Ballot Pilot Program. Mr. Bohyer explained the process of drafting legislation for the Mail Ballot Pilot. He said that if the committee decides not to go forward with LC0060, that draft bill will effectively die. It does not, however, preclude someone coming in and submitting an identical bill draft request (to LC0060).

**SEN. JENT moved to not go forward with LC0060. The motion failed 2-6; Sen. Jent and Rep. Small-Eastman voting aye, and Rep. Wilmer, Rep. MacLaren, Sen. Squires, Rep. Ingraham, Sen. Jackson, and Sen. Gebhardt voting nay.**

#### **AGENCY PROPOSED LEGISLATION**

##### **Secretary of State**

SEN. JENT moved that staff draft the Secretary of State's proposed legislation.

**SEN. SQUIRES made a substitute motion to segregate Secretary of State's Proposal 4 until September 15. The motion passed 4-3.**

SEN. JENT moved that the State Administration and Veterans' Affairs Interim Committee authorize the Legislative staff to draft proposals presented by the Department of Administration, then withdrew his motion.

**SEN. JENT moved to authorize staff to draft the proposals presented by the Secretary of State, except for SOS #4. The motion passed unanimously.**

##### **Commissioner of Political Practices**

SEN. JENT moved that SAVA authorizes the staff to draft legislation presented by the Commissioner of Political Practices.

SEN. SQUIRES wanted it noted that CoPP withdrew proposals 1 and 3.

**REP. INGRAHAM moved to segregate CoPP proposal 5 but authorize staff to draft CoPP proposals 2, 4, 6, 7 and 8. The motion passed unanimously.**

**Department of Administration**

**SEN. GEBHARDT moved to segregate DOA proposal 15 but authorize the drafting of the DOA proposed legislation that was not withdrawn. The motion passed with Sen. Squires voting nay.**

**Montana Public Employees' Retirement Administration**

**REP. INGRAHAM moved to segregate MPERA's proposal 2 and authorize drafting of the remaining proposals. The motion passed with Sen. Jent and Sen. Squires voting nay.**

**SEN. GEBHARDT moved to authorize drafting of MPERA's proposal 2. The motion passed 4-3 with Rep. Wilmer, Sen. Jent, Sen. Squires, and Sen. Gebhardt voting aye, and Rep. Ingraham, Sen. Jackson, and Rep. MacLaren voting nay.**

**Office of Budget and Program Planning**

**SEN. SQUIRES moved to authorize staff to draft Office of Budget and Program Planning's proposed legislation. The motion passed 4-3 with Rep. MacLaren, Rep. Ingraham, and Sen. Gebhardt voting nay.**

**Teachers Retirement System**

**SEN. JENT moved to authorize staff to authorization of bill drafts for the two proposals submitted by the Teachers' Retirement System. The motion passed unanimously.**

**Department of Military Affairs**

**REP. MACLAREN moved for draft legislation on all proposals submitted by the Department of Military Affairs. The motion passed unanimously.**

**Adjournment**

07:58:13 With no further business before the committee, REP. WILMER adjourned the meeting at 4:31 p.m. The next meeting is scheduled for September 15, 2008.

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