



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

February 22, 2008

Room 102, Capitol Building
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

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

SEN. KELLY GEPHARDT
SEN. VERDELL JACKSON
SEN. CAROLYN SQUIRES

REP. PAT INGRAHAM

COMMITTEE MEMBERS EXCUSED

SEN. LARRY JENT
REP. VERONICA SMALL-EASTMAN

STAFF PRESENT

DAVE BOHYER, Research Director
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The committee approved LC 9050 and LC 9060 as committee bills.
- The committee approved a bill draft to amend the language in 13-13-204, MCA, to strike the exclusion of death for conditions that may warrant the request for a replacement ballot of an absentee vote.

CALL TO ORDER AND ROLL CALL

00:00:21 Rep. Wilmer called the meeting to order at 8:33 a.m. The secretary noted roll visually. Sen. Jent and Rep. Small-Eastman were excused. The minutes of the November 30, 2007, and January 7, 2008 meetings were approved.

AGENDA

HJR 46: Election Laws - Sue O'Connell

00:01:41 Ms. O'Connell said that LC 9050 and LC 9060 were discussed and approved for drafting at SAVA's last meeting. Ms. O'Connell discussed the bill drafts of LC 9050 (**EXHIBIT 1**); LC 9060 (**EXHIBIT 2**).

At the January 7 meeting, the Committee had brought up an issue regarding how other states handled situations in which a candidate dies after the ballots had been printed and absentee ballots might already have been voted. Sue referred to and discussed the handout Absentee Ballots and Vacancies on Ballots (**EXHIBIT 3**).

Questions

00:13:32 Rep. Ingraham said that the Committee should consider amending 13-13-204, MCA, to say that if a candidate died, an absentee could apply for a new ballot. As it stands right now, an absentee can request a replacement ballot only if there's been an error on the ballot. Ms. O'Connell said that it would require striking language. The law says that you can't get a replacement ballot, or vote again because a death is not an error or omission. She said that she is not sure if that would fit within the cleanup bill or if it should be a separate bill draft.

Public Comment

None at this time.

Motions

00:23:51 Sen. Squires **moved** that LC 9050 be approved as a committee bill. The motion **passed** with Rep. Wilmer voting proxies from Sen. Jent and Rep. Small-Eastman as "aye".

00:24:24 Sen. Squires **moved** that LC 9060 be approved as a committee bill. The motion **passed** with Rep. Wilmer voting proxies from Sen. Jent and Rep. Small-Eastman as "aye".

00:26:17 Rep Ingraham **moved** for a bill draft to amend the language in 13-13-204, MCA, et. seq., to strike the exclusion of death for conditions that may warrant the request for a replacement ballot of an absentee voter. The motion **passed** with Rep. Wilmer voting proxies from Sen. Jent and Rep. Small-Eastman as "aye".

Rep. Ingraham **moved** to amend Title 13, chapter 15 to address how to handle the ballots and discuss the options. After a discussion on the motion, it was decided that the committee would not vote until they heard from the Secretary of State's Office on the issue. Rep. Ingraham **withdrew** her motion to amend Title 13, chapter 15.

Legal memo "Constitutionality of a Mail Ballot Postage Requirement" - Dave Bohyer, Lead Researcher, LSD

00:43:18 Mr. Bohyer said that at the end of the last meeting, the Committee had asked Mr. Niss to do legal research on whether or not imposing the expense of a stamp and envelope on to voters would be an unconstitutional burden in the form of a poll tax. Mr. Bohyer discussed the memo written by Mr. Niss (**EXHIBIT 4**). In short, Mr. Niss concluded that the court would probably not consider the cost if postage and an envelope as a poll tax.

Mail ballot election pilot project - Sue O'Connell, Research Analyst, LSD

00:47:02 Ms. O'Connell said that at the last SAVA meeting, she presented a section-by-section summary of what a pilot project bill would have to contain. There have been no major decisions on the major elements of the bill. She said that she needed more direction from the Committee as to what they want the bill draft to contain before she goes forward on the bill draft.

Committee Discussion

Rep. Wilmer said that she is less inclined to support going forward with a pilot project after giving it some thought, especially because there have been numerous changes recently to election laws and because the public isn't driving the issue. Rep. Ingraham said that the mail-in ballot concept is people driven because of the increased numbers of absentee ballots and the number that is going to permanent absentee. Sen. Jackson said that doing mail ballot voting would make it easier to vote and allows voters to have the time to think about the issues. Sen. Gebhardt said that he would support moving forward on mail ballot elections. Rep. MacLaren said that the Committee should continue with pilot project. Rep. Wilmer said that both Sen. Juneau and Rep. Small-Eastman have concerns about the impact of mail ballots on reservations. Rep. MacLaren said that if the committee proceeds with the pilot project, keep in mind that mail ballot voting won't be adopted until 2009 and put into place in 2010. In the meantime, if people are still signing up for permanent absentee ballots, it will still be costly because you still have to have polling places open. Sen. Jackson talked about fraud that takes place on election day and schools that don't want mail ballots because of voter turnout.

Public Comment

- 01:09:58 **Janice Hoppes, Clerk and Recorder, Pondera County**, said that they have been running mail ballot elections for special districts and cities for 10 years or more. Every time they have one, people ask why can't they do this for federal elections. She believes that it is public driven. She suggested doing a statewide survey on whether or not the public wants mail ballots or put that issue on the June ballot.
- 01:20:37 **Jean Souvigny, Montana Conservation Voters Education Fund**, said that their organization still has mixed feelings about the vote by mail process. They are interested in how the Secretary of State's Office will meet the financial and resource challenges from the standpoint of election judges. If the program is to go ahead, they are concerned about having the appropriate sideboards in place to have the most effective program possible.
- 01:26:03 **Beth Brenneman, Montana Advocacy**, said that they have concerns about going to a full mail ballot system in Montana. She talked about folded ballots versus nonfolded ballots in the AutoMark machines, having an understanding throughout the state on how mail ballot elections are to be run especially on accessibility issues, postage expense, and David Niss' legal memorandum. In

conclusion, she said that one cannot presume that the public is in favor of a mail ballot system. People have opportunities to do mail-in voting through the permanent absentee system.

01:32:50 **Bob Vogel, Montana School Boards Association**, said that schools have misgivings about mail ballots because a lot of mill levies in schools are passed because they have big supporters in their communities and school districts that come out to vote in support of those levies. Another concern that the MSBA has is the costs that school districts face to run elections.

01:37:15 **Janice Hoppes** clarified that an inactive voter in a mail ballot election does not lose their right to vote. They are a registered voter and when they request a ballot, all they need to do is update their information.

Questions

01:39:56 Rep. MacLaren asked how Ms. Hoppes handles a voter who calls looking for his ballot. Ms. Hoppes said that a card can be sent to them or they can come in to update their information and sign the card.

Sen. Jackson said that he liked the idea that school districts do mail information to the voters. Could that be covered by school funds? Mr. Vogel said that as long as it isn't promotion and simply informational, it could be covered under school funds.

HJR 59: Public employee retirement systems - Dave Bohyer, Research Analyst, LSD

01:54:45 Mr. Bohyer said that there are four items which deal with some information that some committee members asked for:

- Information on local governments' option to join the retirement systems. Mr. Bohyer discussed his memo **(EXHIBIT 5)**.
- Other states' responses to unfunded actuarially accrued pension liabilities. Mr. Bohyer discussed his handout "Selected State Actions Undertaken to Address Challenges in Public Employee Retirement Systems" **(EXHIBIT 6)**.
- Comparison of investment of public employee retirement funds in other states. Mr. Bohyer discussed his handout "Comparing Recent Historical Rates of Return on the Invested Assets of MPERS" **(EXHIBIT 7)**.
- Outline of the Table of Contents for the Guide. Mr. Bohyer discussed his memo on HJR 59 guidance for A Legislator's Guide on Montana's Public

Retirement Systems (**EXHIBIT 8**).

VETERANS AFFAIRS UPDATE

02:11:08 Post Deployment Health Reassessment (PDHRA) Campaign Plan - Brigadier General Stan Putnam, Assistant Adj. General, Montana Army National Guard
Brigadier General Putnam gave an update on the activities of the Montana National Guard (**EXHIBIT 9**).

Questions

02:18:50 Rep. Ingraham asked: With the passage of HR 2640 at the federal level, there have been concerns by the military, especially when we are going forward with the PTSD diagnosis and treatment that this could jeopardize some of the gun rights because of mental limitations. If that is the case, and it is on a volunteer basis for soldiers to complete the surveys and get checked physically and mentally, does the Department of Military Affairs perceive that the potential effect on gun rights is going to be a hindrance? **Joe Foster, Administrator of Montana Veterans' Affairs Division**, said that in reading that House Resolution, what it looked to him was that the key criteria was that a court recognized that this person had some level of mental problems and that bars the person from having a firearm. He said that he didn't think that it would apply to the military.

LC 0018: Agency Rulemaking Regarding Reasonable Necessity Requirement in MAPA - David Niss, Legal Staff, LSD

02:53:09 Rep. Wilmer said that the Committee has to reconsider LC 18, draft legislation regarding MAPA reasonable necessity rulemaking. The Committee did not hear public comment at the last meeting on this issue.

02:53:41 Sen. Squires **moved** to reconsider the Committee's action on LC 18 (January 7, 2008 meeting). The motion **passed**.

Public Comment

02:54:03 **Mark Cadwallader, Staff Attorney, Department of Labor and Industry**, talked about the decision from the Montana Supreme Court regarding the Board of Nursing case that gave rise to some of the concerns that led to LC18.

02:59:18 **David Niss, Legal Staff, LSD**, summarized the action that the Committee took on LC 0018. He said that Sen. Squires made a motion to adopt the draft as it was without any changes and recommend passage of LC 18. Mr. Niss

summarized LC 0018. He said that as a direct result of the Montana Supreme Court opinion in Montana Society Anesthesiologists vs Board of Nursing, they held that the purpose of Montana Administrative Procedure Act (MAPA) was to require public notice of agency decision making processes. Since the rules of the Board of Nursing fulfilled that purpose of MAPA, the statement of reasonable necessity that is required in every rule by the Administrative Procedure Act had been fulfilled. The Montana Supreme Court, by making that ruling, read the request for reasonable necessity out of the MCA because every rule will give notice regardless of what an agency puts in it.

03:05:27 Sen. Jackson said that he needs more clarification because he would not like to see rules come out that are not necessary and don't have any backup in terms of legislation. He asked Mr. Niss if the committee has solved the problem with LC18. Mr. Niss said that the problem was solved for the purposes of the opinion of the Montana Supreme Court. But the question is the larger issue of whether the Legislature has resolved the general issue of unnecessary rules. Mr. Niss said that it hasn't been resolved but LC18 was not intended to resolve that issue. It does not and was not intended to speak to the larger issue that many members have of whether the rulemaking process is the right one, whether agencies are always justified in proposing and adopting rules, and whether there is anything further that the Legislature should do about that.

03:38:38 Sen. Squires **moved** that LC18 go forward as draft legislation. The motion **passed**.

LUNCH

RETIREMENT SYSTEM PROPOSALS

04:00:45 **Susan Bomstad, Montana Association for the Public Safety Communication Officials**, said that they are seeking to have 20-year retirement for the Public Safety Communication Officers in Montana, also known as dispatchers. She explained their current retirement program where they are under PERS and have to have 30 years before they can retire. She distributed a proposal from Montana APCO (**EXHIBIT 10**) recommending a 20-year retirement program. She said that the organization would like to pursue a bill to have 20 year retirement for the Montana APCO.

MAIL BALLOT PILOT PROJECT - Sue O'Connell, Research Analyst, LSD

04:06:45 The Committee and Ms. O'Connell discussed sections of the Mail Ballot Pilot Project (**EXHIBIT 11**) that had minor changes to them.

REIMBURSEMENT FOR MEALS, LODGING AND MILEAGE

04:50:28 **Dave Bohyer, Research Analyst, LSD**, distributed a spreadsheet on the History of Reimbursement Rates for Meals and Lodging (**EXHIBIT 12**) to the Committee.

Sheryl Olson, Deputy Director, Department of Administration, talked about the statute that governs meals, lodging, and transportation of persons in state service (2-18-501, MCA) (**EXHIBIT 13**).

Questions

04:57:19 Sen. Jackson asked whose responsibility is it to determine the amount of reimbursement if it is over the allowable amount. Mr. Bohyer said that the Legislative Services Division staff does that for legislators, but each agency has a person in their financial office that reviews all documentation for reimbursement.

There was a discussion about receipted and non-receipted lodging and the reimbursement rate of \$12.00 for non-receipted lodging. Sen. Jackson said that he would like to go to a per diem reimbursement rate. Mr. Bohyer talked about the rates that legislators get during the session and during the interim, and about whether the claimant is at a meeting as a legislator or as a private citizen. Sen. Gebhardt said that there should be a committee bill to change the reimbursement rates for lodging and that Sen. Jackson's idea of going to per diem during the interim is a good idea.

OFFICE SPACE ISSUES

05:26:50 **Sheryl Olson, Deputy Director, Department of Administration**, talked about the problems that the Department of Administration and Mr. Ewer are having in trying to locate adequate space for state employees in Helena. She provided an outline to the Committee (**EXHIBIT 14**) and discussed the office space problems, the Nob Hill building, background on how the Department of Administration issues an RFP, the different types of leases.

05:53:56 **David Ewer, Director, Office of Budget & Program Planning**, talked about the Nob Hill project. He said this project is somewhat problematic and he is asking for the Committee's opinion because of the issues of size, location, the amount of

money potentially involved and the controversy that Nob Hill has already had. He said that he is concerned enough to have brought this to the Committee's attention today as well as at the last meeting.

Public Comment

05:59:28 **Matt Elsaesser, City of Helena Commission**, distributed a letter submitted by Commissioner Oitzinger and Commissioner Peura to the Department of Administration that highlights some of the concerns they have regarding the Nob Hill site (**EXHIBIT 15**).

Committee Discussion

Rep. Ingraham wanted to know what happens to the building that the state owns that is unsafe for state employees to be working in. Sen. Squires said that she did not like the 30-year lease and would not support the proposal. Sen. Gebhardt said that he would rather see the state own the building than rent it, wherever it may be. Rep. Wilmer told the committee that they have been asked to give a sense of the risks and elements because the Budget Director is formulating the budget to include the costs as part of the Department of Administration costs. Sen. Gebhardt said that the state has a duty to provide office space to its employees and that it should be a safe and healthy environment.

Rep. Wilmer said that what we are asked to do is to give our advice about this project, that several of the committees are going to look at, including the Legislative Finance and Audit Committees, and the question that SAVA has been asked is to give a sense of the Committee about the risk and the possible controversies that surrounds the project.

Motions

Sen. Squires **moved** that the Committee not accept the concept of the Nob Hill building but not preclude the Department of Corrections from finding another building. The motion **failed** with Rep. Ingraham, Sen. Gebhardt, Sen. Jackson, Rep. MacLaren, and Rep. Wilmer voting against the motion; Sen. Squires and Rep. MacLaren voting aye.

Committee Discussion

Rep. MacLaren said that the Legislature is committed to appropriate some funding for office space. He said that by way of the previous motion, the Committee is saying that they support a Nob Hill proposal but would rather see a

lease option alternative. Sen. Gebhardt reiterated that the state has an obligation to provide a decent environment for employees to work in. He is not necessarily in favor of or opposed to Nob Hill and thinks that the Department of Administration needs to work with the city and the local people where the project site will be.

Motions

Rep. Wilmer made a motion that the Committee acknowledges that there is a need for healthy and safe office space to accommodate state workers but this particular proposal has raised a number of controversies that the Committee believes will put the project at risk. The motion **passed** with Sen. Squires, Rep. MacLaren, Rep. Wilmer and Rep. Ingraham voting aye; Sen. Gebhardt and Rep. Jackson voting against the motion.

ELECTION TOPICS - Ralph Peck, Chief Deputy Secretary of State, and Lisa Kimmet, Deputy of Elections

06:57:35 Montana Election Costs - Lisa Kimmet, Deputy for Elections, Office of the Secretary of State

Ms. Kimmet spoke on election costs (**EXHIBIT 16**) for the 2006 and 2007 elections.

Questions

07:03:19

Sen. Squires asked Ms. Kimmet if the federal money that she spoke of came from HAVA money, if any of the money was from local governments, and if HAVA money was involved in the 2006 election, what was that money used for? Ms. Kimmet said that HAVA money was used for the 2006 election but Cascade County bore the costs of \$79,000 that was used for the expense of the ballots, the election judges, and the polling places for Cascade County. Ms. Kimmet said that the HAVA money was used for the purchase of the AutoMark machine and to pay for the first year maintenance agreement on the AutoMark.

Ms. Kimmet explained that HAVA money is restricted by the federal government for HAVA activities, which are laid out by the Election Assistance Commission. The Secretary of State's Office's plan has to fall into line with what the Election Assistance Commission tells them what they can spend HAVA money on. Montana is spending the HAVA money on the approved expenditures. She said that mail ballots are not HAVA related expenses.

Sen. Squires said that she did not hear if HAVA was responsible for training. Ms.

Kimmet said that she did not mention training, but noted that training is one of the eligible HAVA expenses and the Secretary of State's Office is doing extensive election administrator training. They did a statewide training in Billings and they are in their 6th week of Regional Election Administrator Training, and will later conduct Election Judge Training around the state.

07:14:18 Response to Montana League of Women Voters' Request

Lisa Kimmet distributed and discussed the response from the Secretary of State to the League of Women Voters (**EXHIBIT 17**). She said that letters of correspondence regarding the Montana League of Women Voters request to "immediately de-certify ES&S machines used in Montana" had been given to the Committee earlier.

Public Comment

None at this time.

Questions

07:16:11 Sen. Squires asked Ms. Kimmet what kind of voting machines are used in Montana. Sen. Squires said that the machines that Montana uses do not work, no one wants an audit on them. She asked why the Secretary of State's Office does not support an audit after an election. Ms. Kimmet said that the Clerk and Recorders who use the machines do not think that the machines are perfect, but that it is the most perfect solution to running elections in Montana that is available to them. She said that elections administrators do not use any machine that does not use a paper ballot because the Montana Legislature requires a paper trail and the use of a paper ballot. Counties do have the option to do a paper hand count if they think that there is a problem with the machine count. In answering Sen. Squires question about doing an audit after an election, Ms. Kimmet said that the Secretary of State's Office is currently working with the Montana Association of Clerks and Recorders on an audit bill to present a post-election audit bill for the 2009 Legislature.

Sen. Squires asked Ralph Peck, Chief Deputy, Secretary of State's Office, if the Secretary of State is thinking of any future legislation that is going to deal with presidential preference? Mr. Peck said that they have had some preliminary discussion about what is appropriate from their perspective to present to the legislators but they do not have any proposals yet.

Public Comment

07:28:29 **Beth Brenneman, Montana Advocacy Program**, commented on the letter from the League of Women Voters [regarding voting machines] and said that there was a misunderstanding as to the Ohio study which found very little problems with the AutoMark machines in tampering. She wanted the Committee to understand that the AutoMark machine itself that is used by people with disabilities to vote was actually endorsed as a result of the study and it was a mistake for it to be included in the League of Women Voters' request for de-certification of the ES&S machines.

Other Committee Business

07:29:58 Military Retirement Income Exception Issue

Rep. Ingraham said that this is a followup to what was discussed and presented by the three branches of the military that were represented at the January 7 meeting. Rep. Ingraham **moved** to have a committee bill exempting military retirement benefits from state income taxation. The motion **passed** with Rep. Ingraham, Rep. MacLaren, Sen. Gebhardt and Sen. Jackson voting in favor of, and Rep. Wilmer and Sen. Squires voting no.

07:35:35 Proxy Voting Issue

Rep. MacLaren wanted to know where voting by proxy came from. Mr. Bohyer gave a brief history of proxy voting. Sen. Gebhardt said that Legislative Council is looking at the rules and may solidify something that will be in the Joint Rules rather than in the Senate and House rules and will address some of the issues.

07:43:56 Mid-term Assessment: Where have we been, where we are now, where we go from here - Dave Bohyer, Research Analyst, LSD

Mr. Bohyer distributed the mid-interim assessment document (**EXHIBIT 18**) which shows what the committee and done in relationship to the work plan that was laid out at the beginning of the interim. He asked that the members of the committee review the document and if staff has not done what was set out, to inform staff at the next meeting.

ADJOURNMENT

08:09:58 With no other business before the committee, Rep. Wilmer adjourned the meeting at 4:42 p.m. The next meeting dates are April 28 and 29, 2008.