MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE,** on March 5, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 182, HB 585, HB 616, 2/23/1999; HB 362, 2/22/1999
Executive Action: None.

HEARING ON HB 182

Sponsor: **REP. CHRIS AHNER, HD 51, HELENA**

Proponents: **Mike O'Connor, Executive Director, Public Employees' Retirement System (PERS)**
Kelly Jenkins, General Council, Public Employees' Retirement Board (PERB)
David Senn, Executive Director, Teachers' Retirement System
Pat Clinch, Montana Firefighters

Opponents: **Mary Bryson, Department of Revenue**

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 12 - 24}

REP. CHRIS AHNER, HD 51, HELENA, stated this bill was brought forth at the request of the Public Employees' Retirement Board (PERB). There are some general revisions in the bill. Last session I carried the Guaranteed Annual Benefit Adjustment (GABA) bill, which was retirement for the public employees and this is some general revisions of things that were missed last session.

Proponents' Testimony:

Mike O'Connor, Executive Director, Public Employees' Retirement System (PERS), said this is our housekeeping bill. Over the interim sessions we find legislation that may not be clear enough and terminology isn't consistent. Each session we have over a couple dozen retirement bills that affect the retirement statutes in Title 19. This bill tries to make the terminology and what we use in Title 19 consistent and tries to clear up confusing language. The majority of this bill is standardizing terminology. He handed out **EXHIBIT(sts50a01).** The bill clarifies what a retired member is. It also clarifies the subpoena rights of the board. We want to clarify that the board should have the authority to subpoena more than just medical records. The duties of the board are elucidated so they have the authority to delegate duties to various people. Also, if you are covered under a public agency, this clarifies the employment is cumulative. We have run into problems with that. We are clarifying that members can designate charitable organizations as their beneficiary on their membership card, which complies with the Internal Revenue Service (IRS). In the case of public agencies that have not been covered under PERS and want to be covered under PERS, the law currently says once the members vote on being covered, the governing body cannot take any action for at least twenty days. We are clarifying that they should not wait for twenty days before action is taken. Through our office policy it is understood that an individual retiring or terminating from service needs a thirty day break in service before they can receive their retirement benefits.

There are several general revisions in this bill. For PERS members, we discovered that an inactive vested member, someone with more than five years of service who is no longer working, their beneficiary is limited to a lump sum distribution in case

that inactive member passed away. We think they should also be given the option of a monthly benefit. The actuary calculation assumes that when this inactive member passes away, the beneficiary would take the best benefit available to the beneficiary, which in most cases would be the monthly benefit. I want to give you an explanation on how the retirement statutes are structured. We have a general chapter, Chapter Two, that covers all of the retirement statutes. Anything in Chapter Two would be things that are consistent with all retirement statutes. If it is an universal provision that would cover all retirement statutes, we try to clean up the statutes and put the general provisions in Chapter Two and leave the other chapters specific to each retirement system for specific items that are particular to those retirement systems. Currently, in each retirement system you cannot get duplicate service. It is consistent among all retirement statutes so we are trying to delete the stuff in specific chapters and move all of that into Chapter Two. We have discovered that some of the retirement systems do not allow a member to change their contingent annuitant, in case of a death or divorce. Those systems are the Judges', the Sheriffs', and the Game Wardens' and Peace Officers' Retirement Systems. All our other systems are allowed that and these systems should be allowed that as well. We also discovered that the Highway Patrol Officers' Retirement System and the Sheriffs' Retirement System do not allow a person to get credit while they are on Workers' Compensation. All of our other systems allow that so individuals on Workers' Compensation should get credit for that service. We added clarifying language in the Police Officers' Retirement System. We discovered if an individual with more than twenty years of service passes away, their beneficiary would be limited to half pay, which would be a reduction to the amount received if the member had retired. If that member passes away, the beneficiary should be allowed to have the same benefit the member would have had if he had retired. We are also clarifying vesting, the minimum retirement date and minimum benefit adjustment in the Firefighters' Unified Retirement System. Last session we changed all vesting in all retirement systems to five years, but the language needs to be cleaned up to clarify the minimum retirement date is five years and the minimum benefit adjustment should be left at ten years for those people who did not elect GABA.

{Tape : 1; Side : A; Approx. Time Counter : 24 - 39}

Kelly Jenkins, General Council, Public Employees' Retirement Board (PERB), stated, I will try to address this issue on a somewhat technical level to begin with and then give you an under-view at the end. I am going to use a summary, presented by the DOR, as an outline for my speech because they have a

particular interest in this bill. In their testimony before the House State Administration Committee, they had some points to bring out and I think those points need to be addressed before this committee so that we can get a complete explanation of the situation. The portion of the bill that contains the most significant change is in Section 96, Page 63, beginning at Line Three. It is a significant change for us and for the DOR. He handed out a printout from a web site of an organization **EXHIBIT(sts50a02).** I will call the organization, for simplistic purposes, the Uniform Law Commissioners. This is a national organization that tries to develop laws that can be applied by the state so that, in part, we can avoid federalization of certain areas. There are a lot of Uniform laws and Montana seems to be on the cutting edge of the adoption of these types of laws. I think that is to Montana's credit in many instances. The Uniform Law Commissioners tried to establish a standard by which the states can start to mold their laws. Deviations from those standards should be considered very seriously. We are going to suggest a deviation is appropriate from the Uniform Unclaimed Property Act adopted by the Uniform Law Commissioners in 1995 and adopted by Montana as one of the first six states that adopted this in 1997. On this printout, the First Paragraph it says if there is property otherwise unclaimed by people, after a certain period of time the state gets to take that property and deposit it into the General Fund. It is a system for transferring property to the state. There are certain times when we lose track of individuals, sometimes with small amounts on account with us, sometimes with large amounts. We have difficulty in tracking them down when they do not make a claim for the benefits due to them from the retirement system. We have certain amounts, under the new version of the Unclaimed Property Act, that the DOR is claiming we should turn over to them, in order for it to be deposited into the State General Fund. In their summary, they said the Department believes a change in the Unclaimed Property Law establishes a bad precedent. We would agree with that. The change we are worried about and the change they are worried about are two different changes.

The change we are worried about is the one made in 1997. Prior to that time there was an Unclaimed Property Act in Montana, but as far as I know it had never been applied to the trust accounts that were part of the pension trust funds for the retirement systems administered by the state. The 1997 change, which is now claimed to apply to those trust accounts, is a bad precedent as far as we are concerned. There are very few states that have adopted this change, as you can see by the printout. It cannot be argued that Montana is one of the states without change to the Uniform Law adopted by the Commissioners. He handed out **EXHIBIT(sts50a03),** out of the annotations of the Montana Code Annotated. Look at the 2nd Paragraph where it says Montana

Enactment. I did not do a word by word comparison of the Unclaimed Property Act with the model adopted by the National Conference, but it seems to me the possibility of changes to that model law were contemplated at the time the annotations were written, because it talks about the Uniform Unclaimed Property Act, most of which was based on language of the Uniform Unclaimed Property Act adopted by the National Conference in 1995.

The Unclaimed Property Act changes the way retirement systems have dealt with the Department of Revenue across the United States. We talked with people in Utah, who are doing a survey about the same issue. They contacted Nevada, Oregon, Washington, Wyoming, Colorado, Idaho, and California to find out what the mountain west states were doing in this area. They found out only Wyoming's pension trust funds were turning anything over to their DOR. It has been considered to be verboten to do that. In **EXHIBIT(sts50a04)** I have examples of the laws in a few of those states including California and Nevada. Also, to demonstrate it is not just a western phenomenon, I added Indiana's also. You can take a look at those and see what the varied states have said about that and the exceptions they have in their laws for Public Employees' Retirement System type assets. This is the kind of change we are urging here also. We had a change in 1997 in which we were unaware of at the time the change was adopted. Had we been aware we would have been certain to make the same arguments we are making now.

We have a competing interest of two state agencies, the DOR and the PERB. The DOR manages general revenue funds for the State of Montana. The PERB manages pension trust fund accounts and it does so for members and beneficiaries only. When you are weighing out these competing interests, how important is it to these two state agencies. I would suggest it is really not all that important to the DOR. Had it been important, they would have enforced the kind of laws they say have been on the books previously, and they would have enforced the law that has been on the books since 1997. They would have forced us to turn over unclaimed property during that period of time. They have made no efforts to do so, to my knowledge, in any of this period of time. It is critical to the PERB. It goes right to the heart of what the PERB is suppose to be doing. The heart is contained in Article Eight, Section Fifteen of the Montana Constitution, which was adopted by a constitutional amendment, approved by the voters in 1994 and made effective January First, 1995.

There are three reasons why the Montana Constitution mandates the change we are suggesting in this bill. The other thing they indicate in their outline is that there may be a negative impact in the General Fund if you allow the change we are having in this bill. In **EXHIBIT(sts50a05)**, Article 8, Section 15, Subsection 1,

says, "Public retirement system assets, including income, shall not be encumbered, diverted, and so on. Not only are the assets of the pension trust funds not subject to diversion, including diversion to the State General Fund, but the income from those assets is critical. If DOR takes that money, they cannot invest it in the stock market. Only the Public Employees' Retirement Systems can invest in the stock market under the Constitution at this time. We can get the best return possible for those monies. The DOR cannot possibly do that. Secondly, Subsection 1 says the PERS assets, "shall be held in trust to provide benefits to participants and to defray administrative expenses". Under the Unclaimed Property Act these monies given to the state are not held in trust, they are held in the General Fund. That has a couple of different impacts. First, it is contrary to the exact language in the Constitution, the clear authority of the Constitution. Also, it means they are not responsible for getting the best return possible on those monies and they are not responsible for proper administration. We are responsible for those things.

In Subsection 2, "the governing boards of public retirement systems shall administer the system," therefore, we have a responsibility in the PERB to administrate the system. That is the core of what we do. It does not say, except when the DOR wants to assert authority over the system assets because of some artificial standard set up in the statute. It gives a Constitutional requirement that we are required to do the things we are suggesting by the amendment in this bill.

The question is, if I am that certain, why don't we just go to court and get this thing resolved? I have two answers to that question. First of all, we have extremely low cost of administration in the Public Employees' Retirement Systems and we are extremely proud of those. You all received an annual report and you will see that the cost of administration for our retirement systems is .1% of assets. To provide you a point of comparison, the costs of TIAA-CREF, the private party that administers the Optional Retirement Plan (ORP) for the University System, are almost three times what our costs are. We keep those costs low by avoiding conflict that is going to be a costly thing to resolve. We do not want to spend five thousand to ten thousand dollars of my time and effort and the retirement system's effort to resolve this, because the problem can be resolved here by excluding this small portion of what the DOR is trying to do.

Secondly, the court would have to strike in a way that would be unacceptable to the DOR and is really unreasonable as far as what we are trying to do. If you take a look at Page 63, Line 3 through 8, there is a whole Subsection that talks about

individual retirement accounts, defined benefits plans, other accounts or plans that are qualified for tax deferral. Those are the kinds of accounts the Public Employees' Retirement Systems are. They are qualified under Section 401 A, of the Internal Revenue Code. If a court decided this section is unconstitutional under the Montana Constitution, to allow transfer of public retirement system assets to the DOR, they would have no option but to strike the entire subsection in there. They do not have the ability like this committee does and like the legislature does, to interline words into the subsection to so we can establish a very narrow exception. We are asking for a very narrow exception to avoid a broader problem. I am entirely confident that our Constitutional argument stands and that this statutory provision should not remained unchanged.

{Tape : 1; Side : A; Approx. Time Counter : 39 - 53}

David Senn, Executive Director, Teachers' Retirement System, stated, I want to give you a couple of examples of the types of things that happen every year in the Teachers' Retirement System. We have members that come to Montana, teach and leave the state. When they reach age sixty-five, the typical Social Security age, we hear from them. We may have lost track of them for several years. They, however, have not forgotten us and they want that retirement benefit when they are ready to retire. Just recently we had a case of an individual who left one of the local school districts at the time she had an illness. No one thought about applying for disability retirement benefits. She was fully eligible and was not able to teach.

Since then she has recovered somewhat and she did not forget about her retirement plan. She came in our office last summer and we discovered she was eligible for disability benefits, with about ten years retroactive. We had an account of about twenty thousand dollars that had we determined was abandoned property and sent off to the DOR, that is all that would have been there. We owed her retroactive benefits of almost ninety thousand dollars, which we paid to her. Those kinds of things happen every year. We make those retroactive payments when people come in and apply and we have an obligation to do that. That is what state law promises these people.

I think we can work with the DOR with a lot of these things. They have addresses we would like to have. We have lost track of many of these people. We would like to contact them and let them know they have an account. There is some give and take here and some things we can do for each other. We don't want to be transferring money on accounts just because we haven't had contact with them. It is important the retirement system

maintain those assets and we maintain that protection for those retirement benefits, so people can apply whenever they retire.

Pat Clinch, Montana State Council of Professional Firefighters, said we are in support of **HB 182** primarily because of a drafting oversight in last year's Firefighter Retirement System Pension bill. This would correct that oversight and change the vesting period from ten years to five years.

Opponents' Testimony:

Mary Bryson, Director, Department of Revenue, stated, I will take you through the handout **Kelly Jenkins** referred to **EXHIBIT(sts50a06).** The DOR rises in opposition to **HB 182** but we simply oppose the changes found in Section 19 and Section 96 of the bill. The proposed change exempts an account or plan established by Title 19 (public retirement plans) from the provisions of Unclaimed Property Laws. We believe and continue to believe such an exemption will set bad precedent and encourage other holders of unclaimed property to seek exemption from the law, especially other holders in forms of retirement systems or insurance companies that hold annuity forms on behalf of their claimants. We believe that, currently, the Abandoned Unclaimed Property Statutes do provide a mechanism whereby a single point of contact is available for the beneficiaries who will be claiming the property of individuals who have property that has been abandoned. This change in the code would allow for multiple contacts they would be required to pursue. We believe the Department is also better equipped to maintain owner records. We have a vast amount of information of individuals within the state, those that are tax paying entities as well as other employers. We think allowing further exemptions will result in a negative impact on the General Fund. Our reference to a negative impact on the General Fund is that those other holders may pursue exemptions and that would result in further erosion of the Unclaimed Property Statute.

I will give you some further background on what the Unclaimed Property Laws are and why they exist. I know **SEN. HARGROVE** is very familiar with them, as he carried the legislation in the 1997 session to bring Montana into adopting the model. The Unclaimed Property Laws are designed to meet three goals: to reunite lost owners with the property that is rightfully theirs and this is where I differ with **Mr. Jenkin's** categorization of the Department's interest in this matter. Our interest in administering the Abandoned Unclaimed Property Laws is to the claimant, not the state. We are, under statute, required to try

to reunite those lost owners with their property. The laws are also to protect the holder from subsequent claims by the owner after the property is transferred to the state; and to ensure that any economic windfall is for the benefit of the state and its citizens and not for the holder. There is a dormancy period in the statutes to determine when the property is to be turned over to the state. It is approximately three years. Once it has been turned over to the state, the property is held in perpetuity on behalf of the rightful owner or that owner's heirs. Monies received are deposited to the General Fund and correspondingly, refunds to an owner or their heirs are paid from the General Fund. That is the basis of the Unclaimed Property Statutes.

What are some of the performance standards related to Unclaimed Property Laws? Approximately two million dollars is received each year from holders of unclaimed property. Approximately eight hundred thousand to one million of that is returned each year to owners or their heirs. We have four thousand reports filed each year by holders of unclaimed property. Currently, this state is holding money for approximately one hundred and thirty thousand owners who we have not yet been able to locate. The total value of the property still unclaimed is approximately $16,000,000 and we do maintain those records. The unclaimed Property Laws have been in existence in Montana since 1963. The changes made in 1997 were to bring us into conformity with the model statute, but it did not significantly change the intent, view, or policy adopted by the legislature as it related to unclaimed property.

The Department does take issue with whether the Montana Constitution mandates the changes proposed by the Retirement Division in Sections 19 and 96. **Mr. Jenkins** passed out copies of this earlier. We believe the Unclaimed Property Laws are not in conflict with the Constitution because they do not encumber, divert, reduce, or terminate public retirement system assets. Once those assets have been identified and they have determined the eligibility of an individual in his retiring, they are no longer assets of the system. They are rightfully assets of the individual, the beneficiary or the retiree. There is not a conflict in that regard. Unclaimed Property Laws only come into play three years after the earliest of one of the following events has occurred: the date of distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty. There are some very specific requirements and even in our retirement system statutes, there is a mandated age at which an individual can apply for retirement system benefits. Once they

reach a certain age, it is the responsibility of the retirement system to try to find those individuals.

We believe the change to the Unclaimed Property Law establishes a bad precedent. This is not necessarily because it is the retirement system that is doing it, but that you are allowing an exemption to the Unclaimed Property Statute which would then allow, or encourage, or provide an opportunity for other holders of unclaimed properties to seek a similar exemption. We do not believe the Constitution mandates the change. The negative impact on the General Fund would be if further exemptions are allowed to the Unclaimed Property Statutes.

When we indicated to the retirement systems we would be opposing this legislation, we tried to work out amendments with them. My understanding is we had an agreement with the retirement systems regarding amendments to this legislation and an administrative agreement as to how we would handle retirement system unclaimed property. It is unfortunate you have been presented with sister agencies in disagreement. I have amendments **EXHIBIT(sts50a07)**. I ask the committee to give the amendments careful consideration. Basically, we would like to leave Section 19 and Section 96 the same as it currently is.

Questions from Committee Members and Responses:

SEN. HARGROVE asked what happened in the House? Were there amendments in the House? **REP. AHNER** replied, they passed the bill as is. **SEN. HARGROVE** asked, were the same things brought up there? **REP. AHNER** stated, yes.

SEN. HARGROVE asked, do these retirement funds go into the General Fund? **Mary Bryson** said the retirement system is correct in indicating none of the retirement systems have turned over any unclaimed property to the State of Montana, but any unclaimed property turned over by any of the holders of unclaimed property is deposited in the General Fund. **SEN. HARGROVE** stated it is debatable if part of the Constitution says income and actuarially required contributions. Do you think there is a Constitutional challenge there? **Mary Bryson** said we don't believe the Constitution would mandate retirement systems to be exempt from the Abandoned Property Statutes. We do not believe there is a Constitutional issue.

SEN. HARGROVE asked, would there be a cost in maintaining these funds? **Mr. Jenkins** replied, we retain those funds and it is our responsibility to administer those funds.

{Tape : 1; Side : B; Approx. Time Counter : 53 - 77}

Mr. Jenkins continued, I suspect there is not a great deal of cost because the numbers are not huge in relation to the overall size of the assets. We still have to administer the rest of the assets and these just ride along. I am sure there is some cost because that is our responsibility and all of our costs are administering retirement system assets.

SEN. HARGROVE asked, how much money are we talking about? **Mr. Jenkins** stated, I don't know. It has never been split out. We have viewed it as being our responsibility not to turn over those funds. I am not sure there is a way to quantify that. If there is, perhaps **Mike O'Connor** or **David Senn** could answer that question. It has never been split out so we don't know. We hope it is not a great deal and we have mechanisms in place with our Qualifications bill for PERB and the Teachers Retirement System that will increase our tracking. We have talked with the DOR about working with them to identify people who are giving them names and addresses, so that they can tell people when inquiries are made. We hope to reduce the amount but we do not know precisely what the amount is.

SEN. HARGROVE asked, has the PERB always maintained those funds? Did the 1997 changes in statute bring up the question of whether they should be with the Retirement Board or the DOR and the two agencies cannot get along? **Mr. Jenkins** replied, there may have been provisions that could have arguably been applied to the retirement systems previously, but they never were by the DOR or the PERB. When this provision was passed, it became more clearly applicable to the retirement systems. There was another provision in the Uniform Probate Code that we ended up going to court over. We started looking at other situations and came across this. It appears that in the adoption of some of these Uniform laws, they have not considered the possibility of a state having a strong Constitutional provision as Montana does.

SEN. HARGROVE said, I would like to refer that same question to **Mary Bryson**. **Mary Bryson** stated, our position has been and will continue to be that the existing Unclaimed Property statutes did apply to the retirement systems. This is an area within the Department where we had requested additional resources for and have not received those resources, so it is not that we have no interest in pursuing this. We spend most of our time pursuing the identification of those rightful owners and not as much time going out and auditing those holders of unclaimed property, to see if they are maintaining any of that property that should be turned over to the state so we can pursue the rightful owners. We did not pursue with the retirement system, in that regard, because at least we knew where it was and could pursue it if absolutely necessary. We thought we had an agreement as to how

we would share information and resolve that. Our position is that this change to the statute would be the wrong way to go.

SEN. WELLS said, according to your handout, the amount of money DOR receives each year is around $2,000,000 and about $800,000 to $1,000,000 is returned. Therefore, we are apparently gaining about $1,000,000 a year in the system. Has any of this money been from the retirement systems? **Mary Bryson** stated, we receive money from private retirement systems. The state retirement systems have not turned over any abandoned property.

SEN. WELLS said, you asked for resources to handle the assets if DOR were to get the state retirement funds. We heard testimony that it would not cost the retirement system any additional money, but if we approved your amendment it would cost additional funds. **Mary Bryson** stated, no, we requested additional resources to pursue auditing the holders of abandoned property, in order to have that property turned over. Also, to further pursue identifying the owners of that property. This change in statute would have no impact on that. This money is turned over to the General Fund. We do not administer the investments in the General Fund; that is done by the Board of Investments and the State Treasury. There are no resource or fiscal impact to DOR as it relates to the administrative cost of this program.

SEN. WELLS said, on Page Three of your handout it says, "the Unclaimed Property Act is designed to meet three goals". Can you give me some examples of the economic windfall you are referring to in the third goal? **Mary Bryson** explained, that would refer to, for instance, property left in a safety deposit box that the financial institution took ownership over. In such a case, the financial institution gets the economic windfall, whereas, they may not want to pursue trying to identify the owner of that property or the heir to that property. They gain that benefit and the benefit should be to the state and its citizens, not to the holder.

SEN. WELLS said, listening to DOR and how they are protecting lost owner's rights from various kinds of properties that are held by different kinds of institutions, it sounds like there is a certain amount of protection here that is necessary. Do you see that it is an economic windfall to the retirement system if you keep the funds and do not find the owners of these funds or the rightful heirs? Do you think there is a possibility that you could not find those people as well as DOR? **Mr. Jenkins** stated, I think DOR brings things to this situation that we need to take advantage of, which we have not taken advantage of as well as we could. They have addresses for people who have filed tax returns and have made claims. We have no problem with working with them

to arrive at that kind of cooperative agreement. The problem we have is in turning over the money. I don't consider it an economic windfall, but we know assets of the system, by the Constitution, are supposed to be held in trust to provide benefits to participants and beneficiaries and to defray administrative expenses. There are only two things that should happen to those assets of the system. When they talk about economic windfalls and what the General Fund will receive out of this, they are talking about taking funds payable to a beneficiary and putting them into the General Fund, which is exactly the kind of thing Constitutional language is designed to prohibit.

Mr. Jenkins said, as a final point, I think it is important to realize we are both state agencies in a sense, to the extent that there are people we absolutely cannot find through our efforts in a cooperative arrangement in sharing addresses with DOR. Ultimately, that money is absorbed back into the pension trust fund or continues to remain the pension trust fund. It would be applied to defray administrative expenses. Federal tax law says that is the only way we could apply; therefore, the administrative expenses are reduced. The funding for the retirement system comes exclusively from public entities; State and Local Governments and the matching amount from employees. The administrative expenses can be absorbed by money retained in the fund, rather than turned over to the General Fund. That becomes money the General Fund or some other Local Government fund does not have to pay back in to pay administrative expenses. You are not coming out ahead by giving money to the General Fund that should remain in the trust fund. You are potentially depriving beneficiaries of their benefits in the full amount that their benefits are supposed to be, and you are testing the constitutional language.

SEN. TESTER asked, have you received any private retirement system money from the unclaimed? **Mary Bryson** replied, I don't know.

SEN. TESTER asked, how do you find owners and is this something you actively pursue? **Neil Peterson, DOR,** stated, I administer the unclaimed property. There are number of different things we do and states do collectively to try to elevate people's interest in unclaimed property. Currently, we advertise all property received over the last year in all the major newspapers. Three times a year we are able to do an article in a major state newspaper or a television station, saying we are holding property and we have these types of property. Also, the National Association of Unclaimed Property Administrators has a web page with links to each state's web page. We are planning to put our

property list on that page also, so that people can check on a regular basis. We get calls on a daily basis from an individuals because they know to go to the DOR to check for unclaimed property.

SEN. TESTER asked, do you make any specific efforts to go to the individual? **Mr. Peterson** answered, yes we do on some of our larger amounts that are turned over. We make some specific searches to try to find an address or an heir for that particular individual. **SEN. TESTER** asked, do you presently share addresses with other state agencies as far as where these people are located? **Mr. Peterson** replied, we do, to the extent we are permitted to share information with another agency under confidentiality statutes. I do not believe we have, in statute, the ability to share addresses with the Retirement Board.

SEN. TESTER asked, are the monies from the unclaimed property placed in the General Fund invested? **Mary Bryson** explained, they become part of the General Fund pool. Therefore, they are invested at the rates and earn the interest that is attributed to the General Fund. **SEN. TESTER** inquired, do you have any idea what that was for last year? **Mary Bryson** replied, around eight percent, but I don't know for sure.

SEN. TESTER asked, who initiates the drawing of the retirement funds? Is it initiated by the worker? **Mr. Jenkins** stated yes. **SEN. TESTER** asked, at what point in time do you make the determination that these are unclaimed monies, or would you? **Mr. Jenkins** answered, we have someone who keeps track of death lists. We do comparisons with Social Security records. As to the specifics of administration, I would prefer that **Mike O'Connor** comment on that. **Mike O'Connor** explained, we are doing a more pro-active approach. We are going to try to locate these people, when they terminate, for individuals with less than $5,000. Currently, we are looking for individuals on an individual basis to get them the money. The Board's primary concern is to get the money to the members. We review our membership with the Social Security death list so we know people who have passed away so we can locate the beneficiaries.

SEN. TESTER said, assuming you got some money from a retirement system, whether private or public, and the person suddenly appeared, would you give that money back with interest? **Mary Bryson** stated, no, we would give them back the amount of money that was unclaimed. One of the questions that exists with the retirement systems deals with the annuity and how you determine what amount will actually be remitted. That is one of the issues that we have been discussing with the Retirement System.

SEN. HARGROVE asked, does it make any difference to you at PERS, as far as this amendment is concerned? **Mr. O'Connor** said, the Board is fiduciaries of this plan and they are trying to protect the assets of the plan. Their primary concern is making sure the money in the plan gets to the members of the plan. Our concern is that we cannot transfer money to the General Fund because of situations like the one **David Senn** talked about. He had to pay out $90,000, but he only had $20,000 of contribution. We fund retirement systems on investment return of that money, as well as contributions. We earn almost nineteen percent on that money and that is what funds those retirement benefits.

{Tape : 1; Side : B; Approx. Time Counter : 77 - 88}

SEN. COLE asked, do you feel there is a possibility of working this disagreement out through some amendments? **Mr. O'Connor** replied, we would like to work with DOR because they have the addresses of people. We would like to be able to work out an agreement. It looks bad to have two state agencies quarreling and we don't like it anymore than they do.

Closing by Sponsor:

REP. AHNER said when this bill was over in the House State Administration Committee, it was originally a little housekeeping bill. Then DOR came in opposing the bill and that was the first I had known there was some opposition and their reasons for it. In the House State Administration Committee, they chose to maintain that money in the trust versus putting it in the General Fund. That is why it has come before you in this fashion. I did not realize the amount of amendments and the passion which brought this particular issue to the housekeeping bill. I will leave that up to your wisdom and your discretion as to whether to leave this in the pension trust at nineteen percent interest or put it in the General Fund.

HEARING ON HB 362

Sponsor: **REP. TRUDI SCHMIDT, HD 42, GREAT FALLS**

Proponents: **Joe Kerwin, Deputy of Elections, Secretary of State's Office**
Robert Throssell, Montana Association of Clerks and Recorders
Hal Manson, American Legion of Montana

Opponents: None

Opening Statement by Sponsor:

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS, stated this is a bill that expands voting opportunities for United State personnel that are stationed overseas, including military people, religious groups, welfare agencies, and United State citizens. We received a letter from the Federal Voting Assistance Program out of Washington, and I was surprised to find there were over nineteen thousand people living overseas and claiming Montana as their legal residence. This bill is amending language in some core statutes and is expanding the voter write-in absentee ballot. I will go through parts of the bill and the proponents will further expand on it.

Section 1 of the bill adds the Federal Write-in Absentee Ballot to the registration options available for Montana residents serving abroad. Section 2 adds the Federal Write-in Absentee ballot to the voting options available to Montana residents serving overseas. Section 3 allows an oversea's elector, who has applied for a regular absentee ballot, to vote a Federal Write-in Absentee Ballot if the elector feels that he or she may not receive the regular ballot in time. The Federal Write-in Absentee ballot may only be used to vote for a candidate for federal office at the primary or general election, but not for state offices or ballot issues. Section 4 clarifies the counting procedures for Federal Write-in Absentee Ballots. This bill does not change the print procedures for voting by this Federal Absentee Ballot form. It allows a Montanan to register to vote using this ballot if the form is received by the county election administrator by the close of the registration deadline. It also allows a Montana resident to apply for this ballot up to thirty days before the election. It is intended for those who might not get their ballot mailed to them in time due to the slow mail service if they are in a rural country. It is still incumbent upon the voter that they apply in a timely fashion.

Proponents' Testimony:

Joe Kerwin, Deputy of Elections, Secretary of State's Office, said we rise in support of **HB 362.** I would like to pass out the letter from the Department of Defense (DOD) that **REP. SCHMIDT** made reference about **EXHIBIT(sts50a08).** I would also like to pass out a copy from the Federal Write-in and Absentee ballot **EXHIBIT(sts50a09).** I would like to go over how this form is currently used and what changes we are proposing to it. The Federal Write-in and Absentee Ballot is something that can be used by members of the military or citizens overseas. It is intended to allow them to use this if they have requested an absentee ballot at least thirty days ahead of the election, if

they are not sure they are going to get their ballot in time because they may be in certain countries where mail may be delayed. They can mail this ballot in and it is only for federal offices. It allows them to write in the name of the candidate they want to vote for, United States President, United States Senate, or United States House of Representatives. Those are the only offices they can use this for. They have to request an absentee ballot at least thirty days beforehand because when the Federal Voting Assistance Program drafted this program, they wanted to make sure it is used properly. It is intended for those who are diligent, who have made their request in a timely fashion, but because of postal service delays they may not get their ballot in time.

We are planning to expand this two ways. All the information requested on here is sufficient for voter registration purposes and for a request for an absentee ballot. We want to be able to allow them to use this one form to register to vote, simultaneously request an absentee ballot, and then use this as a fallback write-in absentee ballot. The clerk would take that one form, as opposed to having to take three forms, register them, send out the ballot, and count this as a Federal Absentee Ballot. This ballot will only be counted if they do not receive their regular ballot. If the voter returns their full ballot, this ballot would not be counted, so you are not letting them have their vote counted more than once. After thirty days they can only use this in its current form, so if they request an absentee ballot through some other form, they can use this. They can still use the normal voter registration card if they would like to and they could still use the regular ballot application if they would like, but rather than forcing them to use three different forms, we would like to clarify the law, cut down on the paperwork, and hopefully make it a little easier for the Clerks and Recorders and voters overseas, while keeping the safeguards in place.

Robert Throssell, Montana Association of Clerks and Recorders, stated, we are in support of **HB 362.** You have heard **Mr. Kerwin** explain this is aimed to help overseas service personnel and the people overseas under government service. The Clerks and Recorders are happy to assist and believe this clarification and use of the Federal Write-in form will be a help.

Hal Manson, American Legion of Montana, said, in 1944 I was just old enough to vote and I voted for the first time overseas. I never thought it should have been any other way. Any way we can make it easier for our people in the military service to vote and be able to express their citizenship, other than their military duty, we are very much for. We strongly recommend this bill.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 88 - 95}

SEN. HARGROVE asked where would people get this form? **Mr. Kerwin** replied, any United States Embassy or Consulate and every military base with military personnel have what is called a Voting Assistance Officer that would have these forms. They also have a large book that explains state by state how to use the form. **SEN. HARGROVE** said, if a write-in for a regular ballot is received by the County Clerk and Recorders office thirty days before the election then everything is good. After that, what happens? **Mr. Kerwin** explained, after that you would have to use the regular application for an absentee ballot form. You would use this form if you knew far enough in advance that you would be able to get all this information to the clerks thirty days in advance. If you were not certain, you would want to use the regular form. There is a Federal Postcard application you could use that would allow you to register and request an absentee ballot after that period, but you would not be able to use this form.

SEN. TESTER asked, does United States service mean anyone who is overseas? **Mr. Kerwin** answered, I will read to you how the Montana Code defines United States elector, "a member of the military, armed forces in the active service and their spouse and dependents, a member of the Merchant Marines and their spouse and dependants, a member of religious group or welfare agency, or a citizen temporarily residing outside the territory limits of the United States". This bill further clarifies that this is just for those overseas. A citizen overseas would be included in this provision, whether they are military or not. **SEN. TESTER** stated, I don't know why they don't just say a United States Citizen residing overseas. **Mr. Kerwin** said, I think this is based off the definition that is used by the Federal Government.

Closing by Sponsor:

REP. SCHMIDT said, thank you for the great hearing. **SEN. TESTER** has agreed to carry this bill.

HEARING ON HB 585

Sponsor: **REP. RICK JORE, HD 73, RONAN**

Proponents: **Joe Kerwin, Deputy of Elections, Secretary of State's Office**

Opponents: None

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 95 - 104}

REP. RICK JORE, HD 73, RONAN, said we are trying to create consistency in ballot access signature requirements. Currently, the law states that the signatures required for ballot access for independent minor party candidates for President and Vice-president and minor parties require five percent of the successful Governor candidate. This will create consistency by changing five percent to five thousand or five percent, whichever is less. In the last Governor's election Governor Racicot ended up with the other candidate passing away during the election with a high number of votes. The five percent put Montana as number fifty on the list, **EXHIBIT(sts50a10),** as far as the percentage of signatures per capita to qualify for ballot access. Montana requires 2.51 percent under that scenario for signatures on a per capita basis. The closest state to Montana is 1.77 percent. At the top of the list many other states have very minor requirements. My intent here is to create some consistency and stability in that requirement. It is very simple and straightforward. I am an advocate for ballot access in these situations and I think this is reasonable.

Proponents' Testimony:

Joe Kerwin, Deputy of Elections, Secretary of State's Office, stated, we support this bill. We think it is a good way to get Montanans more involved in the process. The current signature requirements fluctuates from elections to election periods based on things that cannot be initially guaranteed. These variables will change what the ballot requirements are to get a candidate or a party on the ballot. We think this is a very good measure. It is not unreasonable for five thousand Montanans to say they want to have a particular candidate on the ballot so they have the choice to vote for him or her.

Questions from Committee Members and Responses:

SEN. HARGROVE asked, is there a minimum you think would be appropriate? Would you like to see it less than five thousand? **REP. JORE** replied, my understanding is, prior to the 70's all it required in Montana is to have a nominating convention. I picked five thousand because I thought it would be acceptable as a reasonable number compared to what we have. I would think five thousand, in this case, would always be the number, but if it goes lower, it will still have a five percent requirement. I cannot imagine it going lower than five thousand.

SEN. WELLS said, I am not familiar with all of the laws that apply here. What does it mean on Line 17 when it says not qualified under 13-10-601? **Mr. Kerwin** answered, there are different ways you can qualify a political party and their parties to be eligible to be called for the primary ballot. There are currently five actual parties that are eligible for a primary election, including the Republicans, Democrats, Libertarians, the Natural Law, and the Reformed party. They can have their candidates file during the same period you file for your legislative office. After that period has closed, we determine if they have filed enough candidates to require a primary ballot or not. If not, these candidates go on the general election ballot. That means they are eligible to have their primary election. Additionally, once you qualify you have to maintain the qualification. You maintain that by having a statewide candidate in either of the last two elections who has received five percent of the votes for governor. You have to have one serious candidate in the last two general elections who has gathered enough votes to keep that party qualified. If it falls below that threshold, you would lose that eligibility and you would not be eligible for any primary election. The 13-10-601 talks about those parties that are eligible to hold a primary election and have maintained that status by having statewide candidates out there.

SEN. WELLS asked, how do you initially qualify? **Mr. Kerwin** said there are two ways you can qualify. Under Section Two, 16-10-601, you can have a petition that qualifies your party to hold a primary election. You would file that much earlier in the process, in spring in our office. If you get enough signatures, you have qualified as a political party eligible for the primary and you can file any candidate you want through the process you use. If you get enough signatures for the X party and you filed it in February, any candidate for the X party could file to run for the legislature by turning in their filing form along with fifteen dollars and they would not have to gather signatures. They would automatically go on the ballot.

The other method you could use to qualify an independent candidate if you wanted an independent candidate for Congress for the X party. In this case you would have a later time period because you would have to file a petition particular to that one candidate. If that candidate qualified, got on the ballot and got enough signatures to have the subsequent election, that would qualify that political party for the ballot.

SEN. COLE asked, is this only for President or Vice-president? Do we have any legislation like this for the Governor? **Mr. Kerwin** replied, this only deals with presidential candidates and the qualifications for the full party. It does not deal with minor party candidates for governor or other offices. Those are based directly off whatever office you are seeking. For instance, if you wanted to run as a minor party legislative seat or the Attorney General's position, the number of signatures you would need to qualify as an independent or minor party candidate for that office would be based off the percentage of the vote cast for that particular office. This does not change that.

Closing by Sponsor:

REP. JORE stated, this is a very simple bill. The principle here is ballot access and consistency. I think it is important to give people that opportunity. I mentioned in the House Committee that I know people in my area who do not vote. They tell me they do not vote because they are not satisfied with the choices. That is a slap in the face to us sometimes, but I think they deserve their access to the ballot as much as anyone else. I believe this makes it a little easier but more than that, it creates consistency. I hope that you will look favorably on this.

HEARING ON HB 616

Sponsor: **REP. MONICA LINDEEN, HD 7, HUNTLEY**

Proponents: **Mike Voeller, Montana Newspaper Association, Lee Newspapers of Montana**
George Ochenski, Representing Self
Riley Johnson, Montana Broadcasting Association

Opponents: None

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 104 - 118}

REP. MONICA LINDEEN, HD 7, HUNTLEY, said, I bring before you a very simple bill, **HB 616.** This bill does three things. One, it allows agencies that are capable of receiving electronic mail to accept public comments dealing with the statute, administrative rule, or policy. Secondly, those agencies that are capable of receiving electronic mail shall publish their electronic email address for public comment in their rule making notices, state agencies' telephone directory, on their web site (if they have one), and on the state electronic bulletin board. Third, at the request of another agency or person, the agency would send public documents to the requesting agency or person through electronic mail instead of surface mail, at a great cost savings to State Government. An agency would not be able to charge a fee for providing documents sent through electronic mail.

Proponents' Testimony:

Mike Voeller, Lee Newspapers of Montana, Montana Newspaper Association, stated, in the last 28 years, it seems like I have been running around in the corridors trying to preserve the public's right to know and participate in government decision-making. This session has been a welcome relief in that there has been quite a number of bills that seek to expand that. The Senate gave overwhelming approval to **SB 82,** which was sponsored at the request of the Justice Department and heard by Senate Business. That bill expands and clarifies the Right to Know in a number of areas. Earlier you heard **REP. COBB's HB 259,** which will bring the Commissioner of Political Practices out of the dark and let the public know what is going on. I signed in on that bill, but through conflict I was not able to testify in favor of it. I expect you will get **HB 578,** which was also heard in the House State Administration committee that expands the Public Record's Law. Now you have **REP. LINDEEN's** bill, which is one more in the series of good bills we feel will give the public an increased opportunity to communicate with government agencies and expand their ability to obtain public information. We hope you will give this bill a Do Pass recommendation.

George Ochenski, Representing Self, said, I am here today to give you some background on these things. In 1989, the Majority Leader for the Republicans carried the bill to establish the state electronic bulletin board. I worked with him to do that, primarily because he was the only legislator I could find who actually knew how the bulletin board system worked. Computers then were not what they are now. There was no web and email was not existent. It did provide for the citizens of Montana access to the information that we take for granted, here in this

building and in Helena. People in the far corners of this huge state cannot get that information easily. By putting it on the bulletin board, we began to take the first steps into bringing all of the citizens into the policy discussions that take place in this building. As the years went by we fine tuned that system and now we have the web. This bill is just a another in that series of bills to try to upgrade and make available to the citizens the same information we use everyday. It has been a great success and makes more sense than paying the government by the ounce to deliver thousands of pounds of paper every year. If people are not interested in it, they throw it away. This way they can get the information, look at it, and if it is of interest to them, they can print it out. If they don't, it costs anything.

Riley Johnson, Montana Broadcaster's Association, stated, I agree with what has been said. This session has been a good example of the use of electronics. I think we are on the verge of a new dawn. This opens up the doors of government and that is a favorable thing for the broadcasters.

Questions from Committee Members and Responses:

SEN. TESTER asked, does this deal with Montana State agencies exclusively, because we can't force anything on the Federal Government? **REP. LINDEEN,** replied, yes, you are correct. **SEN. TESTER,** asked why can't this be done as a basic mode of operation instead of being placed in statute. What is the advantage and is it necessary? **REP. LINDEEN** stated, it is important to put it in the statute, although many agencies are taking advantage of using a web site and electronic email as a way to distribute the information to the public and other agencies. In my opinion, the most important statute in this bill is in Subsection 3, which states that agencies cannot charge a fee for providing documents by electronic mail. We have spent a lot of money in State Government on new technology for the purpose of potentially saving money in government. For them to turn around and charge other agencies and the public for public information available electronically is irrational, because it does not cost anything. It is a matter of pushing a few buttons.

SEN. TESTER asked **Mr. Ochenski,** would you like to add to that? **Mr. Ochenski** said, I would like to. Assuming that agencies are going to do the right thing is a very risky assumption. Putting this in statute removes any point of argument. This will mandate they have to do this, because this is what the law says. Regarding email, if they do not want to give public input they won't put an email address on there. I get every environmental assessment published by Fish, Wildlife, and Parks and they have

no email addresses on anything. They should have because that provides an easy way for the public to comment. **SEN. TESTER** stated, it would make sense to me if I was in a state agency. From a cost savings standpoint, I would want to do this. **Mr. Ochenski** commented, I have been doing this for fifteen years. The things we see as citizens that make sense to us in cross-savings are not always perceived that way by agencies. They are perceived as extra work and possibly opening the door to the public when they did not want that door opened.

SEN. COLE asked, have you worked this with the people at MontPRIME or any of the other state agencies and information services. **REP. LINDEEN** answered, I did speak with **Tony Hubert** and he said the agency had no problems with the bill at all. His only concern is there is a possibility someone might request a document that is over a 4mg file size, but he did not feel that was a huge problem and is something they could deal with at this point in time. If we needed to look at that between now and the next legislative session, we could do that. **SEN. COLE** asked, will this be tied in with the state systems as far as Information Services Division (ISD) or is this separate between the agency and branch that would be doing email? **REP. LINDEEN** said, I would like to refer this to **Mr. Ochenski. Mr. Ochenski** stated, every agency produces their own documentation. That documentation does not go through ISD. They produce it on computers, not typewriters, so its already within the agency's purview. All this requires is that it be made public.

Closing by Sponsor:

REP. LINDEEN said, thank you for a great hearing. I hope you can see the advantage, not just for agencies but for the public, in having access to public documents and being able to be involved in this process. I hope that you will give this a favorable recommendation. **SEN. WILSON** will carry the bill to the Senate.

ADJOURNMENT

Adjournment: 11:58 A.M.

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SEN. MACK COLE, Chairman

_____
KERI BURKHARDT, Secretary

MC/KB

EXHIBIT(sts50aad)