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State Administration and Veterans' Affairs Interim Committee

61st Montana Legislature

SENATE MEMBERS

JOE TROPILA--Chair
JOE BALYEAT
LARRY JENT
DAVE LEWIS

HOUSE MEMBERS

GORDON HENDRICK--Vice Chair
TIMOTHY FUREY
PAT INGRAHAM
ROBERT MEHLHOFF

COMMITTEE STAFF

RACHEL WEISS, Research Analyst
DAVID NISS, Staff Attorney
FONG HOM, Secretary

MINUTES

September 13, 2010

Room 137, 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

SEN. JOE TROPILA, Chair
REP. GORDON HENDRICK, Vice Chair

SEN. JOE BALYEAT
SEN. LARRY JENT
SEN. DAVE LEWIS

REP. TIMOTHY FUREY
REP. PAT INGRAHAM
REP. ROBERT MEHLHOFF

STAFF PRESENT

RACHEL WEISS, Research Analyst
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list (**Attachment 1**)

COMMITTEE ACTION

- The minutes of the June 24-25 meetings were approved.
- The committee authorized the drafting of bills regarding benefit and funding changes to PERS, SRS, GWPORS. The committee also approved the proposal for actuarial funding of TRS with the recommendation to amend out the funding changes and present them as stand alone bills.
- The committee approved bill draft requests from the Office of the Public Defender.
- The committee approved LC 0148 and LC 0253 as committee bills.
- The committee approved sending a letter to the Department of Administration regarding whether or not agencies are in compliance with bonus pay.
- The committee approved the Legislature going forward with agency proposals Nos. 8, 15, and 9.
- The committee requested that staff update the report *Whose Slice of the Pie* with current numbers.

CALL TO ORDER AND ROLL CALL

- 00:00:01 SEN. TROPILA called the meeting to order 9:05 a.m. The secretary called roll. Sen. Balyeat participated by phone.
- 00:02:10 The minutes of the June 24-25 meetings were approved unanimously.

AGENDA

- **AGENCY UPDATE: BOARD OF VETERANS' AFFAIRS - Joe Foster, Administrator**

- 00:04:19 Mr. Foster presented a framed panel of a Beetle Bailey cartoon to Sen. Joe Tropila in recognition of his service on the Montana Board of Veterans' Affairs and his meritorious leadership for all Montana Veterans and as a state legislator, a community leader, and a United States Air Force and Korean War Veteran.

- **REVIEW OF MAIL BALLOT DRAFT**

- 00:07:35 Ms. Weiss gave a brief background of the request from the Clerk and Recorders to consider a committee bill to allow mail ballot elections (**Exhibit 1**). Ms. Weiss distributed copies of emails from the public regarding the bill draft request (**Exhibit 2**).
- 00:08:59 **Linda Stoll, Montana Association of County Clerks and Recorders and Election Administrators**, said that the Association requests that no further action be taken on the bill.
- 00:10:22 **Linda McCulloch, Secretary of State**, discussed the formation of a working group to research the issue of the mail ballot voting. Ms. McCulloch said that she supports Ms. Stoll's request to not continue with the Clerk and Recorders' proposed bill.

Questions

00:18:57 SEN. LEWIS asked Ms. McCulloch why the working group is still meeting on this issue. **Ms. McCulloch** said that as Secretary of the State, she wants to make sure that when it comes to voting, it works for everybody in Montana and that it works properly.

00:22:50 SEN. LEWIS asked what is wrong with going forward with this bill and the working group coming up with amendments to be offered during the session. **Ms. McCulloch** said that for things to be successful, it is always better if everyone has buy-in to them.

00:27:21 REP. HENDRICK asked for the committee's support on the proposed bill.

Motion by Sen. Lewis

00:38:52 SEN. LEWIS **moved** that staff draft legislation regarding the mail ballot.

Roll Call Vote

00:44:43 The motion **failed** on a tie roll call vote (**Attachment 2**).

BREAK

00:56:47 The meeting reconvened at 10:01 a.m.

• **AGENCY BILL DRAFT REQUEST PROCESS - Montana Public Employees' Retirement Board and Teachers' Retirement System**

00:57:36 Ms. Weiss discussed the agency bill draft request process and what the committee has done for the Public Employees' Retirement Board and the TRS Board benefit and funding proposals (**Exhibit 3**). Ms. Weiss that the committee needs to vote up or down on each agency-related proposal.

Discussion

00:59:43 The Committee asked questions about the legislative proposals from the Teachers' Retirement Board and the Public Employees' Retirement Board. They also discussed a proposal to authorize agency bills and to recommend that the funding be taken out.

Motion by Rep. Mehlhoff

01:12:56 REP. MEHLHOFF **moved** that the SAVA Committee authorize the drafting of four bills with benefit and funding changes to PERS, SRS, GWPORS, and the proposal for actuarial funding of TRS as proposed by the Boards, with a recommendation from the SAVA committee that the Legislature amend out the funding changes and present them as stand alone bills. The motion **passed** unanimously.

• **AGENCY UPDATE: COMMISSIONER OF POLITICAL PRACTICES - Commissioner**

Dennis Unsworth and Mary Baker

01:15:33 Mr. Unsworth provided an update on the disclosure program for campaigns and contribution restriction, the budget, maintenance of Administrative Rules of Montana, and the issue of frivolous campaign complaints.

01:36:32 Mary Baker, Program Supervisor, Political Practice, discussed LC0151, eliminating the requirement of submission of reports to the County Election Administrator's Office.

The members of the committee asked questions of Commissioner Unsworth related to his presentation.

No Public Comment given

- **OVERSIGHT OF PUBLIC DEFENDER COMMISSION - Sheri Heffelfinger, Research Analyst, Legislative Services Division**

01:50:05 Ms. Heffelfinger discussed the oversight of the Department of Corrections, Department of Justice, and the Judicial Branch by the Law and Justice Interim Committee. She also discussed the proposals from the Office of the State Public Defender (**Exhibit 4**) and asked that the Committee approve five proposals for drafting purposes.

No public comment given

Motion by Sen. Jent

01:54:07 SEN. JENT **moved** to approve bill draft requests offered by the Office of the Public Defender.

Discussion

01:54:29 Members of the committee discussed the bill draft allowing the public defender to recover all or a portion of the public defender fees if determined eligible and the bill draft for flat fee contracts.

02:01:30 The motion **passed** unanimously.

- **Request by Sen. Tropila to have Rep. Ingraham work with Secretary of State Linda McCulloch on mail ballot bill**

02:03:47 SEN. TROPILA asked that a letter be sent to the Secretary of State requesting that she extend an invitation to Rep. Ingraham to sit in on any meetings that the working group had regarding the mail ballot issue. The committee unanimously approved that a letter be sent regarding his suggestion.

- **Discussion on Department of Administration's administrative rule to repeal personnel rules and its adoption in the Montana Operations Manual - David Niss**

02:05:59 Mr. Niss discussed the issue of the Department of Administration substituting policies in the Montana Operations Manual for Administrative Rules of Montana dealing with state personnel policy issues. He told the committee that the issue will be brought before the SAVA Committee in the next interim to see if they would like to study the issue further.

No public comment given

LUNCH BREAK

03:21:43 The meeting reconvened at 12:26 p.m.

- **REVIEW OF LC 0148 AND LC 0253 - David Niss**

- ▶ **LC 0148**

03:22:16 Mr. Niss discussed LC 0148 (**Exhibit 5**), allowing the Secretary of State to use legislator contact information provided by the Legislative Services Division for the purpose of rulemaking.

No public comment given

03:29:57 **Motion by Rep. Ingraham**
REP. INGRAHAM **moved** that LC 0148 be forwarded as a committee bill. The motion **passed**. The sponsor will be Rep. Furey.

03:31:10 **Motion by Sen. Balyeat**
SEN. BALYEAT **moved** that Sen. Lewis be the backup sponsor of LC 0148. The motion **passed**.

- ▶ **LC 0253**

03:32:15 Mr. Niss discussed LC 0253 (**Exhibit 6**), allowing an agency to notify an interested person, with the consent of that person, of the availability on the agency's website of an electronic notice of proposed rulemaking.

No public comment given

03:35:27 **Motion by Rep. Hendrick**
REP. HENDRICK **moved** that LC 0253 be forwarded as a committee bill with Sen. Balyeat as sponsor and Rep. Hendrick as backup sponsor. The motion **passed**.

- **HJR 35 STUDY - Dave Bohyer, Research Director, LSD**

03:37:34 Mr. Bohyer gave a presentation on the draft report of the HJR Study of bonus pay policy and practices in Montana State Government (**Exhibit 7**).

No public comment given

03:57:25 REP. INGRAHAM asked questions about the report and House Bill 576.

- **HB 659 STUDY, REVIEW OF LC 0251 and LC 0252 - Rachel Weiss**

04:05:07 Ms. Weiss reviewed the provisions as discussed by the Committee for LC 0251 (**Exhibit 8**) and LC 0252 (**Exhibit 9**).

Public Comment

04:09:40 **David Senn, Executive Director, Teachers' Retirement System**, said that there will probably be some changes in the numbers after the actuaries start analyzing the bill draft and its effective date after receiving the determination letter from the Internal Revenue Service.

Questions

04:11:33 REP. INGRAHAM asked what Mr. Senn meant by "the best effective date". **Mr. Senn** said that TRS will use language that says, "effective date would be after the board had received a determination letter then they would then notify the agency the effective date." He said that for schools, they would want the effective date as the first of July.

▶ **LC 0251**

04:20:07 Ms. Weiss discussed the provisions for LC 0251, a bill that would establish two money purchase plans for TRS for new hires only. She asked for clarification on two issues: what is the deadline for new hires having to choose between Plan A and Plan B of the Money Purchase Plan; and do new hires in PERS have a choice between a defined contribution plan and a defined benefit plan.

04:21:59 SEN. BALYEAT said that new employees make an initial election when they are hired, they can elect at what rate they are going to pay, and should be given a year window to change that election with payments made either way depending on the changed election.

04:24:34 **Ms. Weiss** said that one concern that she would have is whether an employee could have two elections. That person could run a foul of IRS regulations. **Mr. Senn** said that the issue of giving people multiple elections is an IRS concern. Mr. Senn encourages the committee to make the employer match effective when they are vested or drop the second proposal all together.

04:26:40 Ms. Weiss said that the motion in August was that the member would put in an additional one half percent of salary and if that member then stayed for 30 or

more years, that half percent of salary would be matched and granted interest. She asked the committee if it wanted to grant interest but not the match, or does the interest and the match go together.

SEN. BALYEAT said that it is his understanding that the interest would be paid on employee contribution and the matching employer contribution but only if they stayed the 30 years.

- 04:28:29 Ms. Weiss discussed applicability and the process by which the IRS lets the Board know whether it is a qualified plan or not. Ms. Weiss discussed the money purchase plan provisions, which are:
- ▶ the employee contribution for Plan A being the current 7.15% of salary and for Plan B, 7.55% of salary;
 - ▶ the employer contribution remains the same as it is in the current plan; and
 - ▶ the interest credit rate is set at a minimum of 5% interest and a maximum of 9% interest with the goal that an averaging of 7% over a member's career but the interest rate could fluctuate between that 5% and 9%.

Ms. Weiss asked who should set that interest credit rate and what guidelines would the committee like to provide in the bill to assist the Board in setting that rate between the 5% and 9%.

- 04:45:23 Ms. Weiss reviewed further provisions of the committee's Money Purchase Plan. She asked if the GABA should be an automatic feature of an annuity when it is calculated or should that be an option that a retiring member can select.

▶ **Sponsors for LC 0251 and LC 0252**

- 04:57:23 SEN. BALYEAT agreed to sponsor LC 0251 and SEN. JENT agreed to sponsor LC 0252.

BREAK

- 05:13:19 The meeting reconvened at 2:18 p.m.

▶ **REVIEW PROPOSED TOPICS FOR SAVA FINAL REPORT - Rachel Weiss**

- 05:14:49 Ms. Weiss discussed the proposed topics for SAVA's final report (**Exhibit 10**).

Motion by Rep. Ingraham

- 05:19:09 REP. INGRAHAM **moved** that SAVA send a letter to the Department of Administration to see if the agencies have their policies in place for wage increases, bonuses, so that they can be audited for compliance. The motion **passed** unanimously by voice vote.

• **COMMITTEE ACTION FOR RECOMMENDATIONS ON RETIREMENT-RELATED**

PROPOSALS

05:20:05 Ms. Weiss said the committee needed to make recommendations regarding the legislative concepts that it has received from the stakeholders, MPERA, and TRS (Exhibit 3).

Discussion

05:21:04 SEN. BALYEAT asked if the committee had already recommended No. 8. **Ms. Weiss** said SAVA did authorize the Public Employees' Retirement Board to draft the general revisions or housekeeping bill, but SAVA has not made any recommendations on what the Legislature should do with that bill. She discussed the list of possible recommendations that the SAVA committee can make: the Legislature should or should not enact legislation based on the concept; or the Legislature should enact legislation but with the amendments that SAVA includes.

▶ **Motion on No. 8, PERB general revisions**

05:22:24 REP. INGRAHAM **moved** that the 2011 Legislature enact legislation on No. 8, general revisions for housekeeping for the Public Employees' Retirement Board. The motion **passed**.

• **REQUEST BY MONTANA STATE FIREMEN'S ASSOCIATION TO UPDATE THE REPORT "WHOSE SLICE OF THE PIE" - Doug Neil**

05:23:34 Mr. Neil discussed the report "Whose Slice of the Pie" and requested that the report be updated with current numbers.

Motion by Rep. Mehlhoff

05:25:18 REP. MEHLHOFF **moved** that staff update the report "Whose Slice of the Pie". The motion **passed**.

• **MOTIONS REGARDING PROPOSED AGENCY LEGISLATION**

Motion on No. 15, TRB general revisions

05:26:35 REP. FUREY **moved** that the 2011 Legislature enact legislation on No. 15, the Teachers' Retirement Board's general revisions. The motion **passed**.

Motion on No. 9, PERB rewrite of VFCA

05:27:27 REP. INGRAHAM **moved** that the 2011 Legislature enact legislation on No. 9, a rewrite of the VFCA. The motion **passed**.

Motion on No. 10, PERB require employer contributions on PERS, GWPORS and SRS

05:28:26 SEN. JENT **moved** that the 2011 Legislature enact legislation on No. 10, the Public Employees' Retirement Board require employer contributions on compensation paid to working retirees in PERS, GWPORS, and SRS.

- **DISCUSSION ON THE ISSUE OF TIE VOTES ON PROPOSED AGENCY LEGISLATION**

05:29:00 There was some concern regarding tie votes on proposed agency legislation. When asked what happens when a proposal fails because of a tie vote, Ms. Weiss said that the staff ends up interpreting that as the SAVA committee deciding to take a "no recommendation" on that piece of legislation.

05:34:44 SEN. JENT asked the chair for a ruling, that when the committee has a tie vote under 5-5-228, does the committee call it a "not enact legislation" and record the vote as "failed on a tie vote". SEN. TROPILA answered yes.

Withdrawal of Sen. Jent's motion on proposal No. 10

05:38:17 SEN. JENT **withdrew** his motion on No. 10.

Motion on No. 1, Association of Public-Safety Communication Officials

05:38:40 REP. FUREY **moved** that the Legislature enact legislation on No. 1, the Association of Public-Safety Communication Officials to include public safety dispatchers in SRS. The motion **failed** with Rep. Furey voting aye.

Motion on No. 2, Montana Judges Association

05:39:52 REP. INGRAHAM **moved** that the Legislature does not enact legislation on No. 2, the Montana Judges Association to increase retirement multiplier for JRS.

05:41:17 REP. INGRAHAM **withdrew** her motion after the committee members discussed No. 2.

Motion on No. 2, Montana Judges Association

05:41:29 SEN. BALYEAT **moved** to recommend that the Legislature enact legislation on No. 2, but will vote against it. The motion **failed** with Sen. Jent voting aye.

Motion on No. 4, MEA-MFT for compensation and funding of MUS ORP

05:45:12 SEN. JENT **moved** that the Legislature enact legislation on No. 4, MEA-MFT for compensation and adequate funding of the Montana University System ORP. The motion **failed** with Rep. Furey voting aye.

Motion on No. 5, MEA-MFT to modify professional retirement option (PRO) for TRS

05:46:05 SEN. JENT **moved** that the Legislature enact legislation on No. 5 with changes as specified in LC 0252. The motion **failed** with Sen. Jent and Rep. Mehlhoff voting aye.

Motion on No. 6, Association of Montana Retired Public Employees to reduce "active employee" members of PERB

05:52:16 REP. INGRAHAM **moved** that the Legislature enact legislation on No. 6 but will vote against it. The motion **failed** with Sen. Lewis voted aye.

Motion on No. 7, TIAA-CREF for a risk-managed defined contribution plan

05:55:17 SEN. BALYEAT **moved** that the Legislature enact legislation on No. 7, but will vote against it. The motion **failed** unanimously.

Motion on No. 10, PERB to require employer contributions compensation for PERS, GWPORS, and SRS

05:55:45 SEN. JENT **moved** that the Legislature enact legislation on No. 10. The motion **failed** with Sen. Jent, Rep. Furey, and Sen. Tropila voting aye, and Rep. Mehlhoff abstaining.

Motion on No. 16, TRB to increase University supplemental contribution rate

05:56:56 SEN. JENT **moved** that the Legislature enact legislation on No. 16. The motion **failed** on a tie vote with Rep. Furey, Sen. Jent, Rep. Mehlhoff, and Sen. Tropila voting aye.

• **OTHER COMMITTEE BUSINESS**

06:00:06 REP. MEHLHOFF thanked Sen. Tropila for his leadership on the committee and his years of service.

06:02:34 A document on Ballot Integrity Model Legislation was distributed to the committee.

• **ADJOURNMENT**

06:03:40 With no further business before the committee, Sen. Tropila adjourned the meeting at 3:08 p.m.

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