



State Administration and Veterans' Affairs Interim Committee

62nd Montana Legislature

SENATE MEMBERS

KENDALL VAN DYK--Vice Chair
RON ARTHUN
LARRY JENT
DAVE LEWIS

HOUSE MEMBERS

PAT INGRAHAM--Chair
BRYCE BENNETT
JOANNE BLYTON
KATHY SWANSON

COMMITTEE STAFF

MEGAN MOORE, Lead Staff
DAVID NISS, Staff Attorney
FONG HOM, Secretary

MINUTES

January 27, 2012

Room 137, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

REP. PAT INGRAHAM, Chair
SEN. KENDALL VAN DYK, Vice Chair

SEN. RON ARTHUN
SEN. LARRY JENT
SEN. DAVE LEWIS

REP. BRYCE BENNETT
REP. JOANNE BLYTON
REP. KATHY SWANSON

STAFF PRESENT

MEGAN MOORE, Lead Staff
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Agenda and Visitors List

Agenda (**Attachment 1**)
Visitors' list (**Attachment 2**)

COMMITTEE ACTION

- The committee approved the minutes of the October 20, 2011, meeting as amended.
- The committee approved adding language from Item 7B from the Nebraska Retirement System to the Principles and Guidelines.
- The committee adopted changes in language in Item T of the Principles and Guidelines regarding Firefighters' Unified Retirement System (FURS).
- The committee adopted the Principles and Guidelines as amended.
- The committee amended the work plan to include studying the Office of Commissioner of Political Practices.

CALL TO ORDER AND ROLL CALL

- 00:00:01 REP. INGRAHAM called the meeting to order at 8:34 a.m. The secretary took roll (**Attachment 3**).
- 00:01:02 The committee approved the minutes of the October 20, 2011, meeting as amended.

THE COMMISSIONER OF POLITICAL PRACTICES VACANCY

- **Overview of process for filling vacancy - Susan Fox, Executive Director, LSD**
00:02:36 Ms. Fox gave an overview of the process for filling the Commissioner of Political Practices vacancy.

Committee questions

- 00:04:46 REP. INGRAHAM
00:05:03 Ms. Fox

- **Update on operations - Mary Baker, Program Supervisor**
00:05:50 Ms. Baker gave a status report of the operation of the office (**Exhibit 1**). She discussed the online services that the Office of the Commissioner of Political Practices provides (**Exhibit 2**).

- 00:09:10 Julie Steab, Investigator, gave a status report on complaints filed with the Commissioner's Office (**Exhibit 3**).

- **Statutory weaknesses related to the Office of the Commissioner of Political Practices - David Niss, Legal Staff**
00:11:04 Mr. Niss discussed the memo dated January 23, 2012, regarding statutory weaknesses discovered researching issues related to the former Commissioner of Political Practices (**Exhibit 4**). He discussed three statutes: 13-37-111, MCA; 2-2-121, MCA; and 13-37-108, MCA, (**Exhibit 5**).

Committee questions of Mr. Niss

- 00:22:06 SEN. JENT
00:23:02 Mr. Niss
00:23:54 SEN. JENT
00:24:14 SEN. VAN DYK

00:26:06 Mr. Niss
00:27:29 SEN. JENT

Committee questions of Office of Commissioner of Political Practices staff

00:28:46 SEN. JENT
00:29:49 Ms. Baker
00:31:54 SEN. JENT
00:33:31 Ms. Baker
00:34:23 REP. INGRAHAM
00:34:43 Ms. Steab
00:36:14 REP. INGRAHAM
00:36:38 Mr. Niss
00:38:36 REP. INGRAHAM
00:40:43 Mr. Niss
00:43:33 REP. INGRAHAM
00:43:51 Mr. Niss

PUBLIC COMMENT

00:44:13 **Sen. Jim Peterson, President of the Senate**, spoke of his concerns about the contents of the Commissioner's laptop that was taken by the Department of Administration. He requested that SAVA direct the Department of Administration and the Governor's Office to preserve all files until the investigations have been completed. He said that the Speaker of the House and he will deliver similar requests to the Governor's Office today.

00:47:42 **Jim Brown, Attorney, Dillon, Montana**, commented that he has a wish list that is made up of 20 recommendations for the committee to reform the process involved with Commissioner of Political Practices Office and various unconstitutional laws (**Exhibit 6**).

Committee questions regarding the seizure of Commissioner of Political Practices' computer

00:57:32 SEN. VAN DYK asked Paula Stoll, Department of Administration, to comment on the seizure of the Commissioner of Political Practices' computer.

00:58:03 **Paula Stoll, Administrator of State Human Resource Division, Department of Administration**, explained the Department's involvement in the seizure of the computer.

01:01:02 SEN. ARTHUN
01:02:00 Ms. Stoll
01:02:18 Mr. Niss
01:03:28 SEN. JENT
01:04:04 Ms. Stoll
01:04:10 SEN. VAN DYK
01:04:31 Ms. Stoll
01:05:10 REP. INGRAHAM

DEPARTMENT OF ADMINISTRATION UPDATE - Sheryl Olson, Deputy Director

01:09:14 Ms. Olsen gave an update of the Department of Administration's activities **(Exhibit 7)**. She also discussed the Montana Operations Manual (MOM) and reported that the manual will soon be available online.

Committee questions

01:19:00 REP. INGRAHAM

01:19:37 Ms. Olsen

- **Understanding the Broadband Pay Plan - Paula Stoll, Administrator, State Human Resources Division**

01:20:50 Ms. Stoll distributed a document "Employee Profile" for the committee but did not discuss it **(Exhibit 8)**. Ms. Stoll gave a presentation on the Broadband Pay Plan **(Exhibit 9)**. Ms. Stoll also distributed a copy of the Broadband Pay Plan Policy **(Exhibit 10)**.

Committee questions and discussion

01:44:11 REP. BLYTON

01:44:33 Ms. Stoll

01:45:20 REP. BLYTON

01:45:37 Ms. Stoll

01:46:20 SEN. LEWIS

01:47:30 Ms. Stoll

01:51:12 SEN. LEWIS

01:51:38 Ms. Stoll

01:52:00 REP. INGRAHAM

01:54:17 Ms. Stoll

BREAK - resume at 10:44 a.m.

PERFORMANCE AUDIT ON GENERAL SERVICES PROCUREMENT SERVICES

- **Improving Montana's Office Supply Acquisition Process (Performance Audit) - Ross Johnson, Legislative Audit Division, and Marvin Eicholtz, Administrator, General Services Division**

02:11:33 Mr. Johnson discussed the results of the audit done on the procurement of office supplies in the state **(Exhibit 11)**.

02:23:39 Mr. Eicholtz said the Department of Administration concurred with the findings of the audit.

Committee questions

02:25:44 REP. INGRAHAM

02:25:53 Mr. Eicholtz

02:26:25 REP. INGRAHAM

02:26:45 Mr. Eicholtz

02:27:09 REP. INGRAHAM
02:27:14 Mr. Eicholtz

Public Comment - none

STUDY OF LAWS RELATED TO ANONYMOUS ELECTION MATERIAL - Megan Moore,
Research Analyst

02:28:42 Ms. Moore discussed the study on the authority of the Commissioner of Political Practices related to anonymous election material **(Exhibit 12)**.

PUBLIC COMMENT on the study

02:36:23 **Jim Brown, Dillon**, distributed but did not discuss written comments regarding a process for selecting, assigning, and investigating audits **(Exhibit 13)**. Mr. Brown commented on the laws related to anonymous election material.

Committee discussion

02:41:52 REP. BENNETT
02:43:37 REP. INGRAHAM

STUDY OF COMBINING SCHOOL BOARD, MUNICIPAL, AND PRIMARY ELECTIONS -
Megan Moore

02:44:08 Ms. Moore presented a paper on laws related to election dates **(Exhibit 14)** and discussed issues surrounding HB 242: Revising election laws **(Exhibit 15)**.

PUBLIC COMMENT

02:51:12 **Lori Page, Helena**, provided written testimony **(Exhibit 12)** that urged the committee to consolidate election dates for school board, municipal, and primary elections.

02:55:11 **Barbara Rush, Helena**, provided written comments to the committee **(Exhibit 17)** and urged the committee to address the security of mail in ballots for city and school elections.

02:57:06 **Becky Stockton** commented on precinct boundaries, military voting online, and supports combining elections.

03:01:23 **Ed Argenbright, Helena**, commented on the impact of combining municipal and school elections.

Committee questions of Ms. Rush

03:06:25 SEN. VAN DYK
03:07:00 Ms. Rush
03:07:25 SEN. VAN DYK
03:07:42 Ms. Rush

- 03:08:23 **Bob Vogel, Montana School Boards Association**, encouraged the committee to consult and have discussions with the School Administrators of Montana, Montana Rural Education Association, Montana Association of Schhol Business Officials, county clerks and recorders, Office of Public Instruction, and Secretary of State about combining election dates.
- 03:14:45 **Diane Fladmo, MEA/MFT**, agreed with Mr. Vogel's comments and cited concerns about budget timelines for the school districts.
- 03:15:55 **Alec Hansen, Montana League of Cities and Towns**, commented on the problems that would occur if national, statewide, county, city, and school trustee elections were held on the same date.
- 03:19:35 **Marsha Davis, Lewis and Clark County Superintendent of Schools**, acknowledged the concerns about security of the ballots and efficiency of elections and concurred with many of the comments that Mr. Vogel made.
- 03:20:29 **Leo Tanner, Helena**, submitted a document describing polling place situations taken out of the Election Judge Handbook (**Exhibit 18**). He discussed the training of election judges and the issue of requiring IDs at polling places.

Committee questions and discussion

- 03:24:38 SEN. LEWIS asked Mr. Argenbright if he had any ideas for legislation that might be able to solve all of the issues heard today.
- 03:25:26 Mr. Argenbright said he wants to maintain local local support for the schools and commented about low voter turnout.
- 03:27:42 REP. INGRAHAM commented on the number of ballots needed for elections, the value of mail ballots, the improved percentage of returned mail ballots, and the security of school elections.
- 03:32:53 SEN. ARTHUN suggested combining a few elections but not all elections and moving the primary date from June to May.
- 03:33:35 REP. INGRAHAM
- 03:34:07 SEN. BENNETT
- 03:34:34 REP. INGRAHAM

LUNCH - reconvened at 1:06 p.m.

DEPARTMENT OF MILIARY AFFAIRS AUDITS

- **Presentation of the Department of Military Affairs' financial audit - Laura Toeckes, Financial Compliance Senior Auditor, Legislative Audit Division**
- 04:32:37 Ms. Toeckes discussed the financial compliance audit report for the Department of Military Affairs (**Exhibit 19**). She discussed a document showing the Department's expenditures for 2009 and 2010 (**Exhibit 20**).

- **Presentation of the Department of Military Affairs' performance audit regarding Contract Management - Megan Coy, Performance Auditor**

04:39:12 Ms. Coy discussed the performance audit of the Department of Military Affairs (Exhibit 21).

Committee questions

04:44:32 REP. INGRAHAM
 04:47:13 Ms. Coy
 04:47:19 Ms. Toeckes
 04:47:56 REP. INGRAHAM
 04:49:19 Ms. Toeckes
 04:50:23 REP. INGRAHAM

PUBLIC COMMENT

04:51:01 **Brigadier General John Walsh, Adj. General, Montana National Guard,** commented on the recommendations from the Legislative Audit Division and the actions being taken to comply with the recommendations.

04:53:35 **Brigadier General Walsh** introduced Bob Oliver, Contract Management Division, and responded to the auditor's findings related to the Contract Management Division.

Committee questions

04:58:15 REP. INGRAHAM
 04:59:01 Brigadier General Walsh
 04:59:14 REP. INGRAHAM
 04:59:26 Brigadier General Walsh

HB 142 REVIEW OF ADVISORY COUNCILS AND REQUIRED REPORTS - Megan Moore

05:00:12 Ms. Moore discussed the updated matrix for HB 142, Review of Advisory Councils (Exhibit 22).

- **Capitol Complex Advisory Council**

05:01:36 Gretchen Bingman, Special Projects Facilitator, Department of Administration, gave a presentation on the Capitol Complex Advisory Council.

- **Economic Development Effect of Business and Industrial Development Corporations**

05:07:39 Lorraine Schneider, Banking and Financial Institutions, Department of Administration, reported on the activities of the Business and Industrial Development Corporations Act (BIDCO Act) since its enactment in 2007.

Committee questions

05:11:29 REP. INGRAHAM
 05:12:07 Ms. Schneider
 05:14:01 REP. INGRAHAM
 05:14:08 Ms. Schneider

05:14:15 REP. INGRAHAM
05:14:25 Ms. Schneider

- **9-1-1 Advisory Council**

05:15:24 Becky Berger, 9-1-1 Program Manager, introduced Kevin Myre, Chair of the 9-1-1 Advisory Council, and Quinn Ness, Bureau Chief of the Public Safety Services Bureau. Ms. Berger distributed information on the staff and representatives of the 9-1-1 Advisory Council (**Exhibit 23**) and gave a brief history of the Advisory Council.

Committee questions

05:19:41 REP. INGRAHAM
05:20:01 Ms. Berger

PUBLIC COMMENT - none

PRINCIPLES AND GUIDELINES FOR PUBLIC EMPLOYEE RETIREMENT SYSTEMS

05:21:19 Ms. Moore discussed the briefing paper, "Principles and Guidelines for Public Employee Retirement Systems" (**Exhibit 24**).

PUBLIC COMMENT - none

Committee questions and comments

05:33:21 SEN. LEWIS discussed a clause in the Nebraska Retirement System.
05:34:15 Ms. Moore
05:35:26 SEN. LEWIS suggested adding that particular language from the Nebraska Retirement System to the Guidelines that Ms. Moore has drafted.
05:35:56 Ms. Moore
05:36:01 REP. INGRAHAM
05:36:15 SEN. LEWIS said he is looking at the handout "Nebraska Retirement Systems Committee (**Exhibit 25**), the last item on page 15.
05:36:44 REP. INGRAHAM asked for comments from the committee regarding Sen. Lewis' suggestion.
05:37:05 SEN. ARTHUN said he doesn't see any problem with that.

Motion to adopt language from the Nebraska Retirement System

05:37:34 SEN. LEWIS **moved** to add language from Item 7B from the Nebraska Retirement System to the Principles and Guidelines.

Discussion

05:38:00 Ms. Moore asked Sen. Lewis who would be independently reviewing.
05:38:24 SEN. LEWIS said that the Legislature should require an independent review by professional consultants every 5 years to see if they are being maintained on adequate sound and consistent basis.

05:39:20 **The motion was approved unanimously by voice vote.**

Discussion of Item T of the Principles and Guidelines

05:39:38 REP. INGRAHAM referred the committee to Item T of the Principles and Guidelines document (**Exhibit 26**). Sen. Ingraham asked if enrolling rural firefighters into the Firefighters' Unified Retirement System (FURS) is now law and if that still needs to be in the Principles and Guidelines.

05:41:02 Ms. Moore said that there was some indication that the language changed from 2005-2006 to 2007-2008. One possibility would be to change it to "should continue to authorize".

PUBLIC COMMENT

05:42:09 **Roxanne Minnehan, Executive Director, MPERA**, said that the statute was changed and she doesn't know when, that rural departments could choose to join the Firefighters' Unified Retirement System.

Motion to remove Item T from the Principles and Guidelines

05:42:53 REP. INGRAHAM **moved** to remove Item T from the Principles and Guidelines for Public Employee Retirement Systems.

Discussion

05:43:26 SEN. VAN DYK asked if the other option would be to say as was suggested to continue to authorize local governments to enroll.

Motion withdrawn

05:44:05 REP. INGRAHAM **withdrew** her motion.

Motion by Sen. Van Dyk

05:44:16 SEN. VAN DYK **moved** to have the language of Item T read as follows: "the Legislature should continue to authorize local governments to enroll rural firefighters under the Firefighters' Unified Retirement System".

05:44:50 **The motion passed unanimously by voice vote.**

Motion to adopt Principles and Guidelines

05:45:09 SEN. LEWIS **moved** to adopt the Principles and Guidelines as amended.

05:45:35 **The motion passed unanimously by voice vote.**

BREAK - reconvened at 2:36 p.m.

TEACHERS' RETIREMENT SYSTEM UPDATE - David Senn, Executive Director

06:02:54 Mr. Senn discussed the Teachers' Retirement System's "Comprehensive Annual Financial Report" (**Exhibit 27**), the "Summary the TRS Outreach Efforts" (**Exhibit 28**), and "Stabilizing the TRS Fund: Exploring the Alternatives" (**Exhibit 29**).

Committee questions

06:18:20 SEN. JENT

06:19:25 Mr. Senn
06:19:30 SEN. JENT
06:20:11 Mr. Senn
06:22:14 SEN. JENT
06:22:54 Mr. Senn
06:23:03 SEN. JENT
06:23:12 Mr. Senn
06:23:19 SEN. JENT
06:23:51 Mr. Senn
06:23:54 SEN. JENT
06:24:08 Mr. Senn
06:24:11 SEN. JENT
06:24:17 Mr. Senn
06:25:15 SEN. JENT
06:25:48 Mr. Senn
06:27:24 SEN. JENT
06:28:23 Mr. Senn
06:28:36 SEN. JENT
06:29:33 Mr. Senn
06:30:00 SEN. ARTHUN
06:30:16 Mr. Senn
06:30:41 SEN. ARTHUN
06:30:44 Mr. Senn
06:31:09 REP. INGRAHAM
06:32:34 Mr. Senn

PUBLIC COMMENT

06:35:03 **Diane Fladmo, MEA/MFT**, said MEA/MFT is committed to preserving a quality pension plan for its employees and members.

CONSTITUTIONALITY OF AMENDING CURRENT RETIREMENT BENEFITS - David Niss, Legal Staff

06:37:51 Mr. Niss discussed the memos: Constitutionality of Amendment of GABA Statutes, dated January 5, 2012 (**Exhibit 30**), Constitutionality of Potential Legislation Modifying GABA, dated August 14, 2009 (**Exhibit 31**), and Legal Issues Surrounding Changes from DB to Modified DB, dated February 27, 1998 (**Exhibit 32**); and the document "LSD Pension Scenario Document" (**Exhibit 33**).

07:09:10 Mr. Niss recommended that the committee, if it decided that existing employees or retirees have to be part of the solution, amend the statutorily provided contract for pension benefits as provided in the statutes. If the Legislature has made the decision to impinge on that contract, something should be put in the committee report explaining all the reasons why the committee and therefore the Legislature has considered but disregarded the nonimpinging alternatives. Secondly, he recommended that the committee be mindful of how state investment earnings are tied to public employee pension benefits.

Committee questions and discussion

07:17:56 SEN. LEWIS
07:20:07 SEN. ARTHUN
07:20:24 REP. BENNETT

PUBLIC COMMENT

07:21:33 **Leo Berry, Association of Montana Retired Employees**, commented on Mr. Niss' presentation. He cautioned the committee against legislation to remove the GABA.

07:28:51 **Diane Fladmo, MEA/MFT**, said that MEA/MFT would like to be involved in finding a solution to the pension issue.

07:29:40 SEN. JENT said that the memos indicate that the contract cannot be impaired except as a last resort and the last resort rule has never been applied.

07:30:23 Mr. Niss clarified that the Montana Supreme Court has said several times, that the analysis is different when the state impairs its own contracts. It just hasn't clearly said so with regard to state or public employee pension benefit contracts. But the Supreme Court has said, regarding other types of contracts between the state and another party, that it will not defer to the Legislature's judgment that impairment was necessary.

STUDY OF RETIREMENT SYSTEMS AND BUDGETING

- **Pension Funding: How Big is the Problem - Amy Carlson, Legislative Fiscal Analyst, LFD**

07:35:20 Ms. Carlson gave a presentation on pension funding and the unfunded liability (UAAL) (**Exhibit 34**).

Committee questions

08:17:59 SEN. ARTHUN
08:18:22 Ms. Carlson
08:19:12 SEN. ARTHUN
08:19:53 Ms. Carlson

PUBLIC COMMENT

08:20:40 **David Senn, Executive Director, TRS**, emphasized a need to make incremental changes because the unfunded liabilities will continue to grow at whatever rate of interest the actuaries assumed.

DISCUSSION ON COMMITTEE WORK

08:23:40 REP. INGRAHAM discussed the studies that need to be finished, the Commissioner of Political Practices' situation, and requested that staff look into ethics commissions in other states, and that the committee make a decision on the study on combining municipal and school elections.

08:27:39 SEN. ARTHUN doesn't think that the committee should take the time to address

the elections.

- 08:28:09 SEN. JENT said that the committee's priority should be looking at a rebuild of the Commissioner of Political Practices and what other states are doing and concentrate on statutory options for the unfunded liability in all pension systems.
- 08:29:11 REP. BLYTON disagreed on the combination of elections study and said that the unfunded liability and the Commissioner of Political Practices issue have to be a priority.
- 08:30:12 REP. BENNETT agreed with setting the issue of combining elections aside. He also agreed that the committee should look at other states where action occurs during actual campaigns and the level of authority that is given to these different commissions.
- 08:31:54 SEN. VAN DYK said it would be interesting to see where other states put the role of a Commissioner of Political Practices.
- 08:33:17 REP. INGRAHAM asked if the committee might consider a study bill to look into combining elections.
- 08:34:39 Ms. Moore said that it would not take much staff time to draft a study resolution.
- 08:34:50 REP. BLYTON said she would like to know the impact of moving the primary to May, at the same time as the school board elections. She would ask that that be part of an interim study.
- 08:36:23 REP. INGRAHAM commented on the confusion because of different primaries in even and odd years.
- 08:37:16 REP. BLYTON said she would still like to know the outcome of moving the primary back.
- 08:37:38 SEN. JENT asked to make a potential study resolution an agenda item for the next meeting.
- 08:37:52 Ms. Moore recommended a formal motion to amend the work plan to include the items that the committee wants to include.

Motion by Sen. Van Dyk

- 08:38:22 SEN. VAN DYK **moved** that the State Administration Interim Committee's work plan include the topics discussed regarding the Commissioner of Political Practices Office and the retirement systems.

Discussion of the motion

- 08:38:49 Ms. Moore commented specifically on Sen. Jent's comments about looking at statutory changes to the retirement systems to fix the unfunded liability and asked for some direction from the committee because there are a number of changes that could be explored.

Motion Withdrawn

08:41:13 SEN. VAN DYK withdrew his motion.

08:41:20 SEN. JENT suggested that staff draft a bill related to each retirement system requiring that the actuarially required contribution be made each year.

Discussion

08:42:09 Amy Carlson, Legislative Fiscal Division

08:43:22 SEN. VAN DYK

08:43:54 REP. INGRAHAM

08:44:45 SEN. VAN DYK

08:44:58 REP. INGRAHAM

08:45:01 Ms. Moore

08:46:48 SEN. VAN DYK

08:47:16 REP. INGRAHAM

08:47:27 Ms. Moore

Motion by Sen. Van Dyk

08:47:40 SEN. VAN DYK **moved** to amend the work plan to include a study of the Office of the Commissioner of Political Practices.

08:48:12 **The motion passed on voice vote with Rep. Swanson voting aye by proxy.**

Additional Public Comment - none

ADJOURNMENT

08:48:38 With no further business before the committee, REP. INGRAHAM adjourned the meeting at 5:22 p.m.

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