MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on January 27, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Hal Jacobson (D)
Rep. Alan Olson (R)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: HB 261, 1/18/2005;
HB 213, 1/18/2005;
HB 279, 1/18/2005

Executive Action: None

HEARING ON HB 261

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HB 261,** Prohibit government employment discrimination on previous salary level. He stated that HB 261 was requested by a constituent who did not get hired by a State agency because of his previous higher salary. He stressed that an employer should look at an applicant's qualifications only.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

Randy Morris, Department of Administration, stated that the State does not ask for previous salaries on job applications; this information is not required. He was aware, though, that this was an issue on some private companies' application forms.

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, requested that Mr. Morris educate the Committee on State pay scales and how stringently they have to be adhered to. **Mr. Morris** explained that the State uses a total of nine different pay schedules, with the most common being Schedule No. 060 which covers the statewide pay plan for about 48% of employees, and Schedule No. 020 which is the Broadband system, covering 48% as well. He clarified that No. 060 is defined in statute; No. 020 publishes a market rate for each job, including the minimum and maximum but is not defined in statute. He stated that of the remaining seven schedules, two are codified.

VICE CHAIR BROWN thanked him for his thorough explanation and asked if this bill was looking for a non-existent problem, stating that maybe someone coming to Montana just wanted to be productive and did not care about compensation because he had a good retirement. **Mr. Morris** replied that he was not aware the issue addressed in HB 261 was, in fact, an issue; he added that the State does publish pay rates when recruiting outside of Montana.

REP. GARY MACLAREN, HD 89, VICTOR, seemed to recall that asking for disclosure of previous compensation levels was illegal. **Mr. Morris** was not aware of such a law.

Closing by Sponsor:

REP. LANGE closed, adding in answer to the last question that Federal law does not address this kind of discrimination.
{Tape: 1; Side: A; Approx. Time Counter: 0 - 12.1}

HEARING ON HB 213

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 213,** Generally revise public retirement laws under MPERA, by request of the Public Employees Retirement Board (PERB). **REP. GALLIK** explained that PERB administers eight different public employees' retirement systems, excluding that of teachers who fall under the Teachers Retirement System (TRS). He advised that the bill reflects technical changes to provide for uniformity and efficiency within and between retirement systems, and compliance with Federal tax laws. **REP. GALLIK** presented Amendment **HB021301.ash** which corrects a technical drafting error having to do with the judges' retirement system.
EXHIBIT(sth21a01)

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 17.2}

Proponents' Testimony:

Kelly Jenkins, General Legal Counsel, PERB, submitted a Table of Proposed General Revisions, Exhibit 2, and written testimony, Exhibit 3.
EXHIBIT(sth21a02)
EXHIBIT(sth21a03)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 16.2}

Randy Morris, Department of Administration, rose in support of HB 213, making specific mention of Sections 11 and 18 which deal with collective bargaining agreements and multi-employer pension plans.

Glen Leavitt, Director of Benefits, Montana University System, stood in support of HB 213.

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR BROWN asked Mr. Jenkins how many judges were affected by the old retirement law in 2001. **Mr. Jenkins** estimated there were about three dozen judges and offered to supply specifics at a later date. **VICE CHAIR BROWN** wondered whether this was not an unusually high number of retirees in one year. **Mr. Jenkins** corrected himself, stating there had been just one retirement since 2001; he had mistakenly thought she had meant the number of judges who elected the retirement system that year.

VICE CHAIR BROWN understood that all these changes were warranted but inquired why they were not broken down into a more manageable bill. **Mr. Jenkins** replied that the various changes could be grouped together and brought forth in a number of bills, but he felt this would create a lot of overlap as some changes would fall into more than one category. In his opinion, putting all of the revisions into one bill was the most efficient way. **VICE CHAIR BROWN** expressed appreciation for his explanation as well as for providing the Committee with the Table as per Exhibit 2.

REP. WILLIAM JONES, HD 9, BIGFORK, asked which of the Sections applied to judges. **Mr. Jenkins** advised that it was Sections 39, 40 and 42 which correspond to Amendments 4, 5, and 6 of Amendment HB021301.ash.

REP. JOAN ANDERSEN, HD 59, FROMBERG, requested an explanation of the proposed change to 19-2-706(6) on Page 1 of Exhibit 2, namely the change from 600 to 960 hours. **Mr. Jenkins** replied that it was a common sense change pertaining to Section 6(6) of the bill. He contended that the 600 hours were a vestigial remnant of a portion changed in the 2003 Session; the change from 600 to 960 hours was made in some retirement systems but not in all.

REP. ANDERSEN wondered whether these employees who came back and worked 960 hours contributed to the retirement system. **Mr. Jenkins** stated that if they are retired, they do not pay in to the system nor do they receive credit since they receive benefits. He referred to his testimony and emphasized that one cannot be both an active and an inactive member of the system; they do have the choice, though, of either receiving retirement benefits for the 960 hours or credit in the retirement system.

{Tape: 2; Side: A}

REP. ANDERSEN inquired whether many retirees came back to work under this 960-hour provision. **Mr. Jenkins** advised that this provision applied only to people who had lost their jobs due to a

reduction in work force. He stressed that it was difficult for them to find similar jobs within the same retirement system; on the other hand, there were many who terminated full-time work for the State but were needed to come back on a part-time basis to fill in during peak periods. They may work for up to 960 hours per year as well while receiving their retirement benefit and wages but do not receive any credits in the retirement system and cannot improve their retirement benefits. He stated it was common practice but was unable to furnish concrete numbers.

REP. ANDERSEN wondered if they would be taking jobs away from people paying into the system. **Mr. Jenkins** believed this was a logical conclusion.

Closing by Sponsor:

REP. GALLIK closed.

CHAIRMAN JENT announced a ten-minute break until 9:20 A.M. since REP. PAT WAGMAN was not present.
{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.8}

HEARING ON HB 279

Opening Statement by Sponsor:

REP. PAT WAGMAN (R), HD 62, opened the hearing on **HB 279,** Revise dual salary for legislators and public officers and employees. In his opinion, a conflict of interest existed, namely whether he was working for the people in his District as a Legislator, or for the City of Livingston as a firefighter. He advised that HB 279 was meant to target legislators who were also public employees but found that it impacted other public employees as well. Referring to Line 29, he offered an amendment that would only strike "legislator" and reinsert the provisions for "public officer" and "public employee."

REP. WAGMAN stated that as a public employee, he could request that the City of Livingston continue paying his wages while he worked at the Legislature and he could sign over his legislative paycheck to Livingston. Since current law requires that public employees disclose the amounts received from two separate public employment positions to the Commissioner of Political Practices, he paid a visit to that office and found that this Session, 12 legislators had filed such disclosures, Form E-1. Of these 12, only one elected to keep his initial employer's salary but has since resigned his position, meaning that none of the legislators were keeping their erstwhile salaries and signing over their legislative paychecks. He submitted Exhibits 4 and 5, copies of

five current and past legislators' E-1s. In closing, he stated that his job was to represent the people in HD 62, therefore, he should be paid by the State.
EXHIBIT(sth21a04)
EXHIBIT(sth21a05)

Proponents' Testimony: None

Opponents' Testimony:

Eric Feaver, Montana Education Association/Montana Federation of Teachers (MEA/MFT), did not share the sponsor's perception of a problem, stating that the law allowed for choices through collective bargaining agreements. He cited that some public employees were serving in this Legislature on a leave of absence without pay, making REP. WAGMAN's objections moot. Moreover, he knew of one teacher/legislator who paid for her substitute, which was a substantial commitment on her part. **Mr. Feaver** stated that he saw no need to change current statute.

Questions from Committee Members and Responses:

VICE CHAIR BROWN referred to Mr. Feaver's statement regarding legislators working on a leave of absence without pay and asked for their names. **Mr. Feaver** replied that REPS. GALVIN-HALCRO, COHENOUR, FACEY, and RASER were being compensated as legislators only. **VICE CHAIR BROWN** wondered if this was by agreement between them and their employers. **Mr. Feaver** presumed that the employer had agreed to the leave of absence which would be specified in their contract. He cited that the Butte contract was the first collective bargaining agreement for teachers in the nation (1936) and was very similar to current statute in that legislators are paid by the school district and remit their legislative salaries.

REP. EMELIE EATON, HD 58, LAUREL, asked the sponsor why he had requested this bill when there were so many options available. **REP. WAGMAN** recognized that there are options but maintained that there should not be any. To him, it was an ethical question: "Do those who are taking their salary from their erstwhile employer really represent the people of their District?"

REP. MACLAREN requested information on the proposed amendment. **REP. WAGMAN** advised it would reinsert stricken language on Page 1, Lines 29 and 30 except for the word "legislator" and again on Page 2, Lines 2 through 3. This would allow a sheriff's deputy, for instance, to also coach in a local school district.

REP. BERNIE OLSON, HD 10, LAKESIDE, recalled the sponsor's statement that this was an ethical issue; he expressed doubt that someone's ethical behavior could be changed by merely putting such language in statute. **REP. WAGMAN** agreed, adding that he found himself in an area of personal conflict because he was losing $10,000 this Session by getting a legislative paycheck rather than his salary from the City of Livingston. He admitted he would rather not suffer this kind of financial consequence but felt he would be indebted to the City by accepting their money.

Closing by Sponsor:

REP. WAGMAN closed.

EXECUTIVE ACTION ON HB 239

Motion: REP. BROWN moved that HB 239 DO PASS.

Discussion:

VICE CHAIR BROWN referred to information supplied to Committee members by the Teachers' Retirement System (TRS), adding that the people addressed in HB 239 are in the full retirement age category and their Social Security benefit would not be affected. She asked Sheri Heffelfinger, Legislative Services Division, to elaborate. **Ms. Heffelfinger** stated she had just read the information, and her question was whether Social Security Disability income was considered; she felt the letter addressed regular Social Security Payments only. **VICE CHAIR BROWN** stated that it was not specified. **Ms. Heffelfinger** recalled that REP. CAFERRO's question was whether this additional disability check would negatively impact someone who already was on Social Security Disability.

Seeing that this particular question needed to be answered, **VICE CHAIR BROWN** rescinded her motion.
{Tape: 2; Side: A; Approx. Time Counter: 5.4 - 30.5}

{Tape: 2; Side: B}

REP. HENDRICK asked if Executive Action could be taken on HJ 6. **Ms. Heffelfinger** recalled that REP. A. OLSON had requested more time to do some research, and since he was not present, **CHAIRMAN JENT** decided to postpone Executive Action on HJ 6.

ADJOURNMENT

Adjournment: 9:50 A.M.

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REP. LARRY JENT, Chairman

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MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT(sth21aad0.TIF)