**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES**
**59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on February 16, 2005 at 3:30 P.M., in Room 102 Capitol.

**ROLL CALL**

**Members Present:**
Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Bill E. Glaser (R)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. Verdell Jackson (R)
Rep. Ralph L. Lenhart (D)
Rep. Walter McNutt (R)
Rep. Penny Morgan (R)
Rep. John L. Musgrove (D)
Rep. Rick Ripley (R)
Rep. Jon C. Sesso (D)
Rep. Janna Taylor (R)
Rep. Jack Wells (R)

**Members Excused:** Rep. Carol C. Juneau, Vice Chairman (D)
Rep. John E. Witt, Vice Chairman (R)
Rep. Christine Kaufmann (D)

**Members Absent:** Rep. Joey Jayne (D)
Rep. John Sinrud (R)

**Staff Present:** Marcy McLean, Committee Secretary
Jon Moe, Legislative Branch

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

**Committee Business Summary:**
Hearing & Date Posted: HB 57, 3/11/2005; HB 243, 3/11/2005; HB 249, 3/11/2005

## HEARING ON HB 249

**Opening Statement by Sponsor**:

**REP. MONICA LINDEEN, HD 43, Huntley Project,** opened the hearing on **HB 249,** a bill to create the Economic Development Fund within the Coal Severance Tax Trust Fund. She said that this bill passed unanimously out of the Business and Labor Committee, and funding is provided for in the budget. This legislation would capture 25% of the remaining flow going into the Permanent Fund and places it in an internal trust. Currently from the Coal Tax Trust Fund, 50% of the receipts go to the Treasure State Endowment Fund, 25% to the Regional Water System Fund and 25% to the Permanent Fund. HB 43 proposes taking that 25% from the Permanent Fund and putting it to a new Economic Development Fund. It also takes a one-time $20 million appropriation from the Permanent Fund to jump start the Economic Development Fund. Thereafter, the interest earnings would be used to fund local economic development projects. It is projected that in 2006 the estimated interest earnings available to fund these projects would be $1.4 million. Seventy-five percent of this money would be earmarked for job-creation projects and the remaining 25% allocated for capacity-building projects for certified regional development organizations.
**EXHIBIT(aph38a01)**
**EXHIBIT(aph38a02)**
**EXHIBIT(aph38a03)**

**Proponents' Testimony**:

**Evan Barrett, Governor's Office of Economic Development,** said that HB 249 would create a strong economic development tool. This fund would be allowed to grow over 20 years with the purpose of creating good-paying jobs in Montana. It also would provide for strong local economic development growth. The Endowment Fund and the Regional Water Fund have shown the good use of the Coal Tax Trust Fund. Both have been very successful. This bill has been accounted for in the Governor's budget and in the ending fund balance.
***{Tape: 1; Side: A; Approx. Time Counter: 0 - 7.7; Comments: Rep. Jayne entered hearing}***

**Tony Preity, Department of Commerce,** said that in the last legislative session, 12 regional development corporations were created, and the funds from HB 249 will help them with capacity building.
**EXHIBIT(aph38a04)**

**Bill Kennedy, Yellowstone County Commissioner, Billings Deaconess Clinic, City of Billings, Montana Association of Counties,** said that HB 249 would help local governments in assisting businesses and creating jobs.

**Paul Tuss, Bear Paw Economic Development Corporation, Montana Economic Developers Association,** said that HB 249 is a significant solution to a difficult problem of building capacity and of creating a funding source for good economic development projects. The Treasure State Endowment Program has been very successful over the past 12 years of fixing the state's infrastructure.

**Joe McClure, Big Sky Economic Development Corporation, several Billings businesses,** said that they were successful in recruiting Bresnan Communications to Billings, which created 180 jobs at an average wage of over $40,000. He said that it has created economic development spin-off beyond their expectations. A local office products company received a $1 million order to supply office furniture. Economic development is a competitive process and the other 49 states and the world are competing for these same jobs. Attracting new companies and expanding existing Montana companies is contingent upon the State of Montana offering economic development incentives.
***{Tape: 1; Side: A; Approx. Time Counter: 7.7 - 14.8}***

**Gary Amestoy, Richland County Economic Development Corporation,** said that they are a non-profit, county-wide development organization in Richland County, and they are in support of HB 249.

**Mike McGinley, Beaverhead County Commissioner, Beaverhead Economic Development Commission,** said that small development corporations appreciate that 25% of the funds that would be available for capacity building.

**Charles Brooks, Billings Chamber of Commerce,** said that they have watched the success of the Treasure State Endowment Fund and they anticipate that the Economic Development Fund will be just as successful.

**Jim Davison, Headwaters Economic Development District,** said that this fund will help to attract new business to Montana, and to help retain our current businesses. It will make Montana competitive in keeping businesses here.

**Riley Johnson, National Federation of Independent Business,** said that their association is comprised of 8,000 small business owners in Montana. Without economic development, there would not

be small businesses in this state. They are dependent upon the Bresnan Communications-type businesses to keep these small businesses growing.

**Anita Varone, Lewis and Clark County Commissioner, Montana Association of Counties Economic Development Committee,** said that this committee worked closely on this bill and they fully support it.

**Opponents' Testimony**: None

**Questions from Committee Members and Responses**:

**CHAIRMAN BUZZAS** asked if this bill will require a 3/4 vote of the legislature to approve. **REP. LINDEEN** answered that it does not because these various funds fall under the Coal Tax Bond Fund. Only when funds are taken out of the Coal Tax Bond Fund is there a requirement to have a 3/4 vote.

**REP. MCNUTT** said that it appears that the one-time transfer of $20 million to the Big Sky Development Fund will result in $1.338 million in lost interest to the General Fund in 2006. **REP. LINDEEN** said that is correct, but it is included in the Governor's budget.

**REP. MORGAN** asked if each year the increased interest will go into the Economic Development Fund. **REP. LINDEEN** said that the interest earned from the principal in this fund will be made available as grants for economic development.

**REP. TAYLOR** asked if the money granted for economic development would require a 3/4 or 3/5 vote of the legislature. **Terry Johnson, Legislative Fiscal Division,** said that as long as the Economic Development Fund remains within the Coal Tax Fund, it does not require the 3/4 vote. The investment earnings from this fund will go into a state special revenue account and appropriated through the normal legislative process.

**REP. MUSGROVE** asked if the Coal Tax Permanent Fund is currently capped, and if so, how long will it be capped. **Terry Johnson** said that it is. Currently, 50% of coal severance taxes go into the Coal Tax Bond Fund and from that, 25% goes to the Permanent Fund. HB 249 proposes moving that 25% into a new Economic Development Fund. **Evan Barrett** said the cap on the Endowment Fund, Water Fund, and this new Economic Development Fund all have a 20-year life. At that time, the funds revert back to the Permanent Fund.

**REP. MCNUTT** said that in granting economic development, the bill states that you must be a certified development corporation to participate. He said that Richland County is not a certified development corporation, and therefore, would not be eligible. **REP. LINDEEN** said that she would be willing to amend the bill to include local development corporations, rather than just the certified regional development corporations.
***{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 32.6; Comments: End of Side A}***

**Closing by Sponsor**:

**REP. LINDEEN** said that the diversion of interest earnings from the General Fund to economic development project is a policy decision as to whether this makes good use of these dollars. If these economic development projects create good-paying jobs which pay taxes, then it should more than make up for the money that is being diverted from the General Fund. The interest money in the Economic Development Fund would be awarded by the Department of Commerce to organizations applying for grants.

## HEARING ON HB 57

**Opening Statement by Sponsor**:

**REP. CHRISTOPHER HARRIS, HD 66, Bozeman,** opened the hearing on **HB 57,** a bill to provide money to the Department of Environmental Quality (DEQ) for cost recovery for hazardous substance releases. He said that this bill passed the Natural Resources Committee and was inadvertently referred to the Appropriations Committee. The fiscal note shows that there would be zero impact to the General Fund. The DEQ said they would be able to handle all of the work from HB 57 within their existing budget. HB 57 authorizes the DEQ to identify the source of contamination and order them to either provide alternative water supplies or reimburse someone for their expenses of obtaining an alternative water supply.

**Proponents' Testimony**: None

**Opponents' Testimony**: None

**Questions from Committee Members and Responses**:

**REP. TAYLOR** said that she was worried about agricultural releases and asked if agricultural products are exempt. **REP. HARRIS** said that they are exempt because of federal environmental laws.

**REP. RIPLEY** asked about the definition of "potentially liable person." **REP. HARRIS** said that when DEQ identifies someone who is potentially liable for the source of pollution, they will receive a formal notice asking for their response. In the past, the DEQ has not been aggressive in pursuing these potential polluters and asking them to do something about it.

**Closing by Sponsor**:

**REP. HARRIS** said, "Let my bill go."

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 11.9}***

## HEARING ON HB 243

**Opening Statement by Sponsor**:

**REP. CAROL LAMBERT, HD 39, Baker,** opened the hearing on **HB 243**, a bill to revise reimbursement to counties for detention costs. It would require the Department of Corrections (DOC) to pay the costs of holding a parole or probation violator in a county detention center, if the department is the arresting agency. These costs would begin upon the date of acceptance of a plea, or a verdict, or a finding of guilt, until the person is transferred to a state correctional facility.

HB 243 addresses a concern counties have about the date DOC should assume the financial responsibility for sentencing inmates. The Attorney General has issued an opinion that "Upon oral pronouncement of a sentence that transfers legal custody of an inmate to the DOC, the financial responsibility of the inmate also transfers to the DOC." This bill would change the date from sentencing to acceptance of a plea, or a verdict, or a finding of guilt. In remote areas of Montana, the local sheriff is often told to pick up a probation or parole violator. While waiting for the judge to arrive, these inmates may be held in the county jail for weeks, causing a financial hardship to the county. The counties feel this is a fairness issue and are asked to be reimbursed for these expenses.
***{Tape: 1; Side: B; Approx. Time Counter: 11.9 - 17.8}***

**Proponents' Testimony**:

**Jean Curtiss, Missoula County Commissioner,** said that they have a regional detention center that was built to house county, state and federal prisoners. The cost of running a detention center is not a money-making deal; their goal is to just break even, with everybody paying their fair share. She said that they do not

feel that the taxpayers of Missoula County should not have to subsidize the State of Montana for housing inmates.

**Gordon Morris, Montana Association of Counties,** said that this bill accomplishes two things:

1) The arresting agency, when it is not responsible for the operation of the detention center, is responsible for the cost of holding the person in this center. Examples of this are Fish, Wildlife and Parks and the Montana Highway Patrol. New language in the bill says the DOC is responsible for these costs when they have a probation or parole violator in the county jail.
2) The Attorney General's opinion states that the DOC is responsible for the costs as of the time of sentencing. This bill changes that to begin as of the date of conviction or when a plea is entered by the defendant.

Currently, the span of time from the date of arrest to the date of sentencing can stretch out to weeks or even months. He said that many arguments have blamed that problem on the county attorney or the judge; but regardless of the argument, he said that DOC, not the county, should be liable for the costs of the incarceration.

**Matt Thiel, Missoula County Detention Officers,** said that they would like to have a clarification of responsibility between the DOC and the counties. It would help them immensely in setting their budget.

**Don Kinman, American Federation of State, County and Municipal Employees,** said that they represent correction officers, and that they think HB 243 is necessary for defining responsibility for all state inmates. It is a matter of fairness and is good public interest policy.
***{Tape: 1; Side: B; Approx. Time Counter: 17.8 - 27}***

**Opponents' Testimony:**

**Joe Williams, DOC,** says that they oppose HB 243. He said that the DOC pays for parole violators because the Board of Pardons and Parole retains jurisdiction over those offenders. On a probation violator, the local court and county attorney retain jurisdiction, and that is why the law states those costs are borne by the county.
**EXHIBIT(aph38a05)**

He said that probation offenders often have delays leading up to their sentencing for various reasons. The DOC has no ability to

stop these delays caused by the defense counsel, and therefore, the DOC should not be held responsible for the costs of incarceration.

He said that they agree that there is a problem in this system, but they do not think HB 243 is the solution. They propose, as an alternative, that a study be done to determine what happens to people from the date of their arrest through to when they get sentenced. This study would help them to determine the underlying issues to this problem. If this is an inefficient system, then they would learn what needs to be done to make it more efficient. By paying more money to the counties for their incurred detention costs, the problem of inefficiency will not be solved.
***{Tape: 1; Side: B; Approx. Time Counter: 27 - 32.6; Comments: End of Tape 1}***

**Mike Ferriter, Community Corrections, Department of Corrections,** said that his department oversees 7,300 adults under their supervision; of that total, 6,700 of them are on probation in 23 communities. Currently, the DOC pays a county if an offender is incarcerated on a parole violation, which involves a large sum of money. The issue in HB 243 is the probation violators, which is largest group of offenders. Often these offenders are arrested during a routine traffic stop by local law enforcement. They then call the probation officer and get the authority to place the offender in custody. Over many years, DOC and local law enforcement have had a good working relationship over the years. He said that they both have the same goal of maintaining public safety.

In regard to previous comments about incarcerated offenders' delays, he said that they write 2,603 sentence investigations per year. They are good partners with the courts and other law enforcement agencies.

**Questions from Committee Members and Responses:**

**REP. JAYNE** said that the bill says, "from acceptance of plea." She pointed out that means a plea of guilty or not guilty; and if it is a not guilty plea, then it extends the time frame before sentencing.

**Gordon Morris** said that is correct. He said that the bill's intent is that the date would begin as of the entering of a guilty plea.

**REP. LAMBERT** said that she would accept an amendment to change the bill to read "from acceptance of a guilty plea."

***{Tape: 2; Side: A; Approx. Time Counter: 0 - 9}***

**REP. JAYNE** asked about the DOC comment that they were picking up the costs of incarcerating parole violators. **Jean Curtiss** said that the cost of parole violators is paid by the State, and the cost of probation violators is paid by the county. Said that the counties want the State to also pay for the incarceration of probation violators.

**REP. SESSO** asked what section of State laws says that the State is responsible for the cost of incarcerating parole violators, and also what the issue is with the probation violators. **Joe Williams** answered, "It is somewhere close to Section 7-32-42." He said that the DOC's problem with paying for probation violators is that these people are under the jurisdiction of the local judge and county attorney. Therefore, the DOC does not have the authority to move them to a State facility whenever they want to.
***{Tape: 2; Side: A; Approx. Time Counter: 9 - 15.5}***

**REP. BUZZAS** asked if people on probation are under legal jurisdiction of the DOC. She also asked if the state probation officers follow-up with the offenders as soon as possible. **Joe Williams** said that statute says the district court will retain jurisdiction, with the DOC supervising the probation offender. He said that a hearing for the probation offender is required to be held within 72 hours; at that time, a report of violation is written up and given to the county attorney, and then it is scheduled on the judge's docket.

**REP. BUZZAS** asked for clarification of the purpose of the study proposed by DOC and how it relates to HB 243. **Joe Williams** said that while HB 243 appears to be well-intentioned, it seems to only be putting money toward a problem that has not been properly identified. He said that even if the $3.2 million from HB 243 is paid to the counties, the system is going to still have problems with paperwork efficiency, and not knowing if the problem stems from issues with the county attorneys, the public defenders or the judges. Over the past few legislative sessions, bills have been introduced that "nip at the ends of this problem, but none of them have really taken the bull by the horns to determine specifically what the problem is."
***{Tape: 2; Side: A; Approx. Time Counter: 15.5 - 22; Comments: Reps. Witt and Juneau entered hearing.}***

**REP. BUZZAS** said that the DOC has stated that if HB 243 passes, there will be extra money for the counties to spend. **Jean Curtiss** said that with this money, they would be able to bring nine prisoners who are currently housed in the Choteau jail, back

to the Missoula jail. These prisoners were sent to Choteau because the Missoula jail has been filled with state probation violators. She went on to say that the laws say that district court will retain jurisdiction over these probation violators, and reminded the Committee that district courts are state courts.

**REP. JAYNE** said that the main goal in this statute is for public safety. She asked if the parties involved could get together and work out a solution. **Joe Williams** answered that he thought they could work towards a solution. The DOC's opposition is that HB 243 does not get to the root of the problem; therefore, future legislatures will continue to have to deal with this issue. **Gordon Morris** said they do not believe that a study is appropriate because this is a State problem, not a county problem. The county currently provides space for the district court judges in their county courthouse, their county attorney is prosecuting these offenders under state law and they are being housed in the county jail at the county's expense. The purpose of HB 243 is not to generate income, but to pay expenses.

**REP. MCNUTT** asked, "If HB 243 passes, wouldn't there be less pressure for judges and County Attorneys to speed up the process?" This would result in more and more money being paid by the DOC to the counties for housing these probation violators. **Gordon Morris** pointed out that county commissioners cannot order district court judges and state probation officers to do anything. If the county attorney is the one causing the delays, then that is the only party with whom the county commissioners have any involvement. **Joe Williams** said that since the Attorney General ruled that the State is liable for incarceration "from the date of oral pronouncement of sentence," the DOC has had a very difficult time getting the paperwork in. The paperwork is necessary for a determination of what housing the offender should go to. This ruling has caused a lot of stress because the DOC has no clout in telling the judges what to do.

**REP. JACKSON** asked if the two parties could negotiate a different price for housing the offenders. **Gordon Morris** said that the DOC and the counties negotiate the rate annually, and it varies from county to county. He said that their argument is that the rate does not take into consideration all of the costs of housing these prisoners.
***{Tape: 2; Side: A; Approx. Time Counter: 22 - 31.9}***

**Closing by Sponsor**:

**REP. LAMBERT** said that the previous statement concerning the fact that counties like this payment from DOC because they can use it to hire extra deputies, is not true. She said that the detention

business is not a money-making business; they're lucky if they can cover their costs.
***{Tape: 2; Side: A; Approx. Time Counter: 31.9 - 32.6; Comments: End of Side A}***

She said that the study proposed by DOC is okay with her, but in the meantime, they need to be paying the counties for the cost of housing these prisoners. Currently, the counties are bearing an unjust expense, and it is a hardship for many of them.

**ADJOURNMENT**

Adjournment: 5:05 P.M.

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REP. ROSALIE (ROSIE) BUZZAS, Chairman

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MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

**EXHIBIT(aph38aad0.PDF)**