MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 18, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Ken (Kim) Hansen (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

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

Committee Business Summary:
Hearing & Date Posted: HB 44, 3/4/2005; SB 477, 3/10/2005
Executive Action: HB 44; SB 146

HEARING ON HB 44

Opening Statement by Sponsor:

REP. SUE DICKENSON (D), HD 25, Great Falls, opened the hearing on **HB 44,** Exempt school for deaf and blind from non-general fund expenditure requirement. This bill was introduced in response to an audit report. The Montana School for the Deaf and Blind serves children, both through a residential educational setting and through outreach services all over Montana. Non-resident tuition is negotiated with the educational institution from which the student transfers. The amount per year covers the cost of the education program per student for the previous year. The number of non-resident students varies from year to year. The school needs to be able to set aside these funds for unexpected repairs, equipment failures, or unplanned-for opportunities or technologies which develop and which require a funding source. By allowing the school to manage these monies separately, it can be the best steward of its resources. The Montana Historical Society and the Montana State Library are exempt from the requirement, and the Montana School for the Deaf and Blind should be also.

Proponents' Testimony:

Bill Sykes, Montana School for the Deaf and Blind, testified they use out-of-state tuition, primarily from students from Wyoming, to fund critical infrastructure repair and maintenance needs. For the last few years, they carried some funds over from year-to-year to do that. The last audit said they need to expend that before they spend general fund first. If they had done that in previous years they would have asked for supplementals due to some major maintenance costs they had to fund.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GREG BARKUS asked how much money they were talking about. **REP. DICKENSON** advised there have been no non-resident students at the school for the last two fiscal years. In the past there have been zero to four students a year. Tuition presently is $59,000 a year, of which $38,000 is for residential cost. This is negotiated with the school from which the student is coming and is paid in advance. Present law says that money ought to be spent before general fund appropriations. The school has been successfully setting that aside for unexpected expenditures.

SEN. DON RYAN asked **Mr. Sykes** if their general fund budget is based on the number of students they have and that they project for. **Mr. Sykes** replied, no. They are not on a formula basis. **SEN. RYAN** asked how they would deal with the costs associated with those out-of-state students if there was no tuition. **Mr. Sykes** answered they would deal with it within the existing budget. **SEN. RYAN** inquired whether they put all that money into reserve or use it to meet the needs of students and reserve what is left over. **Mr. Sykes** responded they have used the tuition to meet the needs of students if they have needs that are outside of the budget to meet. It is primarily students from Wyoming that they collect tuition from. They have used most of it for repair and maintenance needs on campus. **SEN. RYAN** inquired why there had been no students from Wyoming in the last two years. **Mr. Sykes** indicated Wyoming re-did their state plan a number of years ago, and they tried to discourage out-of-state placements. A student evaluated the campus and would have been accepted except they were trying to meet the vacancy savings requirement. They would have had to hire additional staff.

Closing by Sponsor:

REP. DICKENSON explained that Native American students are considered residents, and non-resident students are admitted to the school if the full capacity of the school is not required for resident students. There are school districts in neighboring states that need this service. This bill passed out of the House unanimously. She indicated that **SEN. TRUDY SCHMIDT** was willing to carry the bill.

HEARING ON SB 477

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, Trout Creek, opened the hearing on **SB 477,** Per diem rate for persons in state portion of regional correctional facility. **SEN. ELLIOTT** told the committee that the issue arose at a football game in Frenchtown. He spoke with a deputy sheriff, and they talked about the sheriff's budget. The deputy had some concerns about the budget for the jail and the regional correctional facility in Missoula. **SEN. ELLIOTT** later spoke with the sheriff in Missoula County. The agreed upon reimbursements for the per diem rates for the regional correctional facility in Missoula were not covering the costs. The rates were decided unilaterally by the Department of Corrections using a formula that the sheriff's department agreed with, but, when times got tight, the Department of Corrections

started cutting the per diem rate. The bill establishes a mechanism, under the Montana Administrative Procedures Act, which requires the Department of Corrections to adopt rules specifying the method to properly use when establishing the per diem reimbursement rates. The rules must allow for review and public comment on the rate.

Proponents' Testimony:

Linda Stoll, Missoula County, introduced officials from Missoula County who would talk about the issue. She handed out material they would be referring to.

EXHIBIT(fcs60a01)

Mike McMeekin, Missoula County Sheriff, thanked **SEN. ELLIOTT** for bringing the bill forward. He advised that the Montana Department of Corrections and Missoula County entered into a contractual relationship in 1999 following the construction of a new detention facility that included a regional correctional facility. They jointly agreed to use a formula for a per diem rate that is used nationwide by the U.S. Marshall Service and adapted to Montana. That has since been modified as programs within the facility have changed. The intent has been to continue to use that formula. As the Department of Corrections tightened their budget, that was passed on to the county, and there have been no negotiations, which put the county at a distinct disadvantage. There has been no way to bring forward hard figures on actual cost per person so appropriations can be more accurately determined. The bill could meet both those needs.

Mike Sehestedt, Deputy County Attorney, Missoula County, testified he had been involved in negotiations between Missoula County and the Department of Corrections. They built the Missoula County Detention Center and regional prison in partnership with the Department of Corrections. Part of the original contract called for annual negotiations to determine what amount the Department of Corrections would pay per day per inmate. There is general agreement that the U.S. Marshall's formula, as modified, provides an effective method of calculating those actual costs. In 2003, they used that formula and negotiated a per diem rate. The formula alone does not solve the problem; even with the formula in place there are difficult questions. He referred to letters from the Department of Corrections (Exhibit 1) that indicate that, instead of negotiating, they are being told what the Department will pay. The original contract called for negotiations. They think SB

477, by putting the formula in statute, will bring the Department back to the table and will require negotiations in good faith.

Dale Bickell, Chief Financial Officer, Missoula County, addressed the fiscal impact of this bill on the county. This bill also affects the reimbursement rates for the two other regional facilities in Cascade and Dawson Counties. He referred to the handout and how the per diem rate has been held at the 2003 level for the current two years. The per diem rate dropped to $43.88 in 2003 when the program was changed to short-term state prisoners. Based on the negotiated method the rate in 2004 would have been $48.05 per day and in 2005 would have been $50.64 per day. Those increases were for personal costs, salaries, health insurance, utilities, and operations. For 2005, they are estimating a $340,000 shortfall in the state contract, which is being covered by Missoula County taxpayers. Depreciation is not currently in the per diem reimbursements for the regional correction facilities. The second page of the handout addressed Assumption 3 of the fiscal note. They want to be able to negotiate every year. If a rule was written that included additional capital costs, it would be roughly $44,000 a year. Assumption 4 of the fiscal note addressed the discrepancy between the current per diem and the regional prison request. Based on the 2003 formula, the increase in the per diem rate would be $6.76 and would require an additional $340,501 from the state.

Don Kinman, American Federation of State Government Municipal Employees (AFSCME), advised they represent the correctional officers at Dawson County Corrections and also represent employees at Missoula County Corrections. He spoke on behalf of **Matt Thiel**. They see a need for a solid public policy, and they think SB 477 is a way to get to that need. The need for people to be incarcerated is not really a regional problem. This legislation is needed to inject some fairness into the system. The counties are carrying the brunt of this the way the system is working.

Opponents' Testimony: None.

Informational Testimony:

Pat Smith, Department of Corrections, advised he oversees the contracts and compliance with the contracts for the regional prisons. They think the bill has some good points. He referred to 3(c)(ii) of the bill regarding indirect costs. He suggested they use the federal rate, which is standard nationwide. 3(c)(iii) talks about capital improvements but not the initial capital costs. The state paid for those initial capital costs through bonding or federal dollars in each of those facilities.

If they allow depreciation on top of that, it is almost a double-dipping effect. These are operational contracts for a twenty-year period. After that twenty-year period, these regional facilities become county facilities to be used in any way they want. The state will no longer have any interest in them. The idea was for the state to give the county the money up front to help build and then the county provides the state with a twenty-year contract. Under 3(f), the bill calls for an annual review of per diem rates. He reminded the committee there should be language for per diem increases that are appropriated by the Legislature on a biennial basis. To have an annual review of that process is redundant. Public comment will occur once in the administrative rule process, and again in Legislative hearings.

{Tape: 1; Side: B}

He said they have to make sure that there is language that any increase in per diem has to be subject to Legislative approval. As they look at per diem increases for regional and private prisons, any increases should be tied to compliance monitoring. He noted there is task force of administrators, and that group has input into policies and procedures.

Questions from Committee Members and Responses:

SEN. JOHN COBB observed, according to the fiscal note, this could increase the cost by $2 million, and he asked if that is in the Department's budget now. **Joe Williams, Department of Corrections**, said, it is not. When they were in negotiations with the counties, the rate that the county was looking for was roughly $57.88; the rate they had was $43.88. **SEN. COBB** asked, if this bill passes, if the Department is okay with the higher amount. **Mr. Williams** replied, not necessarily. It leads to the Department becoming more of a pass-through. The Department is okay with it as long as it is funded.

SEN. JON TESTER inquired how many regional correctional facilities there are. **Mr. Smith** replied, there are three regionals--in Great Falls, Miles City, and Missoula. **SEN. TESTER** asked if construction was paid for by state and federal dollars. **Mr. Smith** replied, yes. **SEN. TESTER** asked about the difference in costs between the regional versus private facilities. **Mr. Smith** revealed that the per diem for operational costs for the regional facilities were $43.88 in Missoula, $47 in Great Falls, and $46.75 in Glendive. In the private facility, for operational contracts, it is $9.14; operational costs is $43.60. Some of the difference in the Missoula rate is due to the services they provide. When it was made into an assessment center, the Department took on some of the pharmacy costs, etc.

SEN. TESTER addressed **SEN. ELLIOTT,** and said the bill includes more than just the capital costs. He asked if it is appropriate to ask for depreciation. **SEN. ELLIOTT** declared that is not being asked for in this legislation. The only depreciation that will be asked for is local share of the construction costs. **SEN. TESTER** asked **Mr. Bickell** why the state should pay reimbursement cost to a local government facility. **Mr. Bickell** stressed, they should not. The Missoula facility was built at a cost of about $21 million. The county approved a $17.1 million bond issue. The rules could be written so a portion of the common areas in the facility is allocated to the state. That was not the intent of the bill.

SEN. RICK LAIBLE asked **Mr. Smith** if he had recommendations for an amendment to set the parameters for the negotiations. **Mr. Smith** replied, not currently. **SEN. LAIBLE** inquired whether the Department sent a similar letter to private providers, and whether they had a reduction in cost. **Mr. Smith** replied, yes. **SEN. LAIBLE** asked how much the reduction was to the privates. **Mr. Smith** indicated it was $2.63 per inmate per day. **Mr. Williams** explained the counties have a rate by resolution, and it does not include capital costs. The county commissioners adopt a rate by resolution based upon what they determine the costs for their facility are. Those rates change from county to county and range from $20 to $90 a day. He favored addressing all of the issues with one typical formula. Everyone has their own interpretation of indirect costs. **SEN. LAIBLE** asked **Mr. Williams** if he would be willing to work on amendments with proponents and the sponsor. **Mr. Williams** said he would be happy to. Nine years ago there was a pay issue that was negotiated with the University System in the interim. The Legislature was appalled that they were expected to ratify a rate that they had no opportunity to review, analyze and comment on. That is what he most fears about this. **SEN. LAIBLE** said the issue is to come up with a consistent formula, and **Mr. Williams** agreed.

SEN. SCHMIDT asked **Mr. Bickell** if indirect costs have been negotiated before. **Mr. Bickell** replied the current formula that the per diem is based on includes some depreciation for start-up equipment that was used in the state unit. Indirect costs are based on the formula that the U.S. Marshall service requires them to use. They do not have an officially adopted rate for indirect costs. They are looking for consistency and are willing to work together on a formula. **SEN. SCHMIDT** asked how many times they have negotiated a contract since they have had the facility. **Mr. Bickell** said the only time was in 2003 in response to the letter from the Department. In order to pay for that cut, they cut out treatment services.

SEN. RYAN asked if there should be a bi-annual review. He wondered, if this bill passes, what the fiscal note would be for the next biennium. **Mr. McMeekin** advised, from the viewpoint of the Missoula County Sheriff's Department, an annual review does not make sense because this is a biennial appropriation. **SEN. RYAN** asked how they would put this bill into the budget for this session when they do not know what the rules are going to be for the reimbursement. **Mr. McMeekin** advised the handout shows accurate figures on the fiscal impact for the Missoula County facility. He believed Dawson County had prepared some information. The bill would have to be passed, and then they would have to write the rules. He was not sure that could be done before the end of the session.

SEN. BARKUS inquired what provision in the contract allows the regional facility in Missoula County to reduce their daily rate. **Mr. Smith** advised the contract says all the funding has to be appropriated by the Legislature. The rate was reduced when they had to do those cuts.

SEN. KEITH BALES said they increased the per diem for pre-release centers and the rest of the facilities. He did not think the title of this bill was large enough to include all of those. He asked how they would make this work. **Mr. Williams** thought they would broaden the title of the bill to include the regional facilities, the private facility, county jails, and the pre-release facilities. They could work through administrative rules to set up what allowable charges are, what appropriate indirect costs are, and what unallowable indirect costs are. If Missoula or Cascade County were to pass a pay raise for their staff, that would be an allowable cost that would come into the formula based upon their salaries. **SEN. BALES** said the differences in the salaries are a problem. He asked if there is a way to make things consistent with the Montana State Prison. **Mr. Williams** said that could be done with administrative rules.

SEN. STEVE GALLUS asked if they issued this decrease in per diem through emergency rule with proper notice. **Mr. Williams** advised this was issued in the 2003 budget crisis starting with 17-7-140, MCA. **Budget Director Chuck Swysgood** notified the Department that there were insufficient appropriations. They had to trim their budget by a certain amount of money. **SEN. GALLUS** claimed, with emergency rule, they can do it right away. He said he carried a bill that said the Department could not reduce rates to providers of services via emergency rule. If that bill survives the House, it will have an impact.

SEN. SCHMIDT asked **Mr. Williams** about the current contract. **Mr. Williams** indicated, when it comes to compensation, the contract

talks about the services the Department will reimburse for. The specific issues of what they would allow for salaries, operating expenses, etc., is done through negotiation. **SEN. SCHMIDT** asked for his thoughts on including indirect costs, and if there is something in the current contract related to indirect costs. **Mr. Williams** advised the federal government allows the Department of Corrections eight percent of the contract for indirect costs. They can work through administrative rules to define what they consider to be allowable indirect costs in line with the federal schedules and see what that percentage comes out to be on average. **SEN. SCHMIDT** said the bill talks about the rules, definition of per diem, method of calculating per diem, and costs to include in the per diem calculation. That is currently not in the contract. She asked if it is understood. **Mr. Williams** advised the contract calls for biennial negotiations on those contract rates. **SEN. SCHMIDT** said the state paid the initial capital cost of construction up front. She asked what if any capital costs should be in the contract. **Mr. Williams** said he had some philosophical heartburn over that. The state does not include capital costs. When they purchase something, they go through the long-range building process. The county does not want to tax taxpayers too much.

{Tape: 2; Side: A}

SEN. SCHMIDT asked if medical and transportation costs are laid out in the current contract, and **Mr. Williams** replied, they are.

SEN. CAROL WILLIAMS said she was puzzled why Missoula had a lower per diem rate to begin with. **Mr. Williams** indicated it depends on the level of service. A great percentage of offenders going into prison were DOC commits, and the Department needed a way to prevent that. They decided to turn the Missoula regional prison into a short-term assessment center with a lot less services. They wanted to try to prevent the buildup of people in prison that ought not to be there. He indicated the program has been successful.

SEN. BALES thought this is an over-riding issue that they struggled with in the subcommittee. He wondered if there is time to work out something that will work from now on. They are working on a committee bill in subcommittee. He wondered if this should be looked at in the interim. **Mr. Williams** said they would be happy to work on the rate structure and the impact on facilities in the interim to bring to the Legislature for final approval. **SEN. ELLIOTT** advised there are issues regarding reimbursement and issues in the corrections system. This bill addresses only one of those issues. He hoped the committee would consider this issue in and of itself. The issue is not so much

what kind of formula to use; the issue is predictability and reimbursement to the counties. The Department said they revised the payment schedule once. The counties maintain it has been revised more than once. This issue would not be before them if the Department did not have the ability to cut its costs by lowering the reimbursements. The facility does not have the ability to lower its costs by refusing prisoners. The Department and other state agencies have the ability to unilaterally decide how much they are going to reimburse the facilities. The other issue is the allowable costs. **Mr. Bickell** agreed with the sponsor. This is a narrow issue. The bill was designed to target just the regional facilities. There is a partnership between the state and local governments. The pre-release centers and the Shelby private prison are private businesses. The county is trying to cover its costs to provide services to the state. **Mr. Sehestedt** emphasized that putting this off for a year leaves them in the position they have been in since the May 11th memo. They have a contract with DOC that says they will negotiate a per diem rate each year. They attempted to do that. The May 11, 2004, memo was the Department's response to their request to negotiate a 2005 per diem rate. The memo said the per diem rate would remain the same. What costs go into the formula can be negotiated. Without something that brings DOC to the table, their costs under the partnership are subject to that sort of decision.

SEN. GREG LIND asked about cost shifting and the county of residence of the individuals that are incarcerated in the Missoula facility or the other two facilities. **Mr. McMeekin** advised those are not divided geographically. People are arrested and housed in county jails throughout the state. As openings occur, they are moved to a regional facility.

SEN. BALES asked if there were negotiations done for 2006 and 2007. **Mr. Sehestedt** advised the contract calls for negotiations to begin prior to the beginning of each fiscal year. They are hoping the bill will give them a basis for negotiations. **SEN. BALES** thought the system is flawed because they should have been negotiating for 2006 and 2007 when the budget was being considered so it could be included in the budget. **Mr. Sehestedt** agreed; that has not been what has been going on, but their contract calls for a negotiations and not simply being told how it is going to be.

Closing by Sponsor:

SEN. ELLIOTT thanked the committee. Dawson, Cascade, and Missoula Counties are not being recompensed fully for their costs in supplying services to the state. Missoula County did not have

a problem using the federal formula. The problem Missoula County has is the unilateral ability of the state of Montana to cut payments to local entities when the state of Montana has fiscal difficulties. These costs are incurred, and the costs must be paid for. If the state does not live up to its obligation, then the county must; then the county taxpayer foots the bill. The solution that Missoula County wants is to fix a formula in rule that is enforceable and contractual. The Department's response is typical of the response of someone who takes a stance on something, and then looks for rationale to back up that stance. The Department's response is to cloud the issue. The question is if the Department is getting good value from the local facilities, and are the local facilities doing what they are supposed to do. It is the responsibility of the Department to see that is done. If they feel that is not being done, then they should bring their concerns to the Legislative Audit Committee. The issue is not whether or not they are receiving good value for what they are paying; the issue is they are not paying what they have agreed to pay. Putting the onus on the counties clouds the question, makes the question more complex, the issue more complex, and the issue is not that complex, he contended. Individual state agencies, under state law, are required to cover the actual costs of what they do. The issue is of consequence to the taxpayers of Missoula, Dawson, and Cascade Counties. They are asking for consistency and predictability in per diem payments from the state of Montana to the local facilities.

EXECUTIVE ACTION ON HB 44

{Tape: 2; Side: A; Approx. Time Counter: 22.2}

Motion/Vote: SEN. LAIBLE moved that HB 44 BE CONCURRED IN. Motion carried unanimously by voice vote.

SEN. SCHMIDT will carry the bill on the floor.

EXECUTIVE ACTION ON SB 146

{Tape: 2; Side: A; Approx. Time Counter: 23.0}

Taryn Purdy, Legislative Fiscal Division, explained there were two primary things that changed since the presentation by **SEN. MCGEE** last week. The first with psychiatric examination costs. The version of the bill that was presented did not include several of the large counties--Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, and Yellowstone. They were to be the subject of an audit to take place over two years. The results of

that audit were to be used to determine how much they owed of the cost of the assumption of the public defender program. Those counties are now included in the bill. There will still be an audit, and if any adjustments are necessary as a result of that audit, then legislation will be requested next biennium. Regarding the psychiatric evaluations, currently there can be a request for a person to be evaluated to determine whether or not they are fit to proceed to trial. This evaluation can take up to 60 days. Currently, if the person is indigent, or if the request for evaluation is made either by the prosecution or by the district court itself, the state is responsible for all of the costs of evaluation. The counties are responsible for the costs that are incidental to that, such as transportation, medicine, room and board, etc. For indigent persons, the cost shifts to the Public Defender's office from the Supreme Court Administrator. The incidental costs that are now paid by the county will be paid by the state. This is an increase in costs to the state beyond what was presented previously. They do not know what those costs are. In the audit section of the bill, Section 72, an examination of those costs has been added to the scope of the audit.

{Tape: 2; Side: B}

SEN. JOHN ESP asked who would pay for the psychological evaluations. **Ms. Purdy** said, for indigent persons, the costs are paid currently by the Court Administrator. Incidental costs, such as transportation and room and board, are paid by the counties. Under this bill, those evaluation costs would be paid by the Public Defender's office. In addition, incidental costs would be paid by the state as well. If the evaluation is requested by the prosecution or the district court for someone who is not indigent, it would be paid by the Supreme Court Administrator.

Jacqueline Lenmark, ACLU, further clarified that the amendments to the bill propose that if the evaluation is requested by the court, the court administrator will pay. If the evaluation is requested by the prosecution, the court administrator will pay. If the evaluation is requested by defense counsel, and the defendant is indigent, the Public Defender program will pay. Evaluations are sometimes requested jointly by the prosecution and the defense, and in that instance the cost would be divided equally between the Court Administrator and the Public Defender's office. **SEN. ESP** asked who pays if the evaluation is requested by the defense, and the defendant is not indigent. **Ms. Lenmark** advised the defendant would pay. **SEN. ESP** asked about the rationale for the court paying if the county attorney makes the request. **Ms. Lenmark** indicated the rationale is that the

defendant and defense counsel did not believe the evaluation was necessary, and the prosecution did. It is an accounting mechanism. If the prosecution has made the request for incurring that expense, then the expense will be paid for and accounted for on the prosecution's side of the case. If the request was made by defense counsel, the expense would be borne on the defense side of the case. **SEN. ESP** said he failed to see the connection between the court and the prosecution. He thought they were trying to separate the defense from the court, and wondered why they were wrapping some prosecution functions with the court. **Ms. Lenmark** declared that, currently, the Court Administrator is picking up all of those costs if the court orders the evaluation, the prosecution makes the request, or the public defender under the current program makes the request for the evaluation. The incidental expenses are picked up by the counties, currently. This amendment would move all of the expenses to the state and allocate them based on who requested or ordered the evaluation.

Testimony was briefly interrupted by a visit from school children bringing treats)

SEN. COBB asked about line 27, page 87 of the bill; if 50% of the cost of the audit is borne by the county, he wondered who pays the other 50%. **SEN. MCGEE** replied, the state. **SEN. COBB** asked why. **SEN. MCGEE** said it was a deal. **SEN. COBB** asked if they take that out, if it will break the bill. He asked about the cost of the audit. **SEN. MCGEE** thought it could be $40,000 or $50,000, but he did not know. **SEN. COBB** said, if this passes, the Legislative Auditor would have to eat the costs, and **SEN. MCGEE** said, that is correct.

SEN. RYAN asked if there is a possibility in this bill to be indigent in one county and not indigent in another. **SEN. MCGEE** did not think so, because it is 130% of the federal poverty level.

SEN. GALLUS asked if there is a ballpark cost for the amendment. **Harry Freeborn, Legislative Fiscal Division**, replied, the budget office does not have a number.

SEN. LIND asked **Ms. Stoll** to comment on the entitlement share payment section of the bill and the amendments specific to Missoula County. **Ms. Stoll** said, for the purposes of taking over the Public Defender portion of Justice Court, Missoula County would gladly give up its budget of $150,000 a year. The entitlement share proposal is $310,000 and $195,000 from Missoula County. With respect to the amendment and the discussions about the cost of the amendment, she reminded the committee of her previous testimony that the counties, for the most part, believe

that those costs were included in SB 176. The counties sent nearly $25 million to the state to take over the function of district courts; $18 million of that was through the entitlement fund, and $7 million was through motor vehicle money. In the 2003 session, the Legislature decided to change the way motor vehicles were taxed, and went to a flat tax. The Legislature made the decision to reduce the amount of revenue that otherwise was going to fund district courts. In terms of the cost of the amendment, for those associated costs of fitness to proceed, she suggested contacting the state hospital to determine room and board costs, and then figure out transportation.

SEN. COREY STAPLETON asked **SEN. MCGEE** to respond. **SEN. MCGEE** said. in the bill as first presented to the committee, they had identified the six major counties, had taken a number value out of the bill, and substituted a provision for an audit to determine the actual costs for those six counties so they would know how much to withhold from the state entitlement share. They were looking at justice courts and any un-reimbursed district court costs. The problem came up with regard to the funding of associated costs of psychiatric evaluations. There are two sections of code where a person can be given a psychiatric evaluation to determine fitness to proceed. If they are not fit to proceed, they go to Warm Springs. They did not know if that was a legitimate state cost, or if it was something the counties had traditionally paid for. Estimates of that cost were from $200,000 to $1.4 million. The audit provision stated that, based on the audit, the entitlement share would be reduced by the amount determined by the audit. This required the Audit Division to be the judge and jury with regard to those costs, and to send the bill to the counties. If the counties disputed those costs, the Audit Division would have to adjudicate all this. It became clear that it was probably not appropriate to do the audit for purposes of funding in the 2007 fiscal year. They decided to reinstate numeric values for the withholding from entitlement share for justice courts and for un-reimbursed public defender related district court costs. The number out of Missoula County for justice courts is $152,000 and some change. Added to this were their un-reimbursed district court costs. It seemed appropriate to have the audit division look at 1998 through 2004. No one can say what the absolute number ought to be.

SEN. STAPLETON asked if **SEN. MCGEE** supports the bill as amended, and who is playing the devil's advocate and putting the breaks on. **SEN. MCGEE** said he would not bring forward a bill that was completely open-ended. In two years, once the audit is completed, they will know the public defender costs at the justice court level and the district court level. **SEN. STAPLETON** said that would be taking a leap of faith and making a massive

policy change two years in advance of knowing. He asked what **SEN. MCGEE** sees after the first year. **SEN. MCGEE** said he did not think it would be as high as $3.8 million. There are a lot of start-up costs. Currently, they spend between $8 million and $10 million per year on public defender work; some of that is being paid by counties and some by the state. What is not being expended, and what this bill requires, is whatever the number is for the first year and $3.8 million in the second year. By that time, the Commission is in position, they have hired the Public Defender, and the Public Defender is hiring the associated staff, setting up the regions, etc. He thought things will settle down after the second year. His guess was they would see another $2 million added on in upcoming bienniums. **SEN. MCGEE** asked if **SEN. MCGEE** was convinced this was the way to go. **SEN. MCGEE** advised as they went forward through this entire process, his default setting was if they were not sure--include it. They created a Rolls Royce. He did not think a Rolls Royce would be absolutely necessary to satisfy the suit situation. He believed they could go forward with unified standards of procedures and practices, training, etc., to satisfy issues of the suit without going to this extent.

{Tape: 3; Side: A}

SEN. STAPLETON did not see anybody driving the bus that was giving the option of going with a Chevy. He asked how they could have something to compare to that is not the Cadillac. **SEN. MCGEE** said they do not know what they need to know to decide certain things. They need uniform standards, training, and a certain level of competence to insure adequate, effective assistance of counsel. It seemed to make the most sense to incorporate the municipal courts, justice courts, district courts, and to fund all those entities appropriately. The monies are already being spent by either the counties, at the justice court level or the cities at the city court level. The state will capture about ten million from the entitlement share. The cost of the Chief Public Defender, Deputy Public Defenders, training, etc., is $900,000 the first year and $3.8 million in the second year. It is in the second year that the Chief Public Defender's office gets created. After the audit, they will have some real numbers. They may decide they do not need to include justice courts. for example. In every decision they made, they defaulted toward the people of Montana.

SEN. SCHMIDT asked **Scott Crichton, ACLU,** asked what was needed to satisfy the suit situation and about the comment that this will settle down after the second year. **Mr. Crichton** said, in terms of it settling down after two years, that is true. For the first time. there will be an accounting of what it costs to administer

a good share of the criminal justice system in a centralized way. He imagined that in four years, it will also still be settling down. If this bill passes both Houses as amended, the first year will be setting up the commission, recruiting talent to head up the Public Defender office, to staff it, and to set up a system and technology for centralized delivery of a public defender system. They will not see the beginning of the delivery of services until the second year of this biennium. By the time the Legislature meets, there will have been six months of operation. They will know how good of a job the Commission has done in its recruiting and what this will translate into in terms of services provided. Determining the costs that are expended in the system and the savings that will be achieved in other parts of the system will take a couple of sessions to sort through. He referred to testimony about someone incarcerated for 18 months before going to court. That sort of backlog can cost a county $20,000. He thought there would be savings and this may reduce the prison population if public defender caseloads are reasonable. The numbers put together by staff are based on the best estimates of current expenditures which are not uniformly accounted for. There are some projections about the cost of setting up the system. It is difficult to forecast the cost of the system when the caseloads are not known. A public defender should not have more than 200 cases a year by national standards. The number of cases is also impacted by what laws are passed. Many things could happen by adequately funding the system. The litigation they put on hold was brought forward on behalf of people who were felons or people accused of felonies or misdemeanors who could end up in the deprivation of their liberty. That was the extent of the lawsuit. It was clear that, in order to address inadequacies in public defense, it needed to include juveniles and families that were involved in abuse and neglect cases. The state has lost federal money by not having timely representation of those abuse and neglect cases. The Interim Law and Justice Committee looked at problems facing the state in the interim, but because other committees looked at this bill it was suggested the bill be expanded. Those other elements can be cut out, but then one part of the population would be served by recognized standards and the others who would not. **SEN. MCGEE** and the committee saw it would be better to craft a system, rather than trying to patchwork solutions mandated by litigation.

Motion: SEN. RYAN moved that SB 146 DO PASS.

Motion: SEN. RYAN moved that SB01617.AVL BE ADOPTED.

EXHIBIT(fcs60a02)

Discussion:

SEN. SCHMIDT asked if this is a pragmatic approach or if this is a Cadillac version. **Mr. Crichton** thought it was more like a Buick. He thought it was a good deal. Other jurisdictions in the country use 250% of poverty, and that may be closer to a Cadillac. It is like buying tires that will get them down the road, or buying the cheapest tires available and hoping that they last until the next biennium. The chassis is there and now they are talking about moving it.

SEN. LIND wondered if there was a way, as the audit goes forward, to make the process a little more dynamic so if there is excessive cost allocated to particular counties, that could be corrected prior to the next Legislative session. **Ms. Stoll** replied, no. **SEN. MCGEE** thought there was no way in the middle of the audit. One of the things they were trying to do with the extension of the time period for the audit, was to make sure that the Legislature was the one that did the analysis rather than leaving it up to the Audit Division. The audit provision, with the amendment, will come back to the Legislature and they will decide what are legitimate costs.

SEN. LAIBLE said there was a number that has come up as a result of the amendment, because the entitlements have changed. He asked where the numbers came from. **SEN. MCGEE** advised they came from the counties. The Montana Association of Counties (MACo) did the original research. The interim committee made additional phone calls to counties. The number for Missoula County combines what was reported for public defender costs and un-reimbursed district court costs. There has been confusion over what should have been paid or should not have been paid from the state assumption of district court costs. There have been decisions made at the District Court Council level not to pay certain things. It has been very confusing to counties. They are not trying to fix everything regarding that issue in the Public Defender Act. He thought the counties have a legitimate argument that there should be other costs that should be paid with the assumption of district courts. The numbers have been provided by six counties. They include justice court public defense costs and un-reimbursed district court costs. **SEN. LAIBLE** said this includes different numbers for each community and raises the amounts that will be subtracted for their entitlements. He asked if that was done on a formula basis, or if these changes were a result of the amendment or from the communities. **SEN. MCGEE** advised the League of Cities and Towns went to the cities and towns to find public defense costs. It was decided to apportion that value according to population. There was a double hit to Anaconda/Deer Lodge and Butte/Silverbow because they are unified

city/county. The city component had to be taken out and reallocated based on population for the other cities and towns throughout the state, but not including Anaconda/Deer Lodge and Butte/Silver Bow. That is the reason for the individual city amounts. He added that the fiscal note will change with these amendments; the fiscal note will go down $1 million because that amount will be withheld from the entitlement. Instead of $3.8 million it will be about $2.7 million.

SEN. STAPLETON asked **Ms. Lenmark** about her previous testimony regarding the funding. He asked what will happen in the out years. **Ms. Lenmark** believed the bill will resolve litigation that is infinitely costly to the state. If the ACLU were to prevail in that litigation, there would be an exploding cost. With the Public Defender Program as proposed in the bill, she believed that there will be no exploding cost. They will see a continued refinement through competent statewide management of a system that has no cohesion right now. There will be savings as a result of that. The Department of Justice believes there will be significant economies realized by putting together this comprehensive, standardized, statewide program. She thought there would be good information from the audit that will allow the Legislature to make better informed decisions in two years about what costs actually are associated with public defenders and what costs are not. It will allow them to make some further judgments. She believed there will be some startup costs. There is a difference of opinion between her client and the Department of Justice about what those costs are. She thought they had bracketed them and they are committed to economize in every way possible while still meeting the constitutional standards that Montana is obligated to meet. She said she was uncomfortable with the analogy to a Rolls Royce, a Cadillac, or to any vehicle. She thought the bill was the most carefully thought out, comprehensive framework to put into place a critical management tool for this state to meet state and U.S. constitutional standards for the defense of indigent citizens. **SEN. STAPLETON** said if she was uncomfortable with the analogies they were using, he said it was because nobody had given anything but anecdotal reasons to do this. He thought proponents made a dangerous mistake early in the Legislative process of assuming this is a foregone conclusion and will automatically become law. He was uncomfortable with phrases like "very significant", "infinitely", and "exploding". They are asked to make major decisions on policy absent anybody taking responsibility for laying out numbers just hundreds of days beyond the court assumption debacle which made them all look silly. They were off by an eight digit number.

{Tape: 3; Side: B}

They already assume SB 146 has met the muster, has gotten the votes, is in law, and they can take this time to figure out the numbers as they go. He said the process is not set up that way. They have to make informed decisions, especially on this committee, based on something more than anecdotal assumptions of what might, or could be, for varying car types. **Ms. Lenmark** responded that no assumptions have been made. She said he was exactly right about the process and where they were in the process. The numbers that have been put together painstakingly over the interim by the legislative staff and by the Governor's budget office are the numbers they are working with. Those are the known numbers, and they are endeavoring to get more specificity and certainty for those numbers. She thought the fiscal note reflects that. She urged the committee to consider that much of the money that is going to support this program is already being spent by other agencies towards this function. There will be a transfer of that money from one agency to another, and from one method of accounting for that money to another. **SEN. STAPLETON** asked if that could be provided to the committee so they can make decisions based on what is available. **Ms. Lenmark** was not certain what this committee would regard as user friendly. If the information in the fiscal note format needs to be presented in a different format, the parties are willing to present the numbers in any format the committee would find more useful. **SEN.**

STAPLETON addressed **SEN. MCGEE.** He indicated he was interested in a bean counter's type of look at this. **SEN. MCGEE** said he did not bring the bill forward with the presumption that the bill has already passed the Legislature. There is a statewide fiscal analysis that was presented to the Law and Justice Interim Committee. The numbers have been updated as this evolved over time. He stated that **Mr. Freeborn** put this together and would be happy to make a presentation. In addition, **Brent Doig, Office of Budget and Program Planning**, has been working on these numbers for the last two and one-half years. This bill will go through the rigors of the process. If this bill, or some semblance of this bill, is not passed and funded, the suit will continue. If the suit continues, and if it is decided in favor of the ACLU, not only will there be a cost to the state for the suit, but everyone who has ever had public defense in the state of Montana theoretically could have a cause of action against the state of Montana for ineffective assistance of counsel. **SEN. STAPLETON** declared he was not convinced that going that route would not be less expensive. The court giving them a Chevy directive to follow might be a better course of action. **SEN. MCGEE** expressed regret that he ever made reference to an automobile. Every time there was a loss of liberty, whether criminal or civil, in which there was the allowable provision for public defense, they put it

in the bill. It is comprehensive in that regard. It is probably more comprehensive than they would have had to make it. That is what he was talking about when he said Cadillac. **SEN. STAPLETON** said this is important. He has been here on more than one occasion when the Senate Finance Committee had been the most important choke point. This bill started in the Senate, and he was not convinced that anyone would ever do the due diligence that this committee can do. **SEN. MCGEE** said it was their job to prove to the committee what it is that they have. The numbers they have are not verifiable at this point in time. He hopes the audit provision in the bill will make them verifiable at some point in the future. **Mr. Freeborn** said public defender services are currently being provided at a cost of $10.6 million. Of that, $8.2 million came from the audited state records of the Court Administrator. Those costs are pretty certain. **SEN. STAPLETON** asked if any one of these years would be $8 million. **Mr. Freeborn** advised $8.2 million in FY 2004 was expended by the office of the Court Administrator to provide district court public defender services. The figure came out of the SABHRS accounting system. **SEN. STAPLETON** asked, if SB 146 becomes law, it may cost as much as $8 million. **Mr. Freeborn** indicated some costs were being transferred from the current system from people that are currently providing public defender services. There are some incremental costs on top of those costs to provide the Chief Public Defender offices. Those have to be considered together. **SEN. STAPLETON** asked if the number would be greater than that. **Mr. Freeborn** said, when those numbers are combined, the total cost per fiscal year for the public defender system will be $13 million to $14 million. **SEN. STAPLETON** asked, if a Legislator in the next cycle that comes here for the first time looks at a fiscal note, if it could be $12 million to $14 million a year. **Mr. Freeborn** explained the costs he was talking about were relatively certain, and those costs will increase or decrease over time depending on fluctuations in caseload and the cost of goods and services. Non-reimbursed district court costs were more nebulous. They came up with a number of about $1.7 million; $1 million of those costs came from MACo and about $700,000 came from a written survey of various counties and phone calls he made trying to ferret out certain dollars. Those are the soft numbers that will go through the audit process. **SEN. STAPLETON** thought, with the most recent amendments, those soft costs will be incurred at the state level. The numbers they talk about on an annual basis probably will only go up.

SEN. COBB asked if they will be spending about $14 million in 2007 for the public defender program. **Mr. Freeborn** said, that is correct. **SEN. COBB** said he understood the next two years. In the third year and fourth year, the ACLU estimates as much as $22 million a year.

EXHIBIT(fcs60a03)

He thought there could be a big increase in the next biennium from the justice courts. He was not saying they should not do it, but because they have to fund it correctly, there could be a shortfall next session. **Mr. Freeborn** said he had not seen that analysis and could not respond. **SEN. COBB** said he would get copies.

SEN. JOHN ESP said he would like to segregate paragraph 167 from the amendment and discuss that later. That paragraph takes out 50% of the cost of the audit. He wanted to discuss that on its own merits. He asked **SEN. MCGEE** if he would be willing to expand the concept of the audit to look out into the future in regard to the questions between the counties and the state. **SEN. MCGEE** said he would be happy to include a concept like that in the bill. He asked if it would be for about five years, and **SEN. ESP** responded, yes. **SEN ESP** asked **Ms. Stoll** about an audit concept that looked at costs and the entitlement share over time with the idea they might true up with an amendment. **Ms. Stoll** said she was not clear on what that amendment might do. She pointed out that when this committee heard SB 176, the budget office had those numbers projected out as far as 2011. She thought they might want to revisit those numbers under SB 176. **SEN. ESP** said his concerns mirror the concerns of **SEN. STAPLETON.** They do not know what they are getting and what, for sure, they are not getting. They do not know what the counties may be paying for that the state does not know they are paying for. **Ms. Stoll** indicated she would have to see the amendment. She understood the concern about the growing numbers. With regard to Missoula County, this bill actually reduces the caseload. The bill establishes the poverty level at 133% of poverty. That is much lower than what Missoula County currently uses. They expect to see fewer people defended. In terms of the number of people defended, there is not going to be a growing explosion. She referred to the $8.2 million that was the actual cost in 2004 for the district court public defender program. She reminded the committee that they established $6 million for public defender costs in SB 176 in 2003. That has grown $700,000 per year. **SEN. ESP** said they got a rough number from the Supreme Court on the same costs in FY 03. It was $7.4 in FY 03 and $10.5 in FY 04. So far in 2005, they are up to $11 million a year. His question was if she would be willing to look at truing up the numbers based on whatever experience they have. Maybe the caseload will go down because of this bill. In that case, they may have to ratchet up the entitlement share again. He wanted to know if she was willing to look at some sort of shared responsibility concept into the future. **Ms. Stoll** thought her county would probably say they had given the state everything they had for district courts.

They gave the source of funding and money from their entitlement share. She thought if they had not changed to the flat tax fee on motor vehicles, they would have adequate money to cover the costs that have increased over the past couple of years. She asked **Mr. Bickell** if Missoula County would be willing to put more money into the system if it cost more in six years. **Mr. Bickell** thought it would be hard; Once they give up control of the justice court public defender costs, they have no way to control those costs like they do now. It would depend on how the amendment was written.

SEN. GALLUS called the question on Amendment SB014717.avl from 1-166 and from 168 through the end.

Vote: Motion carried 14-5 by voice vote with SEN. BALES, SEN. KEENAN, SEN. LIND, SEN. STAPLETON, and SEN. WILLIAMS voting no. SEN. BALES AND SEN. KEENAN voted no by proxy.

Motion: SEN. LAIBLE moved that SB 146 DO PASS AS AMENDED.

Discussion:

SEN. LAIBLE advised the only thing that bothers him about the bill is where the incentives are to hold costs down. **SEN. MCGEE** responded they do not know how many crimes will be committed, how many misdemeanors or felonies or civil commitments there will be. They do not know how many times those activities will involve people that need public defense. They do not know how many people will be convicted. **SEN. LAIBLE** contended if a county is not paying for services they could add more services on for indigent defense. **Ms. Stoll** replied the state does not control those costs currently. If Missoula County wanted to pay $150,000 for a public defender right now, the state is obligated to write the check. Having a some kind of state policy and standardization will better contain those costs. The point that **Mr. Bickell** makes is that the county controls the public defender costs right now in justice court. In the event that there is bad management at the state level, she wondered if the counties should be held responsible for that in 2011.

{Tape: 4; Side: A}

SEN. LAIBLE addressed the bill. The bill does not change the amount of money being spent or the amount of services they are providing through all these sources. The question is how much the state is going to increase their share of liability for these costs. The reverse of that is how much the cities and towns and local communities will reduce their costs. He understood why

SEN. ESP segregated his amendment. He thought the amendment was one of the most important components of this bill. He did not necessarily disagree with looking forward, but he thought that would show what the costs are to the state. If costs go up significantly, there might have to be an adjustment down the road as to the participation of local governments. He said he would support the bill and, most likely, **SEN. ESP'S** amendment.

SEN. BOB HAWKS said he could not make this decision based on the assumption that they do not know their costs. They know the caseload might go down with the change in poverty level. That group will get better defense, and that likely will push the cost up a little. The Legislature is in control of the law. They have estimates coming in. The outside risk they have is between $8.2 million and $10.6. He saw the lawsuit as the highest risk. **Mr. Freeborn** said that sounded logical. He found $10.6 million in current costs, and felt good about the $8.2 million he got out of the audit system. Caseloads could rise or fall depending on the services provided. The other costs are where the risks are. Of the $1.7 million, $1 million came from MACo. The $1.7 million is to provide public defender services as they are currently being provided in justice courts. He did not know if those costs were gathered correctly. Sometimes the information is difficult to interpret. The $674,000 were costs related to certain district court costs currently paid for by the counties. He thought there is a lot of risk in that number. The audit mechanism provides some mitigation of the risk. There is a $737,000 number that was attributed to public defender type services for cities, and that number has a lot of risk. Those are mostly misdemeanor type cases. Major felonies are in the district court arena. The types of cases attributed to that function are probably less likely to fluctuate. In the $10.6 million, which relates to current costs of the current system in Montana, $4 million is related to the Chief Public Defender office to provide centralized public defender services and manage the entire state system at the state level. Most of those costs were gathered from SB 218 and were inflated. He thought there was some risk in that area also. **SEN. HAWKS** asked if the fines that accrue from the penalties would come back to the state for providing the services. **Mr. Freeborn** advised that, in the district court area, those fines, fees, and forfeitures currently go into the general fund He did not know if this was a significant factor. This system will be highly variable as caseloads rise and fall. That is an additional risk to consider. **SEN. HAWKS** asked about the $13 million to $14 million and what would be a reasonable figure. **Mr. Freeborn** stressed the $13 million or $14 million was per fiscal year, and there is a startup year.

Motion: **SEN. STAPLETON moved that SB14601.ATP BE ADOPTED.**

EXHIBIT(fcs60a04)

Discussion:

SEN. STAPLETON said this was a policy question he put to the full body of the Senate. The amendment would locate the office in Butte, Montana. This would be an investment in Butte. There are probably marginal cost savings on an annual basis. The most logical place to him seemed to be Butte.

SEN. GALLUS welcomed the idea. It is a depressed area, and it would be significant for his district. A state employee living and working in Butte would find that they like it. It is a good community, it has culture, family activities, and recreation.

SEN. DAN WEINBERG advised he had not been to Butte, but it has just been characterized as depressed. They want to attract people to these jobs. He thought when professional people look for work, they also look for quality of life. He thought they might want to take that into consideration.

SEN. LAIBLE said he would support the amendment. It helps Butte, and Butte is a short distance from Helena. Every state program does not have to be located in Helena. One of the concerns is the law library is in Helena. The amount of people that use the law library is much reduced, because they are all doing it online. Putting people in close proximity to Deer Lodge has some definite advantages. He disagreed with **SEN. WEINBERG** and thought people would find that Butte is a lovely community, and their quality of life might be much better there. Their cost of housing might be better there than in Helena. They still have the ability to go to Helena. He lives in Ravalli County, about an hour from Missoula. When he wants what Missoula has to offer, he can drive there.

SEN. SCHMIDT asked **Pam Bucy, Attorney General's Office**, to comment on locating the office in Butte. **Ms. Bucy** addressed the discussion of the proximity to Deer Lodge. The only time the proximity to Deer Lodge would be relevant is in the Appellant Bureau. The prosecution side is in Helena at the Department of Justice. The Appellant Bureau is a small part of the bill. Most government lawyers have access to the internet; a contract lawyer may not. State lawyers are not paid well in Montana. They do not compete at all nationally. She said she loves Butte, but the Department recruits by offering quality of life.

SEN. GALLUS invited **SEN. WEINBERG** and his wife, and the rest of the committee, to float the Big Hole River with him and his wife. They will go to the Uptown Cafe for one of the best meals they will ever have in the state of Montana. After that, they will go down to the Mother Lode Theater and watch a play or symphony. They will find that Butte, Montana, has as much culture as anywhere in the state.

SEN. LANE LARSON commented that, being from eastern Montana, Miles City would welcome this opportunity with open arms. Billings is not a bad place either.

Vote: Motion carried 10-9 by roll call vote with SEN. BALES, SEN. HAWKS, SEN. LARSON, SEN. RYAN, SEN. SCHMIDT, SEN. TESTER, and SEN. WEINBERG voting no. SEN. COBB and SEN. HANSEN voted no by proxy.

Motion: SEN. ESP moved that SB 146 DO PASS AS AMENDED.

Motion: SEN. ESP moved that SB014603.ATP BE ADOPTED.

EXHIBIT(fcs60a05)

Discussion:

CHAIRMAN COONEY asked **Ms. Purdy** to comment. **Ms. Purdy** explained the reason the Fiscal Analyst is in the amendment is because of the revenue calculation that will need to be made. The committee could have that done in conjunction with the Audit Division and have an audit committee also receive that.

Vote: Motion carried unanimously by voice vote.

Motion: SEN. GALLUS moved that SB 146 DO PASS AS AMENDED.

Discussion:

SEN. COBB said he believes next biennium they are $3 million to $6 million or more short each year. They have a badly funded program now, and it is still underfunded just moving it to the state level. He did not want them to have big hearings like they did last session to find out what happened. He said he would make copies of what the ACLU thinks might happen. It might cost more, and it might cost less. He thinks it will cost more.

SEN. WILLIAMS thanked **SEN. MCGEE** for the work he did on this. Of the bills they had before them this session, this is in the top five of importance. They have not talked much about the human cost of this bill. This is something that has not been dealt

with for thirty years that they need to deal with now. Many people have been involved in this consensus. With the exception of a couple of amendments she would have liked to have gone differently, she thought this is something they have to support in this committee and on the floor. She served on the Justice Foundation Board for five years. They see these problems with ineffective counsel coming to them all the time. It is the human cost to families in Montana, people who have been wrongly incarcerated, and all those who have not been spoken for that she wanted them to also consider. It is the right time to do this.

{Tape: 4; Side: B}

SEN. RYAN commented every one of them were affected by this bill. This is protection for them, because they do not know what the future holds. This is not just for the indigent right now. This is protection for all citizens of the state of Montana.

SEN. STAPLETON congratulated **SEN. MCGEE** and all the people who worked on this. He agreed that this bill needs to move forward. He cannot support this bill until he has a better feel for the numbers. He said they have endorsed something before when they did not have the proper numbers. He hoped by the time the bill is on the floor that they will have some of those. He would like to support the bill. He expressed appreciation for the support for his amendment.

Vote: Motion carried 17-2 by roll call vote with SEN. STAPLETON voting no. SEN. KEENAN voted no by proxy.

Motion: SEN. COONEY moved THAT A COMMITTEE BILL BE DRAFTED TO SUNSET THE 30% CARRY FORWARD PROVISION OF 17-7-303 FOR TWO YEARS. ALL OF THE REVENUE THAT WOULD BE COVERED IN THIS WOULD REVERT BACK TO THE ORIGINAL FUNDING SOURCE.

CHAIRMAN COONEY advised this is related to **SEN. BRUEGGEMAN'S** bill. That bill raised the 30% to 50%, the committee approved that, and he supported that. The carry forward funds are of concern because they apply to the spending cap. This was one way that they might be able to legitimately try to deal with the cap issue. If the bill is drafted, and if it is successful, it would prevent the agencies from taking any carry forward for the next two years. It would reduce the cap by about $16 million.

SEN. STAPLETON asked if this is a committee bill that would change the spending cap. **CHAIRMAN COONEY** said it will not change the spending cap. If the bill passes, it will not allow agencies to carry forward approximately $16 million that applies to the cap. It is not changing the cap. If **SEN. BRUEGGEMAN'S** bill goes

forward it will be 50%. Under the 30%, it will prevent $16 million from going forward.

SEN. BRUEGGEMAN asked if the effective date would be on passage and approval and if it would apply to the budget cycle they are in currently. **Ms. Purdy** replied, **SEN. BRUEGGEMAN** was right.

SEN. ESP asked if they use potential carry forward funds in the calculation of the budget cap. **Ms. Purdy** replied as long as there is a potential for a carry forward. The carry forward has to be approved by the approving authorities by a certain date. **SEN. ESP** contended if the administration did not want this to apply to the cap, they could not approve any carry forwards for this biennium. That would end the issue, and it would no longer apply towards the cap. **CHAIRMAN COONEY** suspected that the budget office could do that, but he wanted to give some legislative direction. As they are dealing with HB 2, the more they can add clarity to this, the better off they will be. This is just a sunset for two years. **SEN. ESP** requested a day to talk to the budget director to see if he would just be willing to do this. **CHAIRMAN COONEY** indicated if they do not do this, it will not show up on the status sheet. If this goes forward, it will appear on the status sheet and show a reduction in spending.

SEN. STAPLETON asked if this is narrow enough not to be used later to blow the cap. **CHAIRMAN COONEY** replied this specifically will be dealing with the 30% carry forward. He maintained there was no intention to try to create a vehicle that would allow them to blow the cap.

SEN. COBB said if they passed this bill, a third of the $16 million would revert to the general fund. That would increase the inversions by $5 million for the end of the biennium. **Ms. Purdy** agreed that would be an effect of this bill. **SEN. COBB** said when they come back, they would have another $5 million.

SEN. BARKUS asked if the $16 million was for the 2005 biennium, and if they already know it will be $16 million. **Ms. Purdy** said it is an estimate; the closer they get to the end of the fiscal year, the more they know. **SEN. BARKUS** said the bill would affect the 2007 biennium, and if **SEN. BRUEGGEMAN'S** bill passes, it is 50%. He asked if that was of concern.

SEN. BRUEGGEMAN suggested one way to do this correctly was sunset the 30% for this fiscal year, and change the number to 50% for the next fiscal year.

SEN. BALES commented, if there is an estimate of what these funds will be and what the 30% figure will be, they will have to know that by department. He inquired if it would be easier to take that into account in HB 2 and reduce their budgets by that amount, rather than going with a committee bill. **CHAIRMAN COONEY** thought there may be other vehicles that could be used to do this. He was trying to find a legitimate way to show they are reducing the cap issue. If they do it the way **SEN. BALES** is suggesting, it will only occur if that action is actually taken. This is an important statement to be made in an effort to show they are looking for ways to reduce the money that applies to the cap. Whatever amount it is will not apply to the cap.

Vote: Motion carried 13-6 with SEN. BALES, SEN. BARKUS, SEN. COBB, SEN. ESP, SEN. KEENAN, and SEN. LAIBLE voting no.

ADJOURNMENT

Adjournment: 12:00 P.M.

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SEN. MIKE COONEY, Chairman

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PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs60aad0.PDF)