MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on April 12, 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 Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (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. John Brueggeman (R)

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 713, 4/5/2005; HB 482, 4/8/2005; HB 614, 4/8/2005; HB 374, 4/8/2005; HB 740, 4/8/2005; HB 695, 4/8/2005;

HB 790, 4/8/2005; HB 761, 4/5/2005; HB 742, 4/8/2005; HB 414, 4/5/2005
Executive Action: HB 414; HB 374; HB 249; HB 327; HB 181; HB 742; HB 148; HB 790

HEARING ON HB 713

Opening Statement by Sponsor:

REP. EVE FRANKLIN (D), HD 24, Great Falls, opened the hearing on **HB 713,** Fund national guard and military mission assessment and promotion. This is a request for $250,000 that would assist the state in maintaining and lobbying to keep and sustain the military missions in the state. The BRAC process (Base Realignment and Closure) will include active military installations like Malmstrom and also guard and reserve installations. The military industrial complex of the Pentagon is a highly specialized and specific culture, and expertise and skill are needed to lobby the BRAC. The key is to attract new missions. For the state of Washington the number one economic development focus is to keep and attract new missions to the state. Those who live in the Golden Triangle area become more emotionally involved in their missiles than perhaps other areas of the state, but this is a statewide issue, she claimed. She read a letter from **Larry Mires, Two Rivers Economic Growth.**

EXHIBIT(fcs78a01)

Proponents' Testimony:

Randy Gray, Mayor, Great Falls, testified that Malmstrom Air Force Base means about $250 million annually to the economy of Montana. When the Montana Air National Guard and Reserve units throughout Montana are added there is a total annual economic impact of between $400 million and $500 million. The Pentagon will issue its recommendation to the Executive Branch about May 16th. Between May 16th and the end of November is when all this activity will occur. The nine missile counties in north-central Montana that house the ICBM fleet that is controlled out of Malmstom Air Force Base have financially contributed to this effort. The City of Great Falls, the Great Falls Economic Development Authority, and the Great Falls International Airport are financial contributors and also contribute staff. They raised over $350,000 from the private sector in the Great Falls area and are asking the state to join in as a partner in this venture. The congressional delegation is also part of this partnership. If the Legislature passes this bill, the $250,000

will be administered through the Department of Commerce. This money, along with the other money he mentioned, would be used to hire expertise to attract missions. He thought that Malmstom Air Force Base, along with Minot, North Dakota, and Wyoming, will retain the 500 land-based ICBMs. Beyond that there will be missions from bases that close that will need to be housed elsewhere. It is hoped that Malmstom and some of the other military assets in Montana would be suitable homes to house those other missions. There will be troops coming home from Europe, flying missions, unmanned aerial craft, etc. Montana has assets that no place else in the United States has. There is an air zone that is about 180 miles east to west and about 90 miles north to south that is on the Missouri River north of the Charlie Russell Game Range that is the most suitable place in the United States for air combat training missions to occur. If they could get the Malmstom Air Force Base runway re-opened there would be an exponential increase in the amount of military missions that might be coming to Montana. Additionally, Malmstom Air Force Base is a potential test site for the Mariah project.

EXHIBIT(fcs78a02)
EXHIBIT(fcs78a03)

Bill Knick, Pacific Steel and Recycling, testified this appropriation is a statewide issue for Montana. Several of their employees are currently activated in the National Guard. He urged support for the bill.

Ronda Carpenter Wiggers, Great Falls and Helena Area Chambers of Commerce, stressed the bill could bring more jobs into Montana. Montana is under-represented compared to other states. It is important to have the support of lobbyists to help out the congressional delegation.

John Kramer, Great Falls Development Corporation, testified the congressional delegation is in support. There are three efforts of which BRAC is the first. There is also homeland security, and the guard units are on the table. Montana has flying space, and the public sector has not encroached on the bases.

SEN. JOE TROPILA, GREAT FALLS, observed Montana is blessed with good flying weather. This bill is important to the future of the state of Montana.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GREG LIND noted the time line is May 16 through November, but the effective date is July 1. **REP. FRANKLIN** thought changing it was a great suggestion.

SEN. JOHN COBB thought it was too late to amend this bill to get it out. He asked if the purpose of the bill was to hire lobbyists. **REP. FRANKLIN** advised that is the basic focus.

SEN. BOB HAWKS indicated base closures are perceived to be purely political. He inquired how much the mission will dictate these types of decisions. **Colonel Joel Cusker, Montana National Guard,** advised military personnel are not authorized to provide testimony as either a proponent or opponent regarding the BRAC issue.

SEN. DON RYAN referred to the effective date and advised the expenditure of the money does not come until that time. He wondered if there was a way to get the money as a one-time appropriation in this biennium. **REP. FRANKLIN** indicated if there are contractual obligations made it would depend on those contracts. She thought they could work around it. **Taryn Purdy, Legislative Fiscal Division,** advised, if they are to have access to any funds in this year, that the appropriation has to be effective in this year which means the bill has to be effective in this year.

SEN. RICK LAIBLE commented they have already raised $250,000 so that should be enough to last at least until July 1. He did not think they should risk the bill.

SEN. TRUDY SCHMIDT asked if the state of Washington is hiring lobbyists and what other states are doing to protect their facilities. **REP. FRANKLIN** advised Washington state, California, and the Carolinas hire experienced lobbyists. The Department of Commerce and the Governor will decide what would be the most appropriate kind of lobbyist for Montana. It would have to be someone who knows how to negotiate that system. **SEN. SCHMIDT** commented we are competing against these other states and they are spending millions. **Mayor Gray** stated that Washington, South Dakota, and Texas are putting millions of dollars into the same effort. This bill started out as a million dollar request and is at $250,000 currently. He said the $250,000 will help. There is 20 percent to 25 percent excess capacity for military basing around the country, and the general basing is going to be reduced. Expert witnesses are needed to explain the efficiencies that can be found in Montana.

CHAIRMAN MIKE COONEY inquired if they do not pass this bill if it precludes the Governor's office or the Office of Economic Development of doing what they can to help out. **REP. FRANKLIN** said it would not preclude them, but they have no resources. The Governor's budget requested a liaison for Washington D.C., but that is no longer in the budget. They could make phone calls, but she did not think there was any way they could do what this bill is asking for. **CHAIRMAN COONEY** advised the Governor's Office of Economic Development had added money so he thought there was some potential there. His understanding was the concern was not so much saving Malmstrom but trying to attract missions. **REP. FRANKLIN** replied yes, as well as the National Guard missions.

SEN. COREY STAPLETON asked what sort of missions were envisioned. **REP. FRANKLIN** advised they lost the flying mission ten years ago. Malmstrom has been primarily a missile base. There was a mid-air refueling mission for a number of years, and that was lost in the last BRAC commission decision-making round. One of the major ones for the active military base would be a flying mission. If North Dakota or any of the midwestern or western states consolidate Guard installations, Montana would look to bring in Guard installations. **SEN. STAPLETON** referred to nuclear weapons. He asked if it was **REP. FRANKLIN'S** hope that Montana would continue to house the ICBMs, and **REP. FRANKLIN** replied, yes. **SEN. STAPLETON** said he supported the idea of the bill but thought it was drop in the bucket. He inquired about the long-term use of strategic defense. **REP. FRANKLIN** advised that is reason for a lobbyist with a lot of expertise. She did not think there was anyone in the Department of Commerce who understands that issue well. **SEN. SCHMIDT** asked **Mr. Kramer** to comment. **Mr. Kramer** replied to rebuild these missile silos is impossible. The Pentagon already acknowledged to rebuild these environmentally is not feasible.

{Tape: 1; Side: B}

The future is a supersonic jet that could be anywhere in the world in an hour and able to pinpoint and surgically bomb targets. That technology is fifteen to twenty years out, but this would eliminate the need for an offensive missile system. A defensive missile system is needed to take those out. In his discussion with congressional delegations here and in North Dakota and Wyoming is the future of these silos is not what is in them but what might be in them to take out those supersonic jets before they get into our airspace. As the nuclear capacity is downsized, the future is to turn the silos into an anti system. The Pentagon is unofficially telling them the silos are very important to their fifty-year program.

Closing by Sponsor:

REP. FRANKLIN advised Malmstrom gets $280 million a year annually, and $56 million of that is spent in Montana. Missoula gets $11 million, Butte Silverbow gets $18 million, and Gallatin County gets $22 million. She cited the economic impact, and she thought this effort should be made.

HEARING ON HB 482

{Tape: 1; Side: B; Approx. Time Counter: 3.6}

Opening Statement by Sponsor:

REP. MONICA LINDEEN (D), HD 43, Huntley, opened the hearing on **HB 482,** Revise allocation of funds to coal tax shared account. **REP. LINDEEN** advised in the 2002 special session when there was a severe financial crisis. The percentage going to the coal severance tax share account was reduced from 8.36 percent to 7.75 percent. The programs within the account include the Coal Board, State Library, Conservation Districts, and the Growth Through Agriculture Program. This bill asks that the percentage be restored to 8.36 percent which would allocate additional funding to those entities.

Proponents' Testimony:

Jim Smith, Montana Library Association, advised the libraries have been a participant in the shared account for about ten year. The money that flows into the State Library from the shared account goes out to every library in the state, including those in coal country, and is used for a variety of purposes. This is an important bill for the Library Association, and he hoped for favorable consideration.

Sarah Carlson, Montana Association of Conservation Districts, stood in strong support of the bill. The Conservation Districts utilize this money in eight different programs.

Michael Wendland, Hill County Conservation District, advised the districts use this money for conservation projects and urged support for the bill.

Pete Woll, Flathead Conservation District, reiterated that these monies given to the Conservation Districts do a lot of good work.

Gayla Wortman, Cascade County Conservation District, testified she is the coordinator for the Missouri River Conservation

Districts Council, which is a coalition of fifteen conservation districts that lie adjacent to the Missouri River from the headwaters in Gallatin County to the North Dakota border in Richland County. She described her rural western upbringing and schooling. She noted that conservation districts work quietly and in the background. A group of volunteers make sure conservation practices are followed on the ground, natural resources are preserved, a balance is struck between agriculture and urbanization, and the tax base is protected. She urged that the committee concur with the bill.

EXHIBIT(fcs78a04)

Daniel Bawgeman, Flathead Conservation District, urged support for the bill. The money is essential to the Clark Fork Task Force and Future Farmers of America.

Gary Amestoy, Richland Economic Development Corporation, rose in support of the bill. Richland County is able to take advantage of all four of these programs. They especially support the Growth Through Agriculture program and the increased funding of Conservation Districts, the Library, and the Coal Board.

Bob Gilbert, Rosebud County, expressed strong support of HB 482. Rosebud County is coal country. The coal mines and electrical generating plants in that county have sent hundreds of millions of dollars to the state of Montana to be shared amongst all the counties. In the last session Rosebud County asked for $100,000 to help repair Castle Rock Road. The application was approved but never funded. In the meantime the county spent $380,000 of local taxpayer money to repair this road to keep the coal flowing. He noted **Willy Duffield, Montana Association of Oil, Gas, and Coal Counties,** strongly supports the bill.

Stephen Granzow, Lewis and Clark County Conservation District, distributed information to the committee in support of the bill.

EXHIBIT(fcs78a05)

Opponents' Testimony: None.

Informational Testimony:

Ray Beck, Department of Natural Resources, advised they provide legal, administrative, technical, and financial assistance to conservation districts and offered to answer any questions.

Questions from Committee Members and Responses:

SEN. LAIBLE inquired if this was restoring funding that was reduced in the 2002 special session. **CHAIRMAN COONEY** explained these dollars were taken from these funds and put into the general fund. In the last regular session they kept that flow going into the general fund. This bill is to put these dollars back for the purposes originally established. He said part of this had been taken care of in HB 2. **Ms. Purdy** explained there was an amendment on the floor in the Senate to add appropriation authority to these various entities including the libraries, the Coal Board, and Conservation Districts for any extra money that this bill would provide to them from the coal tax shared account. The Legislature appropriates all of this shared account in HB 2.

SEN. COBB asked if they need the bill. **SEN. KEITH BALES** explained the amendment was coordinating language if this bill passes. This is statutorily appropriated, so they need this bill.

Closing by Sponsor:

SEN. LINDEEN said she was unaware of the amendment on the Senate floor. The programs in the shared account are valuable to many people across the state of Montana, and she hoped the committee would find this to be a priority.

HEARING ON HB 614

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 18.3}

REP. CHRISTOPHER HARRIS (D), HD 66, Bozeman, opened the hearing on **HB 614,** County courthouse restoration act. **REP. HARRIS** described this as a modest bill for a large set of important projects. Montana is blessed with about 48 historical county courthouses that were built in the 19th Century, early 20th Century, and the 1930s. The architecture is magnificent. Time is taking its toll on these courthouses. This bill would establish a program whereby the State Historical Preservation Officer within the Montana Historical Society would make services available to the counties and would help the counties with grant applications for both private sector and public sector grants. The Teton County Courthouse has been fully restored, and that was difficult to accomplish. Professional advice and better access to private and public sector grants would have helped. He referred to the restoration of the Capitol. County courthouses are smaller versions and deserve some help. The amount requested was $39,000 a year which would go to the an assessment by an

historical architect and helping with the grant applications. This bill allows for ADA compliance along with historical restoration.

Proponents' Testimony:
Harold Blatty, Montana Association of Counties (MACo), thanked **REP. HARRIS.** The counties felt they were alone in the struggle. The cost of making older courthouses ADA compliant is prohibitive. This modest amount will get the process started and save some significant local tax dollars. He urged favorable support.

Jim Kimbel, American Institute of Architects, testified they would like to save these historic, beautiful buildings and records of our history.

Charles Brooks, Yellowstone County Commissioners, asked for favorable consideration.

Arnie Olsen, Montana Historical Society, read from written testimony and provided information to the committee.

EXHIBIT(fcs78a06)
EXHIBIT(fcs78a07)

Phil Hohenlohe, Montana Advocacy Program, advised they have been studying the issue of courthouse ADA accessibility, and they believe this bill would help the counties to make their courthouses more accessible. Under Title II of the ADA, a county courthouse is required to operate its services so that they are readily accessible to and usable by individuals with disabilities. If they fail to do so the US Supreme Court recently confirmed that they can be sued for damages as well as attorney's fees and injunctive relief. His organization first became interested in the issue of courthouse accessibility with the Teton County case. The Teton County Courthouse recently did some renovations to become ADA accessible. That was a result of a lawsuit, and his agency represented the Plaintiffs in that case. The Teton County Courthouse was completely inaccessible to people with disabilities. As the result of a settlement in that case, the Teton County Courthouse is completely accessible. The Montana Advocacy Program wanted to examine how widespread this problem was and found significant problems in a large number of county courthouses. The counties are aware of inaccessibility problems and want to fix those problems. They do not know where to go to get the money. There are sources of money out there, but the counties need some help finding that money to make their courthouses accessible.

{Tape: 2; Side: A}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE inquired about the long-range impacts in the fiscal note and criteria to be used for prioritizing. **REP. HARRIS** replied there is no priority in the bill itself. He thought it was a question of which counties are most interested in moving on this. It will be on a first come first served basis. There has been communication between **Mr. Olsen's** office and various counties. If this bill passes there will be funds available for the first sixteen and most important. **SEN. LAIBLE** asked if the lead agency will be the Montana Historical Society. **REP. HARRIS** replied the original communication will be by phone. If a county has an interest in securing the services of the Historical Preservation Society and the historical officer, the architects will be sent out for an assessment. In some cases it may be ADA compliance issues, and in some cases it may be the actual renovation. The estimate to repair the Anaconda Courthouse is $700,000. They think there is money that can be leveraged, and that is the purpose of this bill.

SEN. LANE LARSON advised the Rosebud County Courthouse in Forsyth has done a lot of restoration work and put a new elevator in the building. He wondered about the interaction with the Historic Preservation Officer on that project. **Pete Brown, State Architect**, testified he had no contact with that project. **SEN. LARSON** said the restoration began in the mid-1980s. The elevator project was completed last fall. **Mr. Brown** advised if Rosebud County had received state or federal dollars they would have consulted with him. **SEN. LARSON** believed they were in contact with the Historical Society. He was curious where funding to restore courthouses came from before. **Mr. Olsen** said they provide technical assistance on request. If there is state or federal money they are required to be involved because of the State Preservation Act. One of their current board members, Judy Cole, is from Forsyth and is very active in the community with preservation. The Society helps get buildings on the National Register and provides technical advice. They have not provided any funding other than the staff time it takes to do that. There is no current source available to pay for something like this bill. Money would have to be added into HB 2 in order to do this kind of work. Their job is to provide technical assistance if they are asked on occasion. They do the best they can with existing resources. This would accelerate the program rather

than just waiting for an occasional opportunity to provide technical advice.

CHAIRMAN COONEY advised there is no money appropriated. If there is no money appropriated and this bill is passed, he asked if the Historical Society will have to comply with the bill without money. **Mr. Olsen** advised, yes. It would be an unfunded mandate. They need money in order to do this, and it is about $5000 per assessment.

Closing by Sponsor:

REP. HARRIS advised even if only five or six assessments were done a year it would be an important accomplishment. They would be able to come back next session showing it works. He indicated Rosebud County was willing to share their experience with the Historical Society to get this job done.

HEARING ON HB 374

{Tape: 2; Side: A; Approx. Time Counter: 10.9}

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, Bozeman, opened the hearing on **HB 374,** Increase drunk driving penalty when person under 16 was in vehicle. **SEN. HARRIS** asserted that it is bad enough to drive drunk; it is worse to drive drunk and carry children as passengers. The fiscal note indicated that 10 percent of all drunk drivers probably carry children as passengers. The bill created an enhanced penalty and only covers the first three convictions. At no point will anyone convicted under this bill be subject to the Department of Corrections and will essentially be the county's responsibility. The bill will double fines and incarceration time. About 31 other states already have either separate offenses for driving drunk with a child or enhanced penalties. He did not think there would be any fiscal consequence to the state of Montana.

Proponents' Testimony:

Kris Minal representing herself, spoke in support of HB 374. Some of the best testimony she heard on this bill was that every child deserves a designated driver.

Pat Melby, Montana Medical Association, testified their members man the emergency rooms that often see the results of driving under the influence and also the young children that are

sometimes involved in those accidents. They think this is a public health issue and support HB 374. He thanked **REP. HARRIS** for bringing the bill forward.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GREG BARKUS inquired what the bill is really doing and whether judges already have the ability to stiffen the penalties if they so choose. **REP. HARRIS** advised this would create a separate offense of child endangerment if the DUI is accompanied by carrying a passenger in the car. This is not a factor that judges could consider under present law. **SEN. BARKUS** said this would increase the fine to $2000 because the imprisonment is already available. **REP. HARRIS** said that is true. He said it was his firm belief that if this bill was passed by the Legislature the judges would pay attention to it. If there is a prosecution for child endangerment DUI the judges will increase the penalties. That has been the experience in 31 other states.

Closing by Sponsor:

REP. HARRIS reiterated there is no fiscal impact on the general fund, because this only applies to the first, second, and third offense. It enhances the penalty for those offenses and will send a clear signal. It is meant to be a deterrent.

HEARING ON HB 740

{Tape: 2; Side: A; Approx. Time Counter: 20.4}

Opening Statement by Sponsor:

REP. RALPH HEINERT (R), HD 1, Libby, opened the hearing on **HB 740,** Appropriate money for asbestos-disease related programs. **REP. HEINERT** advised the bill provides a grant of $175,000 to allow the Lincoln County Health Board to continue to assist individuals with health issues that are primarily asbestos-related respiratory problems. The program is called the Asbestos-Related Disease Network. The program started with a federal grant through the Rural Health Outreach program to the health department and was initiated on May 1, 2003. There was enough funding provided to get this program through this coming year. They are likely to run out of funds before the next Legislature meets. The program assists those in their homes or

in nursing homes with asbestos-related respiratory problems and helps determine whether people qualify for other assistance programs such as Social Security Disability. They provide outreach service to various individuals to help them cope mentally with the problems they are experiencing from their exposure to asbestos. The program also helps provide transportation for those who need to go outside their homes to receive medical care. There are three employees and a staff of volunteers. There have been 1200 people diagnosed with asbestos-related breathing problems associated with either direct exposures or indirect exposures. It is anticipated that 300-500 people a year may also be diagnosed because asbestosis has a twenty to forty-year latency period. They want to keep the program going long enough until the federal distribution of funds becomes available. He made note of requested amendments to the bill.

Proponents' Testimony:

Eric Stern, Governor's Office, advised they support this appropriation. The program is about to lose their federal grant, and this would enable them to continue the services they are providing and allow them to write a new grant.

Michelle Reinhardt, Northern Plains Resource Council, testified her grandfather died of asbestos-related disease. For several years of his life he was on oxygen because of the asbestos. The clinic assisted him with his disease. There are many more who have it but do not know it yet such as those who played in the ballfields or ran on the track. She urged support for the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN COONEY asked why this would take $175,000 out of the general fund and moving it into a state special revenue account. **REP. HEINERT** said it was suggested as a method because, when the funds run out with the Lincoln County Health Board, it provides a mechanism for them to be able to apply for it through the Department of Health and Human Services.

Closing by Sponsor:

REP. HEINERT stated along with the physical health assistance this program provides, the ARDNET program also is instrumental in

trying to coordinate the efforts of the various local health care units. He hoped the committee would concur.

Recess 9:36 a.m.
Reconvene 9:53 a.m.

{Tape: 2; Side: B}

HEARING ON HB 695

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, Arlee, opened the hearing on **HB 695,** Fund representation for indigent victims of domestic violence. The bill transfers $150,000 from the general fund for the biennium to the Civil Legal Assistance for Indigent Victims of Domestic Violence account. That will be used for buying legal representation for indigent victims in civil matters and domestic violence cases.

Proponents' Testimony:

Klaus Sitte, Montana Legal Services, testified they often receive funds that are given to the civil legal assistance account with the Supreme Court. Montana Legal Services has represented low income clients in cases for over forty years and this particular bill takes care of a gap created by the end of funding for the Violence Against Women Act. He distributed information to the committee.

EXHIBIT(fcs78a08)

Seven years ago Montana Legal Services was the recipient of a federal grant to provide civil legal assistance to victims of domestic violence. The funding formula is being changed, and that grant will not be renewed. This leaves victims of domestic violence in 42 of 56 counties without access to civil legal assistance.

Kate Chulewa, Montana Coalition Against Domestic and Sexual Violence, advised because many domestic violence offenders use finances to keep control over their victims, often domestic violence victims lack the resources to hire an attorney. Without representation victims are more likely to be unable to get restraining orders or get custody of their children. They found out about the change in funding pattern in November, and it represented the loss of $400,000 for the biennium. She thought the change in funding pattern reflected a lack of understanding

of the geography of Montana. Both Rep. Denny Rehburg's and Sen. Max Baucus' offices contacted the Office on Violence Against Women in early December. They are trying to figure out how to get through the next biennium and to find other ways to fund this critical service.

Neil Haight, former Director of Montana Legal Services, testified this is a much-needed program. It is well-run, and he asked for support for the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SCHMIDT referred to the loss of the $400,000 and **SEN. JIM SHOCKLEY'S** bill for $160,000. She asked if there was another bill passed regarding this or if **SEN. SHOCKLEY'S** bill was the only one. **Ms. Cholewa** advised **SEN. SHOCKLEY'S** bill is the only one addressing funding for attorneys for indigent victims of domestic violence. It is expected to raise about $160,000.

SEN. KEN HANSEN asked about the number of victims. **Mr. Sitte** responded in the report from the Montana Domestic and Sexual Violence Services from July 2003 to July 0f 2004 there were 9300 direct domestic violence victims and 2200 secondary victims. That can be broken down into those that were victims of Orders of Violation, Orders of Protection, Kidnaping, Stalking, etc. **SEN. HANSEN** inquired whether the percentage has risen. **Mr. Sitte** advised the only figures they have is 2003-2004.

SEN. DAN WEINBERG inquired about the percentage of occurrences of domestic violence among married people versus unmarried people. He indicated this was an issue that came up in the committee recently. **Ms. Cholewa** revealed the US Department of Justice released a report in the last year that the group that had the highest rate of reported domestic violence was separated women. The second highest reporting category was divorced women who were reporting domestic violence when they were married. The next group was single women, and the last group was married women. The Department of Justice report said to be careful how to interpret the data. They did not want to infer that marriage is safe because of those two categories at the top. They also did not want people who were in violent relationships who were not married to think that marrying would be an escape from violence. The cautioned against using the information in the report for that purpose. Unfortunately, according to **Ms. Cholewa,** there was a foundation who took that information and used it exactly for

those purposes. Part of their agenda was the marriage initiative promotion. That data helped them move that agenda, even though it was a very dangerous way to use the data in terms of domestic violence.

SEN. BALES said the previous day they passed HB 476 which had to do with domestic violence. He inquired if there is an overlapping or if they are two separate functions. **Ms. Cholewa** explained HB 476 increased the fee for marriage licenses in order to pay for grants to create an infrastructure for holding misdemeanor domestic violence offenders accountable for their sentences. The bill funds probation officers for misdemeanor domestic violence offenders. When funding was lost for attorneys for domestic violence victims, they started using divorce filing fees, which created a small amount of money to pay for that. Now that the federal funding has been lost that helped pay for the attorneys, **SEN. SHOCKEY'S** bill would add more money to the divorce filing fee going into that pot. This still leaves the program $240,000 short, but this $150,000 general fund helps compensate for the $400,000 loss. It is a totally different purpose than HB 476, and is the same purpose as **SEN. SHOCKLEY'S** bill, SB 406.

CHAIRMAN COONEY referred to the technical note that said the bill is not specific as to the fund this general fund money would be transferred to. He assumed that Montana Legal Services is the only one who could provide these types of services. **REP. JAYNE** advised traditionally anybody can apply for these funds. **Montana Legal Services** has usually been the ones that applied and usually got the grant as the recipient of the contract.

SEN. SCHMIDT inquired who can apply for these funds. **REP. JAYNE** advised any organization. The account that is now available is under MCA 32-714. The money would go into that account. Montana Legal Services has been a recipient most recently, and almost always, for those funds. **SEN. SCHMIDT** asked for an example of who else could be applying for the funds other than Montana Legal Services. **REP. JAYNE** did not know of any other organization that has applied. **Mr. Sitte** said there are other organizations that have applied and have received small pots of money from the Supreme Court Administrator's office. The Supreme Court has set the standard as providing the greatest good to the greatest number. **SEN. SCHMIDT** said that would be Montana Legal Services. **Mr. Sitte** advised some clinics have applied and the Dawson County Civil Legal Services program and one in Sanders County have applied in the past as well.

SEN. LAIBLE inquired how many indigent clients will receive these services. **REP. JAYNE** replied the information she had was the

information given earlier. They do not know how much of a caseload will come forward in the next biennium. There has been up to 14,500 people who have used the services. From July 2003 to June 2004, there were 11,758 people who were the primary victims and 2700 secondary victims. **SEN. LAIBLE** wondered how many have been provided services of an attorney. **Mr. Sitte** revealed that last year Montana Legal Services closed about 4800 cases statewide. At least 53 percent of those were family law related. They also represent victims of domestic violence with non-family law problems such as landlord/tenant housing, Medicaid/Medicare, etc. **SEN. LAIBLE** said the funding in this bill is only for domestic violence. **Mr. Sitte** clarified it is to help those victims with civil legal problems with any kind of problem they have that needs a lawyer.

Closing by Sponsor:

REP. JAYNE advised the Public Defender bill will probably pass this legislative session. That bill provides legal assistance for the perpetrators. HB 695 will create a legal playing field for the victims. The bill provides a small amount of assistance for those individuals that cannot afford an attorney. The individual recipients who are eligible are those that are up to 125 percent of the federal poverty level. These may be individuals who may be well to do, but because the perpetrator has taken away the assets, there might be a mother and children left without resources. This bill will cover everyone across the board.

HEARING ON HB 790

{Tape: 2; Side: B; Approx. Time Counter: 24.6}

Opening Statement by Sponsor:

REP. JIM PETERSON (R), HD 30, Buffalo, opened the hearing on **HB 790,** Interim study on split estates and coal bed methane reclamation and bonding. The bill originated in the House primarily in response to several bills that were heard in the Senate and in the House with regard to coal bed methane. Most of those bills were not successful, and as a result **SEN. GLEN ROUSH** and he discussed the possibility of an interim study overseen by the Environmental Quality Council (EQC). The study will address the split estates of mineral owners and surface owners related to oil and gas and coal bed methane development in Montana and coal bed methane reclamation and bonding. Six members of the interim study will come from EQC and six members would not necessarily have to. There are so many different interests, particularly on

the split estate issue, the feeling was that people who are dealing with this every day should be part of the study. The appointments would have to be agreed on and approved by the Chair and Vice Chair of EQC, and there has been great effort to insure this would be a balanced and fair interim study committee. The original appropriation was $50,000, and that has been cut to $25,000. The $25,000 would come from the allocation from the oil and gas production taxes.

{Tape: 3; Side: A}

Proponents' Testimony:

Tom Richmond, Board of Oil and Gas Conservation, stated the bill proposes $25,000 for the study. The Board has regulatory authority for coal bed methane. They share some of that authority with DEQ, but would be the primary permitting agency. Reclamation is within the scope of their program, and the construction, citing and operation of coal bed methane development. They do not have a lot of authority on split estate issues. What is discussed in the study are items that are not codified in the statute under which the Board has rulemaking authority. They are comfortable funding the portion of the study dealing with coal bed methane.

Eric Stern, Governor's Office, advised they support this study. The EQC has a good track record of studying complex issues like this, and next session may be prepared to take strong, meaningful action on this issue when there is an appropriate study on which to base it.

Gale Abercrombie, Montana Petroleum Association, testified they were involved in the legislation that led up to this particular study. Wyoming did a study on the split estates issue and passed a bill in their last session.

Michelle Reinhardt, Northern Plains Resource Council, testified that coal bed methane development and making sure it is done right has been one of their top priorities for the past several years. They have a lot of stakeholders who stand to be directly impacted by development in the Powder River Basin and along the Tongue River. The EQC will conduct hearings around the state and in impacted areas. This was the compromise that was made when bills were killed, including **SEN. MIKE WHEAT'S** bill, SB 258 on surface damage and **SEN. LARSON'S** bill on reclamation. The money to fund the study comes from oil and gas production taxes before it goes to the general fund.

CHAIRMAN COONEY asked about a new fiscal note, and **Ms. Reinhardt** provided copies to the committee.

EXHIBIT(fcs78a09)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. WEINBERG inquired if the outcome of the study could in any way be influenced or skewed by the fact that the Board is putting up half the money for the study. **REP. PETERSON** said he did not believe so. The interim committee will be appointed by the Chairman and the Vice-Chairman of EQC. His experience with the EQC was the EQC goes out of its way to be fair and balanced. The Board of Oil and Gas will have no input as to who serves on the committee. Everyone will be allowed to make suggestions, but the decision will be done by the Chairman and Vice Chairman, and EQC will have to approve the makeup of this interim committee, half of which will come from EQC and the other half from outside the EQC. **SEN. WEINBERG** asked why the Board of Oil and Gas was willing to put up that money for this study. **REP. PETERSON** thought it was because they agree this is an issue that has to be addressed and is not going away. Hopefully there will be some recommendations that everybody can agree to as it relates to reclamation. Last session EQC spent its entire time on water adjudication, and as a result of that study the water adjudication funding bill came before the legislature. The EQC has a good track record of addressing tough issues during the interim and coming back with good recommendations. The original fiscal note was for $50,000 and there was concern with getting that money. The new fiscal note says $25,000 with the idea that, if necessary, the Board of Oil and Gas would be able to fund part of the reclamation portion of the study. He did not see bias; everyone wants to get this resolved rather than fighting it out in the Legislature. **SEN. WEINBERG** inquired if the study would include all minerals, not just oil and gas. **REP. PETERSON** advised the study is directed specifically to the split estates related to oil and gas and coal bed methane. He thought this could be a good roadmap for other mineral owners. **SEN. WEINBERG** said the reason he asked was because there was legislation earlier in the session addressing severed mineral rights, and many of the people who are supporting this study were opponents to that legislation. They filled the room, were out into the hallway, and down the stairs there were so many of them. He wondered if the topic was narrowed, or if they have changed their tune. **REP. PETERSON** reiterated the study will be focused on oil

and gas and coal bed methane. He thought if the split estates can be addressed in that area, it will serve as a valuable roadmap for other areas.

SEN. HAWKS described coal bed methane as a hot button issue because the impacts on surface owners with coal bed methane is much different than oil and gas. He was not sure how much they have in common. He inquired how coal bed methane will have the representation it needs at the table to discuss that issue, which is really driving all of this. **REP. PETERSON** said that is precisely why this interim committee was expanded beyond the membership of EQC. There was great interest in having other interests other than just those appointed members of EQC participate in the study, even thought this will be under the direction of EQC. Coal bed methane would be represented by the addition of six members, and EQC will have the charge of making sure that coal bed methane is represented in the split estates study.

SEN. LAIBLE inquired if the interim study will address the registration or documentation of the split estates. **REP. PETERSON** thought it was possible that kind of recommendation could come out of this study. He did not think the study would actually establish that process.

SEN. LIND inquired about the role for the six at large members with no voting privileges since these are going to be open meetings with anyone free to participate. **REP. PETERSON** replied all members of the subcommittee will have voting privileges at the subcommittee level. They will not have voting privileges on the EQC itself. They will provide valuable input and have equal influence on the outcome within the subcommittee. Once that subcommittee makes its recommendation to EQC, the EQC will have to make the final decision and present the final report to the Legislature in September of 2006. The subcommittee will go around the state to meet and take public input.

SEN. LARSON asked about **REP. PETERSON'S** reluctance as far as split estates was involved. This basically involves oil and gas companies and coal bed methane companies that will be involved in the split estates. **Mr. Richmond** acknowledged they were related issues, but for coal bed methane operations, they have rule-making authority within Chapter 11. Anything this study might recommend for regulatory approaches they could do without legislation. Split estates, surface damages, and related issues are codified in Chapter 10. They have no rule-making authority over that chapter. The Legislature will start over with that chapter if it is going to make recommendations for legislation. It will not be a regulatory approach to solving those issues. He

saw the issues as related but not following the same track. **SEN. LARSON** asked how the Board of Oil and Gas gets its funding and how it is split up. **Mr. Richmond** advised their main source of funding is a tax on the value of production. It is rate set by the Board that cannot exceed three-tenths of one percent. That goes into a state special revenue account to cover the operations of the Board of Oil and Gas. They also receive a small amount of federal money and some miscellaneous income. **SEN. LARSON** asked if they have any funding that is directed toward studies. **Mr. Richmond** said he distinguishes between the money set aside for science projects and public outreach and education. He did not think this subcommittee of EQC will go out monitoring wells, taking samples, or mapping. He thought the study was more about public outreach and education than scientific. They have studied a lot of the issues of coal bed methane. There is an ongoing need to bring people along as part of the decision-making process. The policy decisions will be made on science. **SEN. LARSON** wondered what their budget was for public outreach and education. **Mr. Richmond** replied they requested a biennial appropriation of $600,000 for studies and a biennial appropriation of $125,000 for public outreach and education. **SEN. LARSON** inquired if they pass this bill without any funding if the Board could absorb the entire $50,000 in that budget. **Mr. Richmond** advised the public outreach and education portion they asked for was to revitalize the teacher education workshops that had gone on in the state for a long time and were discontinued back in the early 1990s. They might be able to take $50,000 out of that, but it would delay what they intended to do with the project. He felt comfortable offering it up as long as it meets the intent of the appropriation. He told the subcommittee what they would do with the funding, and this was not it. They can afford the $25,000, but he was not as comfortable with the $50,000. **SEN. LARSON** commented there is a lot of education that needs to be done on coal bed methane, and he thought that would be appropriate.

SEN. HANSEN inquired about a typographical error in the new fiscal note. **REP. PETERSON** explained the figure should be $25,000, not $35,000. **SEN. HANSEN** asked if the drop to $25,000 was because they could narrow the study down. **REP. PETERSON** said they hope to get $25,000 from the general fund and $25,000 from the Board of Oil and Gas.

SEN. SCHMIDT referred to page 1, line 19 and inquired about surface ownership related to coal bed methane. **REP. PETERSON** said those are somewhat general statements to give the subcommittee guidance. There is nothing that would restrict the subcommittee from dealing specifically with the issue raised by

SEN. SCHMIDT. The study is on split estates and the coal bed methane reclamation and bonding study. The intention is to look at split estates both from the oil and gas perspective as well as the coal bed methane perspective. Some of the same split estate issues exist in northern Montana. This is not just a southeastern Montana issue. **SEN. SCHMIDT** inquired about the technical note. **REP. PETERSON** responded it is clear where the money is coming from, but he would not object if **SEN. SCHMIDT** felt that needed to be clarified. He preferred to get the bill out to address this contentious issue that is of great interest to many. The oil and gas money is being earmarked for the study before it gets to the general fund.

SEN. BALES clarified that methane is a natural gas and is gas production under the definition of oil and gas. He wondered if something was needed in HB 2 that transfers money to the EQC. **Ms. Purdy** said it sounded from the testimony that the Board of Oil and Gas would directly extend a portion of this and then $25,000 would be appropriated to the EQC. **Mr. Richmond** explained that part of the reason for his coming to the hearing was to make sure he established some legislative intent so if he authorized the expenditure of $25,000 for this study some auditor will not say that is not what he told the subcommittee. If they spend the $25,000 on this study, it will come from their state special revenue account and is already appropriated to the Board. He did not think there needed to be language in the bill that appropriates that $25,000. It just needs to be appropriated from the general fund. **Ms. Purdy** said as long as the Board of Oil and Gas is the entity that is going to spend the $25,000 they are providing, they do not need anything further to happen either in this bill or in HB 2 to do that. If the Board of Oil and Gas were to provide any of the funding for the operation of the EQC, then some transfer would need to be made through this bill to allow the EQC to actually get the money.

{Tape: 3; Side: B}

SEN. BALES asked how that will work logistically. **Ms. Purdy** replied if the Board of Oil and Gas is going to conduct a portion of this study and consequently is not going to be covering any of the cost of EQC directly, then this would work the way it is. If the Board of Oil and Gas were to provide any of the funds for the operation of the committee, then this would not work the way it is and funds would have to be transferred from the Board of Oil and Gas for expenditure by the EQC. **SEN. BALES** said the bill would need an amendment that would transfer it from the Board of Oil and Gas to EQC for the purpose of this study. **Mr. Richmond** stated he had envisioned contracting with EQC for the study. Between governmental agencies that is a short, letter form

contract. It would be much like administrative rule creation. They would give the money to EQC to perform the studies and then give the Board the product. He admitted this has been done before.

CHAIRMAN COONEY asked if the study would be a study of the Board's and not of the EQC. **Mr. Richmond** agreed that was technically true. The funding and the result are not the same. The Board had the Bureau of Mines perform some data work over the years with a personal services agreement with one of the researchers. He did not want to make this process more complicated than it needs to be. He thought taking this direction would avoid sending this bill back to the Senate again. It is already appropriated in their budget; they just need to find a mechanism to get the money to the EQC to do the study.

REP. PETERSON suggested a contract between the EQC and the Board of Oil and Gas would be a contract for funding of this particular study. It would not be a Board of Oil and Gas study; it would be this particular study that is being authorized by this Legislature. The other alternative would be to amend the bill to earmark and divert $25,000 of oil and gas production taxes. That would affect the appropriation for the Board, and he did not know what the unintended consequences might be. Originally, there was a $50,000 general fund appropriation, but it became a money issue. That is when the Oil and Gas Board stepped up to the plate.

Ms. Purdy observed there is one potential way of solving this administratively with an agency transfer. Statute allows agencies to transfer money from one agency to another as long as the original intent of the appropriation is maintained. It would probably be best that the Legislature specifically maintained in Free Conference Committee on HB 2 that part of that $125,000 was to be used for a study of the split estates. This committee would not have to do anything further.

Closing by Sponsor:

REP. PETERSON encouraged the committee to take action on the bill. It has some amendments, and they are subject to some deadlines. He thought there was across-the-board, bipartisan interest in going forward with this.

Recess 11:02 a.m.
Reconvene 4:00 p.m.

HEARING ON HB 761

{Tape: 3; Side: B; Approx. Time Counter: 9.2}

Opening Statement by Sponsor:

REP. ART NOONAN (D), HD 73, Butte, opened the hearing on **HB 761,** Life insurance premium reimbursement for members of national guard/reserve. He explained the word "handicapped" came from the First World War. When the veterans were coming back from the First World War the government issued caps to those veterans that were hurt and also to the families of those veterans so it would be easier for them to beg. Veterans now get life insurance policy of $13,000 from the federal government. Veterans are offered life insurance policies and are encouraged to take those life insurance policies. They also have to pay a certain percentage of that themselves. Many choose not to have that life insurance coverage. This legislation establishes a fund that if they choose life insurance coverage, their piece of the premium will be covered for them. The bill would lapse if the insurance started to be covered by the federal government. This bill would cover Montana national guard/reserve members in the interim while this is being sorted out at the federal level. It provides $250,000 worth of coverage for them.

Proponents' Testimony:

Keith Kelly, Montana Department of Labor and Industry, testified in support of the bill on behalf of Governor Brian Schweitzer saying this is least we can do for the people who put themselves in harms way.

Colonel Joel Cusker, Department of Military Affairs, read from written testimony on behalf of Major General Randy Mosley.

EXHIBIT(fcs78a10)

Colonel Jim Jacobson, US Army Retired, Legislative Chairman of the American Legion, testified the American Legion in Montana consists of about 125,000 citizens and is in total support of the bill.

Dan Antonietti, Veterans of Foreign Wars, supported the bill and thanked the sponsor.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BARKUS asked why there was no fiscal note. **Ms. Purdy** advised in a bill like this where there is a calculation made and an assumption made about the number of folks eligible, he would expect a fiscal note, but there does not have to be a fiscal note if there is an appropriation.

Closing by Sponsor:

REP. NOONAN explained they used the maximum premium of $16.25 for the calculation. The appropriation was for 100 percent usage of the program which may or may not happen. It is highly likely that the entire $650,000 will not be spent over the two years. That would be the maximum amount. His concern was for the treatment of Montana veterans. He favored putting this into law and keeping it there.

HEARING ON HB 742

Opening Statement by Sponsor:

REP. ROSALIE (ROSIE) BUZZAS (D), HD 93, Missoula, opened the hearing on **HB 742,** Create registry for declarations concerning life-sustaining treatment. The bill provides for an electronic, statewide repository for advanced directives such as living wills and power of attorney for health care. The website would be set up through the Attorney Generals office. It would be a secured database designed to provide authorized health care providers immediate access to the registry at all times. There would be no cost to an individual to register and/or search the documents. It helps individuals make their health care wishes known in accordance with Montana's Right of the Terminally Ill Act and the federal Patient Self-Determination Act. It alleviates the burden on families during times when loved ones are too ill to communicate. It helps health care providers give appropriate care when patients cannot communicate. She pointed out that anytime a patient can communicate, a living will or end of life directive does not kick in. Hospital costs for patients with advanced directives who died in the hospital were 38 percent less than those without advanced directives. End of life care consumes about 12 percent of all health care expenditures and 27 percent of Medicare expenditures. The bill has an appropriation of $100,000 of which $75,000 would be used in the first year to set up the program. It would cover the cost of the system, training for health care professionals and hospitals, and outreach and public education. In the second year, $25,000 would be used for licensing and maintenance of the system.

Proponents' Testimony:

Casey Blumenthal, Montana Hospital Association, testified this is a huge issue currently. She read from written testimony.

EXHIBIT(fcs78a11)

{Tape: 4; Side: A}

Lily Tuholske, Life's End Institute, provided copies of the testimony of **Jan Jahner, St. Peter's Hospital.**

EXHIBIT(fcs78a12)

The Life's End Institute conducts research and studies end of life issues like family care-giving, dying, death, and bereavement. They construct programs as national demonstration projects based on what the research finds. The conversations that people are likely to have when they complete their advanced directive are instrumental in improving the quality of life at a time of life when everything is difficult. They also found that advanced directives cannot be found when they are needed. That is why this bill is so important. There is no existing system for tracking advanced directives. She asked for support for the bill.

Eric Stern, Office of the Governor, stated support for the bill and stressed there is no current system for sharing information among hospitals and doctors. Other states are doing this and others are thinking about it.

Susan Hancock, Choices Bank Program, read from written testimony, and provided written testimony of **Jeanne Weber, Missoula.**

EXHIBIT(fcs78a13)
EXHIBIT(fcs78a14)

Pat Melby, Montana Medical Association, advised there was an end of life issues forum held the previous week. When it was announced the Senate had passed HB 742 on second reading people applauded. He felt that was an indication of the importance of the issue. He pointed out there is a body of law that exists in the statutes regarding the creation of declarations, the standards to be met in order to be valid, how to revoke them, etc., in Title 50, Chapter 9. This bill does not change that body of law. The bill allows for a declaration created under that body of law to be registered with this registry so it can easily be found should health care providers need to know what someone's wishes are. He thought this was a great companion to

SEN. SCHMIDT'S bill, SB 1, which provides for a designation on drivers licenses. He strongly urged concurrence with the bill.

Tom Ebzerry, St. Vincent's Health Care, agreed with previous testimony. He emphasized the cost to hospitals without advanced directives. He pointed out this is a voluntary system and failing to file with the Attorney General does not affect the validity of a declaration or its revocation. A health care provider is not required to access the registry.

Pam Bucy, Assistant Attorney General, testified on behalf of Attorney General Mike McGrath. She noted it is critical that end of life decisions be documented. This is a national movement of attorney's general. The office of the Attorney General will provide some end-of-life information on their website regardless of this bill. The $100,000 appropriation was based on discussion with the Choices Bank.

Robert Speirer, AARP Montana, read from written testimony in support of the bill.

EXHIBIT(fcs78a15)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. COBB recommended double checking the appropriation. **REP. BUZZAS** indicated if they do it for less, it just means there would be less money for outreach and training. This is not an expensive program, and they will do it with as much money as they can find.

SEN. HAWKS assumed this is not in HB 2. **REP. BUZZAS** confirmed this is not in HB 2. **SEN. HAWKS** wondered about the information on drivers licenses and the referencing of the location of this information. **REP. BUZZAS** agreed, but was not sure how that could be done. The great part about having it on the drivers license is that it alerts the doctors right away at the hospital. Once information is submitted into the directory, an individual would get a wallet card with a specific access code.

SEN. SCHMIDT inquired about the cost for setting up the computer program. **REP. BUZZAS** indicated the actual cost of the system is about $25,000. **SEN. SCHMIDT** said the rest would be for publicity and promotion. **REP. BUZZAS** thought some money was needed for that. She asked that they not cut the appropriation too far

back. It was a best guess based on the Missoula demonstration project.

SEN. WEINBERG thought the winners with this were families and insurance companies. He wondered about this being funded by insurance companies. **REP. BUZZAS** thought $100,000 was not a huge cost to get this going statewide. She commented on the huge impact on families.

SEN. CAROL WILLIAMS noted in the debate on the Senate floor there was a concern about liability for physicians. **Mr. Melby** referred to page 2, lines 11 and 12. Health Care Providers are not required to access the registry in order to determine if a qualified patient has filed a declaration with the Attorney General. There is no duty created for a health care provider to access the registry. Without a duty there cannot be liability for failure to access.

SEN. BALES inquired about someone with a revocation that was not filed. **Mr. Melby** replied if a person files the declaration with the Attorney General's office and then later revokes that declaration but fails to follow up and file that, there is going to be a declaration on the registry. It is incumbent on that individual to make sure they follow up and file the revocation as well. The way the bill is written, the revocation has to be produced either by the family or health care provider. There is the potential where somebody might have revoked the declaration and not told anybody about it or no one knows to look for the revocation and that health care providers may act on a declaration.

SEN. BARKUS inquired about liability from the state's point of view if a physician or a medical facility acted upon information in the registry which had been revoked.

{Tape: 4; Side: B}

Ms. Bucy responded those issues will come up with or without this registry. This provides one central database from which anyone can look, especially medical personnel. She did not see more liability and probably less for the medical community. **SEN. BARKUS** asked if there is any talk of a national registry. **Ms. Bucy** advised this is a big topic of discussion. The important thing about these databases is access. The concern to have a national database is not that important as long as no matter where you are they can access your state database. She thought it was possible that at some point all states would unite with one database.

CHAIRMAN COONEY thought there was a network of people who could help promote this that could bring the cost down. **REP. BUZZAS** said that is the reason they are able to do this for a small amount of money. The bill also allows for an account to receive grants and other contributions.

Closing by Sponsor:

REP. BUZZAS acknowledged there were legitimate concerns. This bill does not either prevent those or create them. There will be times when family members will contest a living will with or without this bill. This bill will provide an important service to many citizens of Montana. She pointed out the bill will allow health care providers to access information immediately from anywhere in the country. This service can be provided at minimal cost. The system is not interactive, and forms are downloadable. Under current state law any end of life directory must be witnessed by two people. This does not change existing law. There have been no opponents to the bill, and there has been strong support.

HEARING ON HB 414

{Tape: 4; Side: B; Approx. Time Counter: 7.2}

Opening Statement by Sponsor:

REP. DEE BROWN (R), HD 3, Hungry Horse, opened the hearing on **HB 414,** Statutorily appropriate unexpended juvenile delinquency funds to Supreme Court. The bill came from a finding in an audit. The Juvenile Delinquency Intervention Program (JDIP) is a general fund program that provides an alternative method of funding juvenile placements. Historically, District Court expenses, including these youth court expenses, were administered and accounted for at the county level and any surplus went through the Department of Corrections. This bill implements a provision for the FDIP statutes at the state level which were implemented by the local governments to go through the Department of Justice.

Proponents' Testimony:

Beth McLaughlin, Supreme Court Administrator's office, rose in support of this bill. This is a result of a finding in their most recent audit. The finding comes because of district court assumption. In 2002 when the state assumed control of the district courts and the youth courts the method in which the JDIP funds were transferred to the youth courts had to change. Prior

to state assumption any money that the youth courts had remaining for prevention and intervention programs went into the county, and the county provided the check-writing mechanism for funding the programs in youth courts. The auditors determined that those expenses, because of state assumption, had to be maintained on a state account. The Department of Corrections had to have a way to transfer the money to the Judiciary so the Judiciary could write the checks on behalf of the Youth Court. They worked with the Governor's Office, the Legislative Auditor, and the Department of Corrections to find a way to do this. This piece of legislation is that mechanism. At the end of the year if there are monies remaining in JDIP that are available for prevention and intervention programs, those programs would be approved by the Department of Corrections. The Department of Corrections would put that money in the statutory account, and the Judicial Branch would then write the checks on behalf of the Youth Court to fund those programs. These programs are key prevention programs in communities across the state. There is no fiscal impact.

Karen Duncan, Department of Corrections Youth Services Division, advised the Department supports this legislation.

John Northey, Legislative Audit Division, advised the bill has a retroactive applicability date because this system is already in process. It had to be to get these monies through since state assumption. This is a cleanup bill and does not change the source, the amount, or the use of the funds.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. BROWN closed on the bill.

EXECUTIVE ACTION ON HB 414

{Tape: 4; Side: B; Approx. Time Counter: 12.9}

Motion/Vote: SEN. BARKUS moved that HB 414 BE CONCURRED IN. Motion carried 14-0 by voice vote.

SEN. ESP would carry the bill on the floor of the Senate.

EXECUTIVE ACTION ON HB 374

{Tape: 4; Side: B; Approx. Time Counter: 14.6}

Motion/Vote: SEN. GALLUS moved that HB 374 BE CONCURRED IN. Motion carried 12-2 by voice vote with SEN. BALES and SEN. COBB voting no.

EXECUTIVE ACTION ON HB 249

{Tape: 4; Side: B; Approx. Time Counter: 16.1}

Motion: SEN. GALLUS moved that HB 249 BE CONCURRED IN.

Discussion:

SEN. LAIBLE said this diverts money that would normally go into the permanent coal tax trust fund, and he could not support the bill.

SEN. BALES said if they do this, they will no longer be increasing the coal trust fund itself. All of the money will be going into segregated accounts that are strictly earmarked. He thought they need to leave some of the money going into the coal trust fund.

SEN. BARKUS inquired how they could do this without a super majority vote. **Ms. Purdy** indicated they posed that question to **Greg Petesch, Legislative Counsel,** who said it was unclear whether or not a three-quarter vote was necessary. Because he found it unclear and it was not in bill, and it was not determined to be absolutely necessary.

SEN. BALES asked if anyone would be free to file suit if this passes. **Ms. Purdy** said that is the ramification under these circumstances. She offered to see if this is still the position of **Mr. Petesch.**

SEN. GALLUS withdrew his motion for additional research.

EXECUTIVE ACTION ON HB 327

{Tape: 4; Side: B; Approx. Time Counter: 21.3}

Motion/Vote: SEN. ESP moved that HB 327 BE CONCURRED IN. Motion carried 14-0 by voice vote.

SEN. JOE TROPILA will carry the bill.

EXECUTIVE ACTION ON HB 181

{Tape: 4; Side: B; Approx. Time Counter: 22.9}

Motion: SEN. ESP moved that HB 181 BE CONCURRED IN.

Motion: SEN. ESP moved that HB018101.AGP BE CONCURRED IN.

EXHIBIT(fcs78a16)

Discussion:

SEN. ESP explained if they find the money before they leave and put it in HB 2 that the section of the bill to add to employee contributions will go away. If there is a larger ending fund balance than anticipated, that will be used to buy down the increase also. In response to a question by **CHAIRMAN COONEY, SEN. ESP** further clarified the increase in the percentage will go away if they either put the money in HB 2 or if the ending fund balance is greater than anticipated by $11 million. Then $10.164 million would be appropriated to the Teachers Retirement System (TRS). **CHAIRMAN COONEY** asked if **SEN. ESP** was saying if the ending fund balance was in excess of $11 million. **SEN. ESP** said if the ending fund balance was $11 million greater than they thought it would be in the budget as it sits now, then this would take effect.

SEN. WEINBERG said he was unclear about the source for the figures for the ending fund balance. **SEN. ESP** suggested that the budget director reply. **David Ewer, Budget Director,** said the budget had $80 million ending fund balance. Until the process is over and the Legislature adjourns, the ending fund balance is based on assumptions about what passes or does not pass. The fund balance is a moving target depending on the estimates. He thought it might make sense to pick an absolute number.

{Tape: 5; Side: A}

Mr. Ewer explained the $100 million in fund balance is not the same thing as a budget number. **SEN. ESP** asked if that was the beginning balance projected in the budget when it was presented as the ending fund balance in 2005. **Mr. Ewer** said they try to start with reality and then make a budget from it. Their best estimate was $105 million, they looked at what the Martz administration had, ongoing revenues each year, and one time only

money, and had a one-time-only ending fund balance of about $80 million.

Ms. Purdy referred to the legislative budget analysis of the Schweitzer budget that they published at the beginning of the session. Then the estimated ending fund balance for 2005 was $158.4 million. She called **Terry Johnson, Legislative Fiscal Division,** who said currently there was an estimated ending fund balance for 2005 of a little over $161 million. **SEN. ESP** said his motion would be if the ending fund balance exceeds $158.4 million by at least $11 million.

SEN. BALES said the question is when is the budget for the 2005 biennium figured. He thought the budget for the 2005 biennium is figured when the Legislature adopts the budget at the end of the legislative session plus any supplemental appropriations. The way the amendment read to him was the budget for the 2005 biennium and then however much it exceeds that budget. **Ms. Purdy** said **SEN. BALES** was raising a very good point. The Legislature is going to make certain supplemental appropriations that will impact the ending fund balance as well as any changes in the reversion estimates and the actual revenue estimates. Between the time the legislators leave and the time when the actual ending balance is determined for the year is what she interpreted this amendment to actually mean.

Substitute Motion: **SEN. ESP made a substitute motion TO ONLY CONSIDER 2 (a).**

CHAIRMAN COONEY explained the substitute motion would leave intact Subsection (a) but remove (b).

SEN. BOB KEENAN stated the HB 181 general fund impact is $4.262 million, along with some other impacts, so the total impact is $6 million. There would be some local property taxes above and beyond that. Article VIII, Section XV of the Constitution says "public retirement systems shall be funded on an actuarially sound basis". He inquired what it would take to get this system actuarially sound. **SEN. ESP** clarified he has a plan in HB 181 to get this system actuarially sound within a minimum of six years or so. In the first two years of that plan his amendment would have the state take responsibility for fixing it, and then when the Legislature comes back they will deal with year three through year six of that plan. His amendment would not make it completely actuarially sound. **SEN. KEENAN** asked how much money **SEN. ESP** was looking for in the next two years. **SEN. ESP** said it would be $10.416 million.

SEN. BALES recalled his global amendment when they were discussing HB 2 on the floor. What **SEN. ESP** is trying to do is address the problem that he saw and that he was trying to address with the global amendment. His amendment would have appropriated money to the Teachers Retirement Fund to waylay these local property taxes. It is the total of the countywide school retirement levies plus the school federal funds. The reason the school federal funds were in there was because of SB 333 and SB 147, which says they will no longer use the general revenue for retirement for federal teacher salaries. The retirement system is not actuarially sound. If they pass this bill they are increasing local property taxes by $10 million in this biennium. Next biennium it will be $20 million over what it is today, and in the third biennium around $30 million more than it is today. The indication is it will have to run several years unless there is a dramatic turnaround in the corpus of that fund. He thought there was a very serious problem both the TRS and the PERS. Part of the solution is probably going to be putting more money into it, but he thought they also need to look at the benefits, what the packages are, and what the retirement dates are. **SEN. ESP'S** amendment will relieve this property tax if they can find the money in HB 2. He did not favor raising local property taxes and hoped they would pass this amendment.

CHAIRMAN COONEY said he looked at this as a member of the audit committee. The goal is a return of at least eight percent per year, and the system should be actuarially sound. **Mr. Ewer** indicated the issue is more complicated than an eight percent bogey. It is his understanding that the return at the Board of Investments over the last ten years has exceeded the rate that the actuaries assumed. If the premise is that if they meet the rate, then he asked why these systems were in the financial stress they are in. There is a lot more that affects the system than a benchmark rate. He said he would be happy to give his overall comments on this entire subject on both retirement systems whenever the time is appropriate. The market return has been satisfactory. The actuaries assumption on return is one of many assumptions, so that cannot be the only key driver. If it were these bills would not be in front of them.

SEN. LAIBLE inquired what **Mr. Ewer** thought the other component was that was causing this problem. The eight percent has been exceeded as an average. They could add more money from the general fund and property taxes and still be in the same situation in the future. **Mr. Ewer** said there is no question the retirement systems are under financial stress, because that is what the actuary tells them. The Schweitzer administration has been in office for 100 days, and they think the appropriate course of action is give them some time to develop an action

plan. They have not supported retirement bills that are unfunded or where there was double counting. One of the components that drive retirement systems is investment returns. They will take a hard look at the Board of Investments. He thought there were some management issues and asset allocation issues, but the actual returns over ten years exceeded the benchmark of eight percent. The actuary does not set that; the plan sponsor sets that. It has been reduced for TRS to 7.85 percent, which puts even more pressure because the lower rate of return has an effect. Pension administration is a component. Another important component is what legislators have done, and he included himself. Benefits were passed that were not funded. In 1999 the Racicot budget had a guaranteed benefit adjustment for the TRS with no contribution increase from employers or employees. The system itself was to make up sufficient returns. The actuarial unfunded liability term on the fiscal note went from nine years to twenty-five years. Under generally accepted accounting practices anything under thirty years is deemed acceptable. They were at the top of the market, and things have deteriorated quite a bit since then. In 2001, a bill was passed with an unfunded three percent guaranteed benefit adjustment for PERS. There once was a process in the Legislature to looked carefully at pensions in the interim. When he was a legislator it was acknowledged and understood that a pension bill could not get passed unless it had been studied in the interim. They do not have that process anymore. He has been in the finance business all his life and is an expert in municipal bonds. He has the ability to read the actuary statements and glean information. It is arcane enough that he could not tell them the key drivers. He would like to find out if actuaries have consistently used the same assumptions or if they have changed to include the level of retirement, how old people are, and the assumption on debts. If those assumptions have changed, they have huge compounding effects. He thought from the beginning of his appointment that he needed to put together a group to help him understand the key drivers of actuaries. It is a given that they have to accept the constitutional requirements. This is something that has grown over some time, and there will be an opportunity soon enough to address some kind of action plan in a more comprehensive fashion that addresses whether it is a combination of state and local money, one-time-money, or fund balance. There are many options, but they want to better understand these key drivers because this is such as important issue. They will have an action plan that will address the Board of Investments, pensions, actuary, the legislative role, and recommendations to the Governor. He thought the Governor would ask him to lead a task force on this. He had calls from Montana community leaders worrying about the tax effect and cities not having room within their cap. The administration's recommendation is to postpone and they will present a more

comprehensive action plan soon enough. The Legislature is faced with a responsibility to provide for a quality system of education. He saw that as something they will be addressing within this calendar year, and it goes hand in hand with benefits and retirement.

SEN. ESP commented it is accurate that the ten-year average is above the eight percent, the actuaries looked at the last five years and do a rolling average of some kind. They found the return was somewhere between two and a half and three percent. He agreed part of the problem was legislative action. The peace officers liabilities have increased in the last couple of years fifty to sixty percent in direct relation with legislative action. In PERS and other systems it has grown almost forty percent in a couple of years. He thought they could pump some money short term into the system while they study it. He cited the financial consequences if they wait seven hundred days to address the problem. The other issue is the bonding companies are also calling every month or two. The fact that they have not done something to address the situation at this point will reflect in some way on bonding ability and the rate they pay when they go the market with the bonds. He assumed that would take place in May or June. He agreed a study is needed and a plan is needed. If they have the money, pumping some money in now is not mutually exclusive of studying it later.

Mr. Ewer said the new issue that **SEN. ESP** addressed was with respect to bonding companies. This is an area he knows something about; he worked with the rating services since 1981. The rating services understand that structural issues like this take time to get into and take time to get out of. As long as they are convinced that the state is showing the leadership and the willingness to address the problem, as they will continue to do, ratings should not be impacted. When states deny there is a problem that is when there is a wake-up call with the rating services. Montana has a AA- rate with Moody's and a AA- with S&P. Montana is not currently rated by Fitch. Montana's bonds actually get a better interest rate than the ratings would indicate and get more of a AAA scale. This is complicated and they are not talking about seven hundred days. They are looking at this calendar year.

SEN. BALES asked **Mr. Ewer** what the administration can do unilaterally a year from now to address this. **Mr. Ewer** replied if the work continues on meeting the challenge of the obligation to provide a basic quality education, he thought the Legislature will be back within the calendar year. That will be an opportunity to address this again.

{Tape: 5; Side: B}

SEN. BALES asked if **Mr. Ewer** plans on having a solution for them when they come back to redo a funding formula for education because that seems to be what the leadership has decided at this point. He was not certain what date they would be back. **Mr. Ewer** responded that would be his intention, and he would like to get a handle on those volatility factors--the actuarial assumptions. A couple of years ago, according to the statements, the systems were in good shape. It went from okay to abysmal in a couple of years. He wanted to know if it could down like a rock and come up like a cork. He wanted to know what the key drivers are. He suggested they have more discipline as a community as far as retirement bills.

SEN. BALES hoped they could spring back up like a cork, but he was not optimistic. Part of the solution will require money. It appeared to him they were spending every bit of money they have now. When they come back they have the education and retirement problems that will both take a considerable amount of money. He hoped there was a way to leave a larger ending fund balance than what is being contemplated to address some of those issues. He asked if **Mr. Ewer** was contemplating anything along that line. **Mr. Ewer** said they stand by the $80 million target. It is sufficient for meeting contingencies with respect to declining revenues if assumptions are wrong, federal revenues are reduced, or there is a harsh fire season. The option of the current structure needs to be expanded to consider one-time-only monies, better investment returns, and economic growth. There are a lot of variables. He acknowledged there are certain ideological differences as far as priorities in structuring the budget and the use of that money. They have not contemplated putting one-time-only money into the retirement monies in this session.

SEN. KEENAN thought **SEN. ESP'S** amendment was an action plan. He did not know about the bond rating companies and whether they will accept an action plan for a study or an action plan that says if our ending fund balance reaches a certain point they will put some money in here and also mitigate property tax relief. When they came into the session, there were a handful of things they needed to do including indigent defense. These two bill, 181 and 148, were also at the top of the list, along with school funding for this next two years, the pay plan, and long-term educational funding. They started this session with $300 million and at day 78 they have started some new programs and spent the $300 million. They are about to leave the session studying education, studying the retirement system, and studying other things like mental health. He thought this amendment was an action plan to address one of the four big bills that needed to

be addressed this session if they were to have any kind of a session at all.

SEN. ESP said he did not mean it would take 700 days to solve this; he just used that as an example. If in the end they can't get there, there the Governor can veto the bill. He thought this allows some flexibility for the administration. He urged the committee to support the amendment. **SEN. ESP** said his intention would be to work with **Director Ewer** between now and the time this hits the floor to figure out the number.

Vote: Substitute Motion failed 8-11 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. COBB, SEN. ESP, SEN. KEENAN, and SEN. LAIBLE voting aye. SEN. BRUEGGEMAN and SEN. STAPLETON voted aye by proxy.

SEN. ESP withdrew his motion to concur on the bill.

Motion/Vote: SEN. COBB moved that HB 181 BE TABLED. Motion passed 16-3 by roll call vote with SEN. BALES, and SEN. KEENAN voting no. SEN. STAPLETON voted no by proxy.

EXECUTIVE ACTION ON HB 742

{Tape: 5; Side: B; Approx. Time Counter: 13.2}

Motion: SEN. COBB moved that HB 742 BE CONCURRED IN.

Motion: SEN. COBB moved TO STRIKE "$100,000" AND INSERT "$80,000" ON PAGE 4.

SEN. COBB said this would cut back on outreach. The $80,000 is what is needed for the computer systems and the training.

Discussion:

CHAIRMAN COONEY said he liked this bill, but it was his hope to hang onto it for awhile to see how things develop in HB 2. If they support the amendment, it means this bill has to go out to meet the deadline.

SEN. COBB acknowledged the dilemma. If they vote for the $80,000 they have to vote for the bill. The Governor's office supported the bill. The sponsor said they could do this for $20,000 less.

SEN. HAWKS asked if there was one spokesperson from the Governor's office with regard to the budget.

SEN. GALLUS said they have three different individuals from three different executive positions within the Governor's office coming to speak on different pieces of legislation. They probably delegate so no one person on the Governor's staff is completely overwhelmed because they have other work to do.

SEN. WILLIAMS thought both proposals would be a good idea. She favored waiting to see if they can get the full $100,000. She thought they really need the $100,000 to do the program, for the computer setup, and the travel and training. She said she would support the bill and thought it was a good program.

SEN. WEINBERG said he felt conflicted. He liked the bill and thought it was a great program, but thought the wrong people are paying for it. The insurance companies will save millions of dollars, and he did not know why the state was footing the bill.

SEN. ESP thought a long-term solution to this whole problem was in the electronic medical record. He said he was going to work on this next session. Attached to the electronic medical record could be a living will or advanced directive. He thought they should vote this down and come back next session to figure out how to get that done. He thought in the long term that would save everybody a lot of money and a lot of medical mistakes along with other benefits. He urged the committee to vote no on the motion.

SEN. KEENAN felt strongly they need to get this thing started now and pass the bill.

CHAIRMAN COONEY said he would oppose the amendment. If they oppose the amendment, he would ask they hang onto this bill for awhile to see what happens with HB 2. He liked this program and told those promoting it that if they have the money he would like to see it happen. He was not comfortable making that commitment at this point, even for $80,000.

SEN. COBB said if they do not pass it now, they are never going to do it. He was just trying to fix the bill.

Vote: Motion to amend carried 11-8 with SEN. BALES, SEN. COONEY, SEN. ESP, SEN. HANSEN, SEN. HAWKS, SEN. LARSON and SEN. TESTER voting no. SEN. STAPLETON voted no by proxy.

Motion/Vote: SEN. WEINBERG moved that HB 742 BE CONCURRED IN AS AMENDED. Motion passed 10-8 by roll call vote with SEN. BALES, SEN. COONEY, SEN. ESP, SEN. HANSEN, SEN. HAWKS, SEN. LARSON, and SEN. TESTER voting no. SEN. STAPLETON voted no by proxy.

EXECUTIVE ACTION ON HB 148

{Tape: 5; Side: B; Approx. Time Counter: 23.9}

Motion: SEN. ESP moved that HB 148 BE CONCURRED IN.

Discussion:

SEN. ESP asked **Mr. Ewer** for his position on the bill. **Mr. Ewer** indicated his general comments were the same.

Substitute Motion/Vote: SEN. LAIBLE made a substitute motion that HB 148 BE TABLED. Substitute motion passed 13-6 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. ESP, and SEN. KEENAN voting no. SEN. BRUEGGEMAN and SEN. STAPLETON voted no by proxy.

EXECUTIVE ACTION ON HB 790

{Tape: 5; Side: B; Approx. Time Counter: 26.0}

Motion: SEN. LIND moved that HB 790 BE CONCURRED IN.

Motion: SEN. LIND moved that HB079001.ATP BE ADOPTED.

EXHIBIT(fcs78a17)

Discussion:

SEN. LIND said this is the bill to study two related but independent issues of coal bed methane. This is an unprecedented study format with six members from the EQC and six members of the public. The amendment would reduce the six public members to two and change the funding somewhat to better comport with addressing some problems identified in discussion with **Ms. Purdy** and her discussions with the Code Commissioner. The funding change would reflect the membership of the Board. The money would come from the Board of Oil and Gas in HB 2. **Ms. Purdy** commented the money would, instead of flowing into the account that the Board of Oil and Gas uses to fund its operations and the studies, the money would be diverted to the Legislative Services Division. The corollary amendment would be in HB 2 to reduce the Board of Oil and Gases appropriation for those studies.

SEN. ESP requested to ask a question of **Ms. Reinhardt.** He said he got the impression from the testimony of the proponents that this was a coalition. He inquired if she supported the amendment

to reduce the number of people on the committee. **Ms. Reinhardt** said the position of their membership was they want the study bill to pass. She spoke with **REP. PETERSON,** and he said he would not support the amendment on the House side. There was a concern about the bill passing if the numbers were reduced. They want a fair and balanced study and they want the issues to be addressed. They do not want the bill to die.

{Tape: 6; Side: A}

SEN. ESP thought this was an important enough issue to try to get something done to address the issues of surface damage in a thoughtful way. He said he would hate to jeopardize that.

SEN. LARSON said he would feel more comfortable with eight members.

SEN. JON TESTER asked **Ms. Reinhardt** if **REP. PETERSON** was upset with the membership portion or the funding portion. **Ms. Reinhardt** indicated it was the membership portion.

SEN. LIND asked **Ms. Reinhardt** about her comment that this makeup of the board was necessary to do a fair and balanced study. He inquired if it was her assertion that the EQC cannot do a fair and balanced study. **Ms. Reinhardt** thought the study would be fair and balanced either way, but they do not think it would pass with the amendment based on **REP. PETERSON** saying he would oppose the bill if the members were taken out.

SEN. TESTER said the funding source in the amendment is in number four, number six, and number eight. He asked if it was in any other spot. **Ms. Purdy** said it was not. Amendment number eight is a cleanup more than anything else.

Substitute Motion: **SEN. TESTER made a substitute motion TO SEGREGATE THE MEMBERSHIP AND MAKEUP OF THE COMMITTEE FROM THE FUNDING SOURCE IN THE AMENDMENT.**

Discussion:

SEN. BALES advised **Mr. Richmond** testified his department was willing to put in half the money because he felt it was part of their jurisdiction and in the rules and regulations pertaining to coal bed methane. The split estate issue is not at all within their jurisdiction. It was taking money from another project they had going. He asked **Mr. Richmond** to comment with the committee's indulgence. **Mr. Richmond** said he did not understand the proposed new funding source. The current appropriation in HB

2 would be reduced by this amount presumably in the line items for public outreach and education. **Ms. Purdy** said that was correct. The funding source would be the one that funds their primary oil and gas ERA account. Instead of going into that account, up to $43,000 would be diverted for use by Legislative Services Division. The appropriation in HB 2 from that account would be reduced by $43,000 in the line item that gives them $125,000.

CHAIRMAN COONEY inquired if the number of members stays at the current level in the bill, then the amount of money would have to be increased from $42,100 to $50,000. **SEN. TESTER** said it would not have to necessarily. **CHAIRMAN COONEY** indicated it would in order to live within the terms of the bill as it is currently written.

SEN. BALES asked for **Mr. Richmond's** perspective on the funding. **Mr. Richmond** repeated they had a line item for education and outreach in next year's budget for $125,000 split into $62,500 each year. The $43,000 for this bill comes out of the first year of the biennium. They had intended that $62,000 to regenerate a teachers workshop with expertise from Montana Tech. Taking $43,000 out of the $62,000 would prevent them from doing that in the first year of the biennium. **Ms. Purdy** said when the budget was put together the $125,000 was still a biennial appropriation. They could expend the entire amount in the first year. They split it out for purposes of keeping track on the stats.

SEN. BALES said he would oppose both parts of the amendment. The committee needs the full amount to do the proper job that was intended to be done.

SEN. LIND said he spoke with staff at the EQC office and they expressed some discomfort from the funding mechanism--the contractual relationship between the Board of Oil and Gas and the EQC. There was some discomfort with relationship to objectivity and the funding relationship. The amendment was an attempt to address that issue and the funding. It is an increase in the funding. **Ms. Purdy** said she and **Mr. Petesch** discussed the nature of that contractual relationship, and he expressed the concern that she had mentioned in committee about whether or not it would be viewed as an oil and gas study rather than an EQC study.

SEN. TESTER inquired if the education program is a new program or a program the Board had in the past. **Mr. Richmond** replied it would be a pilot program and would be restricted one-time-only.

Substitute Motion: SEN. TESTER made a substitute motion to REMOVE THE FUNDING SOURCE FROM THE BOARD OF OIL AND GAS IN THE AMOUNT OF $50,000.

SEN. TESTER said the reason was coal bed methane and its advancement in the state and a good study behind it is definitely part of the program of the Board of Oil and Gas. The split estates issue, if it is ironed out, will promote more development in coal bed methane.

Vote: Motion carried 11-8 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, and SEN. LAIBLE voting no. SEN. STAPLETON voted no by proxy.

SEN. TESTER said he would oppose the other part of the amendment if it would derail the bill. He thought the coalbed methane study needs to happen and this would kill the bill.

SEN. HAWKS asked how that scenario unfolds if the sponsor opposes the bill in the House. **SEN. TESTER** said they are assuming that **REP. PETERSON** has the ability to reject the amendments or kill the bill.

SEN. WEINBERG said if he is willing to kill his own bill because there would potentially be fewer industry people involved speaks to the lack of objectivity and fairness in the first place. He did not think it was worth going through with this if that is the kind of study they would have. If the sponsor truly wanted to have an objective worthwhile study, then he would grasp this and support it. He thought they needed to go ahead and reduce the number of people on this and hope that he really does want an objective study.

SEN. BALES did not think that was the issue. He thought half of the people would be on one side and half on the other. When the number is reduced there would be less input from interested landowners in the area that may be affected. In essence there would just be legislators and the people that are appointed to EQC with the addition of two other people. There would be less opportunity for the affected people out in the country to have input into the process. He thought it was totally wrong to say this was for the sake of industry. There was an agreement reached between all of the parties involved as to what the representation should be. To automatically assume that reducing the numbers would aid one group or the other is wrong. It would limit the amount of outside information and outside input into the committee.

SEN. LAIBLE said they heard testimony that the bill is held together by a fragile coalition of people that want to get some things done. He thought the Legislature wants to see some changes and see this study go forward. One of the things that has been most rewarding to him during this session was to see what happens when people from diverse points of view on a subject come together to work to resolve their differences. They have seen more collaborative effort from diverse groups than they have ever seen before. He thought this was the same, and the groups that will be involved in this would come to a resolution. He thought it would be a grave mistake if they pass this amendment and change that fragile relationship. He thought there was a very high probability that this bill will die, and that will come from both sides of the aisle because they had changed the structure of what was agreed upon in this bill. He asked the committee to oppose the amendment.

SEN. GALLUS commented the interim studies are not always about majority rule like it is when they are in session voting on bills. It is usually divided evenly. Most committees switch off on what party chairs each interim. He thought the language in the bill provides proper safeguards. The Chairman appoints, and the Vice Chairman has to agree to it. He thought the chances of all the at-large members being card carrying members of the Montana Oil and Gas Association were slim to none. He thought it would be evenly divided and would bring a group of interested parties to the committee. He mentioned these committees get staffed by very talented and organized people. All the committees he served on in the past have been well staffed, and they do a lot of hard work. He thought the bill has the proper safeguards.

SEN. ESP said the Vice Chair and the Chair get to appoint these people and will appoint a well balanced committee. **SEN. TESTER, SEN. LAIBLE** and a few others took part in an exercise at the University during the last interim that had to do with the environmental studies program. He was not sure it was necessarily balanced and/or fair, but it brought people together in a group and they talked about a lot of different issues. Out of that came a better understanding and some directions and initiatives on different people's part that were productive and that helped build relationships between the environmental community, legislators, and industry. He did not see any downside in having more people involved because there are more perspectives.

SEN. HANSEN asked **SEN. LIND** if this amendment goes if the study will still be done. **SEN. LIND** said a quality study can be done through the EQC without HB 790. He had assurances that this is a

number one, top shelf priority for EQC. He was confident that this will be done with or without HB 790. **SEN. HANSEN** said he agreed with **SEN. WEINBERG.** He did not like to be held hostage by the sponsor. He said he would support the amendment.

SEN. BARKUS said this is not about **REP. PETERSON.** This is about a collaborative effort by the resource and environmental communities to put a solution forward. He thought they should respect the work of those groups. He said he would resist the amendment.

SEN. BALES added it was an agreement between the different sides and the different parties and those who would be the Chairman and Vice Chairman of the EQC that they would make sure it was evenly divided and put in the people that the different sides wanted. He thought that was the agreement and that was part of the reason that nobody wants to change it. That agreement was struck with quite a few people that are on the EQC.

SEN. TESTER thought they should vote, but he wanted to make sure there was a motion on these amendments. **CHAIRMAN COONEY** asked for a motion on the remaining amendment.

Motion: SEN. LIND moved ITEMS 1 AND 2 OF HB079001.ATP.

SEN. LIND said this amendment has been around for a week or more and he discussed it with many folks. He heard the bill in Natural Resources and Energy. He thought twelve voting members is too large of a body to tour the state. Individuals from industry or environmental groups can participate. These will be publicly noticed, open meetings, and anyone can contribute. He reminded the committee that the water adjudication issue which is handled by the EQC was a four member subcommittee that dealt with the entire funding matrix. That functioned very well, and he submitted that this is the Montana State Senate. It is a balance between the House and the Senate. He asked for support for the amendment.

Vote: Motion failed 4-15 by roll call vote with SEN. HANSEN, SEN. LARSON, SEN. LIND, and SEN. WEINBERG voting aye.

Motion/Vote: SEN. TESTER moved THE CLEANUP PORTION OF THE AMENDMENT. Motion carried unanimously by voice vote.

Motion/Vote: SEN. GALLUS moved that HB 790 BE CONCURRED IN AS AMENDED. Motion carried 13-3 by voice vote with SEN. HANSEN, SEN. LIND, and SEN. WEINBERG voting no.

SEN. ROUSH would carry the bill on the floor.

ADJOURNMENT

Adjournment: 6:50 P.M.

_____
SEN. MIKE COONEY, Chairman

_____
PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs78aad0.PDF)