MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 146

Call to Order: By **SEN. MIKE WHEAT**, on April 13, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Rep. Diane Rice, (R)
Sen. Dan McGee, (R)
Sen. Jon Ellingson (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. John Parker (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: SB 146

FREE CONFERENCE COMMITTEE ON SB 146

SEN. WHEAT called the Free Conference Committee Meeting on SB 146 to order. He then turned the meeting over to **SEN. MCGEE.**

SEN. MCGEE stated that he had requested a Free Conference Committee because he wanted to deal with two or three small remaining items that had not been addressed in the House amendments. He went on to say that he also wanted to address one of the amendments that had come up in the House amendments. He further explained by having a Free Conference Committee they could deal with any remaining issues that needed to be dealt with. **SEN. MCGEE** explained that items 1, 4, 5 and 6 on the House amendment had been placed on SB 146 at his request. He then explained the purpose for each of these amendments. **SEN. MCGEE** then addressed items 2 and 3 of the House amendments. He stated that he did not agree with the change on Page 86, Line 30, regarding the accumulation of vacation and sick leave. He explained that with the amendment the State would be on the hook for 50% of the vacation time of any county employee that would become a state employee on July 1, 2006, under this bill. He went on to say that he felt that it was a county expense. **SEN. MCGEE** indicated that he did not want the same thing to happen that had happened with district court assumption which had created a huge fiscal impact to the State's budget. He then stated that he would like to see that amendment stricken from the bill. **SEN. MCGEE** stated that the other two items he would like the Committee to at least consider were: Missoula County's concern that their entitlement withholding numbers are too high and the issue regarding the location of the Chief Public Defender's Office. He went on to say that the question was whether it should remain in Butte as currently worded in the bill as amended or if it should be left to the Commission to decide. **SEN. MCGEE** reiterated that the items he wanted to address were vacation payments, time frame of county payments, the Missoula issue and where the Chief Public Defender's Office should be located.

SEN. WHEAT asked the members of the House if they had any issues other than those presented by **SEN. MCGEE.**

Discussion:

REP. RICE expressed her agreement with **SEN. MCGEE** on the percentage issue. She went on to say that whenever employees came to work for the State, after recently receiving a pay raise, the vacation and sick leave were paid at the higher rate. She continued saying that he was right -- the State could get stuck.

SEN. MCGEE referred to the bill and read the language in Subsection 3, on Page 86, which pertained to salary and potential raises for employees. He went on to say that because of this language he hoped they would not have the same situation as when the assumption of the district courts took place.

SEN. WHEAT suggested that they deal with the four issues item by item. He then indicated that they would start with the vacation issue.

The committee members discussed the issues and decided to address the formula for county payments first.

SEN. MCGEE indicated that since the audit would be completed by April 2006, he would recommend to leave that particular House amendment as it was. He went on to say, since it would not hurt the State and it would help the counties, it would be best to leave it with the two-payment schedule.

Motion: SEN. MCGEE moved to change the 12 1/2% to 25% on Line 30, Page 86, and vacation to 100%.

SEN. WHEAT explained that, in effect, what they were doing was rejecting the House amendment and putting the bill back the way it was in regard to the vacation pay.

Motion: Reject paragraph 3 of the House Amendment.

REP. GUTSCHE informed the committee that under court assumption this was the way it had been and that was the reason for the amendment.

SEN. WHEAT responded that this was not court assumption, this was something completely different. He continued saying that they would be dealing with public defenders who would come on board, there were those who would not, and there were those who would decide to contract with the Public Defender's Office. He went on to say that he understood that it was what the counties wanted.

SEN. MCGEE talked about whether or not there would be any vacancy savings involved in the process.

REP. GUTSCHE proposed that in those cases where the employees did become state employees, it would be a different percentage, such as, the formula used under state assumption.

Vote: Motion to reject paragraph 3 of the House Amendment resulted in the following vote: Senate 3-0, House 2-2 with REP. RICE and REP. PARKER voting aye.

Members of the Committee then questioned the proper procedure to follow because there was not a majority vote from the Representatives. Since they were unable to gain a clear understanding of the Rules, the Committee requested that **Greg Petesch of Legislative Services** be summoned to clarify the pertinent rules for the Committee.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.7}

Motion: SEN. MCGEE moved to reconsider the motion to reject paragraph 3 of the House Amendment. Motion carried unanimously.

Mr. Petesch informed the Committee, that with the 50/50 split in the House, should there be a split vote by the Representatives, the vote would go to the House without a recommendation.

Motion/Vote: SEN. MCGEE moved to amend Page 86, Line 30 by striking "25%" and inserting "50%". The motion carried as follows: Senate 3-0, House 3-1, with REP. LANGE voting no.

SEN. WHEAT advised that they would now deal with the issue of Missoula County's payment.

SEN. MCGEE explained to the Committee the process that had been used to ascertain the county's costs for indigent defense in justice courts and the non-reimbursed district court costs. He went on to say that the number on Line 4, of Page 28, was the amount that the Interim Committee had been given by the county. He went on to say that he had made it clear to the counties that if they needed to take up a bill in the next session to deal with some legitimate costs that the counties incurred for district courts, that were not paid by the District Court Counsel, then they would do so. He then stated that SB 146 was not the tool to do that. He further stated that the numbers reflected in the bill had been furnished by MACO and the League of Cities and Towns. **SEN. MCGEE** then informed the Committee that originally they had an audit provision in the bill rather than hard numbers. He continued saying the Interim Committee had decided that it would not be a good idea to have the Audit Division be responsible for deciding amongst conflicting information which information to use to come up with the hard-dollar amount. **SEN. MCGEE** then talked about the conflicts regarding the dollar amount that had been established for Missoula, and the resulting discussions that had taken place along with the decisions that had been made by the Committee. **SEN. MCGEE** suggested that they leave the hard dollar amounts as they were presently in the bill and let the next legislative session deal with the issue if there were adjustments to be made.

REP. RICE stated that she agreed with **SEN. MCGEE.** She went on to say that if they picked one county or city and started to negotiate with them, the rest would probably want to do the same. She further stated that it would all even out in the end.

REP. GUTSCHE referred to the bottom of Page 28 and stated that Anaconda-Deer Lodge and Butte-Silver Bow had already been changed. She went on to say that because of this there had been a precedent set. **REP. GUTSCHE** then addressed the issue of the information received from Missoula and the possibility of conflicting information having been provided. She then talked about the letter she had received indicating actual dollar amounts that had been spent, regardless of what may or may not have been reported. She continued saying that she felt it would be fair to lower Missoula's dollar amount as at least two other counties had seen issues and had their dollar amounts lowered.

SEN. ELLINGSON stated that he concurred with the observations of **REP. GUTSCHE.** He went on to say that he did not understand why they could not follow the precedent that had already been set, since they had received better numbers from Missoula. He continued, saying that he did not feel it was fair to use the old numbers since they had now received accurate figures to use.

SEN. MCGEE addressed the issue of the changes to the Butte and Anaconda figures, and explained the reason for those changes.

SEN. ELLINGSON stated that he felt it would be educational for the Free Conference Committee to hear from the representatives from Missoula County so they could explain the reason for the $300,000 figure that had originally been presented and the reason for the figure being presented now.

SEN. WHEAT explained that the $310,000 figure had come from the Budget Division. He went on to say that the Division had requested the information from the various counties, and then made the present calculations from the information they had received. He continued saying that the dispute was between the Budget Division's calculations and Missoula County's calculations.

SEN. WHEAT asked **SEN. MCGEE** what would happen if they amended the bill to reflect the $172,600 amount and then found out in two years that the amount should have been the $310,000 amount. He further asked if Missoula County would have to pay the difference with interest and, likewise, if they left the amount $310,000 and it should have been $172,600, would the State have to pay the difference with interest. **SEN. MCGEE** asked if he could have **Judy Paynter** of the Budget Office to respond to the question.

Judy Paynter, **Budget Office**, explained that the Audit would be known in April 2006. She further stated that if the Audit came back at $310,000 would that be the adjustment that would be made for fiscal 2007. She went on to say that if the number came back at $190,000 the next session would have to consider that adjustment.

Valencia Lane stated that there was no automatic adjustment. She went on to say there was a provision in the audit provision that states the Law and Justice Interim Committee will prepare legislation to be presented to the 2007 Legislature to adjust the base.

Ms. Paynter then stated that as this all affects fiscal year 2007 and the Legislature will be in session in fiscal year 2007 to deal with those adjustments, it could be dealt with at that time. She went on to say that, because of this situation, if there were adjustments they would be minor.

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REP. GUTSCHE stated as a point of fact, that any one of the numbers could be wrong, and they would not know at this time.

REP. RICE asked **Ms. Paynter** if there would be any interest paid by the State. **Ms. Paynter** responded to her knowledge there would not be any interest paid by the State or the counties.

SEN. MCGEE stated that it was important for the Free Conference Committee to understand that it had been difficult and frustrating to get accurate numbers regarding anything to do with the courts. He went on to say that **Harry Freebourn** was the individual that had called the counties, therefore, if they had any questions about the numbers they could ask him. He further indicated that **Brent Doig** and others, with the Budget Office, were the ones who had been crunching the numbers. He then stated that Missoula had the perspective that they had court costs that had never been reimbursed that probably should have been. He then stated that they also had philosophical issues that would also factor in. **SEN. MCGEE** added that what they did not have in front of them were the actual numbers, because until the audit was completed, no one would know what the actual numbers are. He then addressed the three different dollar figures they had in front of them and indicated they could make a choice as to which one they were going to use.

REP. PARKER asked if there was a motion on the table. **SEN. WHEAT** stated that they were just discussing the issue.

REP. PARKER stated that he felt that they should make a motion.

SEN. WHEAT responded that he felt it was healthy to discuss the issue before they got into making a decision on which way they were going to vote.

SEN. ELLINGSON made a couple of observations. He stated that all of the other entities had an opportunity to look at these numbers and he did not think that it was an unreasonable assumption to make, that if they thought they were really out of whack, they would be hearing from them also. He went on to say that it had been through a venting process and the only county that had come forward saying they were way off base was Missoula County. He went on to say that he wanted to hear from all sides of the issue, therefore, he would like to hear from the representatives of Missoula County and from **Mr. Freebourn**, to find out how they had reached the numbers they had in front of them.

SEN. WHEAT responded that he would have **Mr. Freebourn** testify and then they would pick one representative from Missoula County to testify. **SEN. ELLINGSON** suggested **Ann Mary Dussault** from Missoula County.

Mr. Freebourn informed the Committee that the figures were all estimates. He stated that the way they had received the numbers was through a written survey and through telephone calls to verify information that had been provided by the surveys. He then provided the Committee with information regarding the telephone surveys he had done and the information he had requested from those offices. He further indicated they had asked all of the public defender's offices to provide them with a copy of their budgets, and Missoula was the only office that had not provided one. He concluded by reminding everyone that what they had were estimates and they had been obtained from a variety of places. This was the reason that the bill had an audit provision.

SEN. WHEAT asked **Mr. Freebourn** how they had come up with the numbers they had for Missoula County. **Mr. Freebourn** replied, to the best of his knowledge, they received the information from individuals in the Missoula office and also, he and **Sherri Heffelfinger** had gone to Missoula and talked with the Chief Public Defender.

SEN. MCGEE asked **Mr. Freebourn** if it would be fair to say, at the time they had been inquiring about the costs, that the counties may have had the perception that somehow the State was going to end up paying for some of the program. **Mr. Freebourn** replied at

the time they were getting the cost estimates there had been no provisions for any reimbursements by the counties and cities.

REP. GUTSCHE asked **Mr. Freebourn** if he had asked for a certain level of employee when they had called for information. **Mr. Freebourn** replied that they had always tried to talk with the Chief Public Defender. He went on to say that he did not remember talking to a county fiscal person in any case. He further stated that in many instances he had talked to staff and requested that they get the information and provide it to him.

SEN. ELLINGSON asked **Mr. Freebourn** if he had ever inquired of anyone in Missoula County as to why they had never provided a copy of the budget. **Mr. Freebourn** replied that the reason they had asked for the budget was because they wanted to see what their county budgets were so they could compare them to the estimates that they had, so they could do a sanity check on what they were doing.

Ann Mary Dussault, Administrative Office, Missoula County, stated to her knowledge there were only two people in Missoula County who could certify numbers. Those individuals are Dale Nichol, Chief Fiscal Officer, and herself. She went on to say that a secretary in the Public Defender's Office could not certify numbers and that was the individual who had been called. **Ms. Dussault** informed the Committee that this was the first time she had heard that there was a request made to Missoula County for a copy of the public defender budget. She provided the Committee with the same numbers that had been provided to them by Linda Stoll, and stated that they were the actual numbers. She then commented on what problems Missoula County would incur if they were to use the $310,000 figure for the entitlement. She concluded by asking the Committee to use the number of $172,600.

Motion: REP. LANGE moved that on Page 28, Line 4, they strike "$310,000" and insert "$172,600".

REP. LANGE explained that he was making the motion because if it was his county he would be complaining. He further stated that with the State having a $300,000,000 surplus they should not be quibbling over this small amount of money for a county's costs. He continued saying that he was certain if there was a discrepancy found after the audit, the State would see that it was corrected.

REP. PARKER stated that he would be supporting the motion. He went on to say that he knew how hard it had been to pin the numbers down. He continued saying, that based on the points that **SEN. MCGEE** had made, there were good mechanisms in place in the

bill to harvest good numbers and improve them. He then said that if they should find out any of the numbers were incorrect, they had a good-built in device to address that concern.

SEN. MCGEE responded that he would oppose the motion because he personally believes that counties inflated costs when they thought the State was going to pay for it.

SEN. ELLINGSON stated that he felt something had fallen through the cracks in obtaining the information from Missoula. He went on to say that he felt that Missoula County had provided compelling testimony as to the accuracy of the numbers they were providing and it should be addressed. **SEN. ELLINGSON** then stated that he stood in support of the motion.

SEN. WHEAT stated that he was frustrated with the process, because this process had been going on for a long time and the counties knew they had to get their numbers in. He then stated that he shared **SEN. MCGEE'S** frustration. He continued saying that for purposes of moving this extremely important bill forward and trying to show some compromise he would support the motion.

REP. GUTSCHE stated that the audit would fix whatever needed to be fixed, therefore, she felt they could go forward with the process.

Vote: The motion to strike "$310,000" and insert "$172,600" on Line 4, Page 28, carried as follows: Senate 2-1, with SEN. MCGEE voting no and House 3-1, with REP. RICE voting no.

Valencia Lane informed the Committee that there would need to be a corresponding change in HB 2.

SEN. WHEAT stated that the last issue they had to deal with was the issue of the locating the Chief Public Defender's Office in Butte.

SEN. WHEAT stated that he felt that the Commission should decide where the Chief Public Defender's Office should be located. He then explained why he felt that the Commission should make that decision.

REP. PARKER talked about the arguments he had heard regarding where the Chief Public Defender's Office should be located.

Motion: REP. PARKER moved that on Page 10, Line 27, the Office of the Appellate Defender shall be located in Helena.

REP. PARKER asked the Committee to consider this compromise approach. He stated that in working on this issue they had tried very hard to structure a system that was immune from politics. He further stated that they needed to construct a firm firewall between the activities of the Chief Public Defender and the activities of the Appellate Defender because of the conflicts that could arise.

REP. LANGE asked **REP. PARKER**, if they accepted this amendment, what portion of the staff would be located in Butte and how many would be located in Helena. **REP. PARKER** replied that he did not have that answer because that was an allocation that would have to be defined by the Commission.

REP. LANGE asked **REP. PARKER** if this approach would allow for the main office to be located in Butte and the Commission deciding where the Appellate Office would be located. **REP. PARKER** replied that the main office would indeed be in Butte, however, his amendment would locate the Appellate Office in Helena.

REP. GUTSCHE asked **REP. PARKER** how the supervision would work with the Chief Public Defender's Office in Butte and the Appellate Defender's Office in Helena. **REP. PARKER** replied that supervision from afar was an inherent piece of the entire puzzle. He went on to say that the Chief Public Defender would be administering 11 different Public Defender Regions tasked with insuring, at a constitutional level, adequate representation throughout the State. He went on to say that it would be an administrative task for the implementation of uniform standards across the State and implementation of quality work in each of the 11 regions.

REP. RICE asked **REP. PARKER** if the Chief Public Defender would be in Butte and the Appellate Public Defender in Helena. **REP. PARKER** replied that was correct.

SEN. ELLINGSON asked if they could hear from the representative from the Department of Administration.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 34.3}

Steve Bender, Deputy Director, Department of Administration, stated that his agency would be intimately involved in creating the Chief Public Defender's Office. He went on to say that they would be identifying the people, converting them to State employees, contracting people, servicing the payrolls, and creating the accounting setup to provide the answers needed for the next session. Furthermore, they will be setting up the IT environment for the new office. **Mr. Bender** continued saying that

this would be the 9th largest generally funded agency in the State of Montana with 85 employees. He then stated that they would be having at least one person from their office in the new building basically full time next session. He concluding saying that because of all that was involved, the logistics were going to matter.

REP. RICE left to attend another Conference Committee.

REP. LANGE stated that he felt it was the job of the Legislature to decide where the office was going to be located. He further stated that he was against having the office in Helena because he wanted it insulated, as much as possible, from the halls of government. He continued saying that he felt Butte made good sense because of its proximity to the Capitol should the Chief Public Defender need to come to Helena. He concluded by saying that he stood in support of **REP. PARKER'S** motion.

SEN. ELLINGSON stated that he had a soft spot in his heart for Butte and felt that it would attract some good professionals to take advantage of all of the amenities offered by Butte and the surrounding area. He went on to say that he felt **REP. PARKER** was correct in the need for separation of the Public Defender's Office and the general administrative tasks. He continued saying that he felt it was a creative compromise and he would support the amendment.

Vote: Motion that on Page 10, Line 27, the Office of the Appellate Defender shall be located in Helena carried as follows: Senate 3-0, House 4-0 with REP. RICE voting aye by proxy.

Motion: SEN. MCGEE moved to strike "the office must be located in Butte, Montana' on Line 19, Page 8.

SEN. MCGEE explained if they struck this language it would leave it to the Commission where the office should be located.

Ms. Lane indicated that almost all State agencies are located in Helena, Montana. She then stated that if he wanted the Commission to choose where the office would be located he would have to state that in his amendment.

SEN. MCGEE withdrew his original motion.

Motion: SEN. MCGEE moved to insert "the Commission shall determine the location of the Office of the Chief Public Defender" on Page 6, Line 25.

SEN. MCGEE explained that he was not trying to exclude Butte. He went on to say that he felt there were some practical issues that they needed to address. He then commented on his concerns regarding the costs for travel he felt would be incurred with the Office being located in Butte. He concluded by saying that in the end they needed to look at the benefit to the entire State not just one issue. He further stated that he agreed that the Legislature should make the decision, but at this point he did not want to say Helena.

REP. GUTSCHE asked **SEN. WHEAT** how this amendment would work with **REP. PARKER'S** amendment. **SEN. WHEAT** stated that it would not matter, what it would do is have the Commission determine where the Chief Public Defender's Office would be located. He went on to say that with the amendment the bill would simply say that the Appellate Division would be in Helena.

SEN. MCGEE asked the Committee to remember that there were going to be 11 regional offices, therefore, simply because the Chief Public Defender's Office would be Helena, it would not mean that a lion's share of people would be in Helena. He continued saying that the idea that there would not be a regional office in Butte was without merit.

SEN. ELLINGSON asked **SEN. MCGEE** what the Chief Office would consist of in terms of bodies.

SEN. WHEAT indicated that as he remembered there would be a Chief Public Defender, an Administrative Assistant and others.

SEN. MCGEE answered that it looked like there would be a Chief Public Defender, an Administrative Director, Assistant Public Defender, Financial Manager, Contract Manager, Administrative Support, Accountant and three Accounting Technicians for a total of 12 to maybe 15 individuals.

SEN. ELLINGSON inquired if that was the group that would oversee the entire Public Defender System throughout the State. **SEN. MCGEE** answered 'yes'. He went on to say in different regions there would be a deputy public defender who would be the regional public defender.

SEN. ELLINGSON made the observation that this would be an office that would be administering the whole statewide program. He continued stating that he did not see any benefit to locating the Chief Public Defender's Office in Helena as opposed to Butte or any other location. **SEN. ELLINGSON** then spoke about the extra costs that would be incurred if the office was located somewhere

other than Butte. He concluded, re-emphasizing that he would like to see the office located in Butte.

REP. PARKER addressed comments made by **Mr. Bender** regarding lobbying, the idea that the Chief Public Defender's Office needed to be located in Helena, the costs to be incurred as a result of travel and setting up of computers.

REP. LANGE expressed his reasons for not having the Chief Public Defender's Office in Helena. He further stated that the decision as to where the office should be located was a political decision not one that should be made by the Commission. He went on to say that they needed to make that decision, and take the stand the Legislature is in charge. He concluded saying that it would cost the Commission less to have the office space in Butte, housing costs in Butte are lower and, finally, it would put the measure to bed.

SEN. WHEAT indicated that he disagreed with regard to the political aspect of the issue. He went on to say that they did not know what the costs were going to be and that their estimates were probably way too low, therefore, it was probably going to be a huge issue for the next session. He continued, saying that maybe Butte is the best place for the office, however, he would like to see the Commission make the decision as to where the office should be. He expressed his concern that there was no fiscal note, therefore, they did not have any idea what the cost was going to be. He concluded by saying he did not like the idea that the option of Butte being the location for the Office was brought forward at the very last minute.

SEN. MCGEE asked if the amendment was going to be on Page 6.

Ms. Lane suggested that they place the amendment on Page 7, Line 23 and make it a new number 9. **SEN. MCGEE** agreed that would be a place for the amendment.

<u>Vote</u>: Motion to insert "the Commission shall determine the location of the Office of the Chief Public Defender" on Page 7, Line 23, new number 9, failed as follows: House 0-4 with REP. RICE voting by proxy and Senate 1-2 with SEN. MCGEE voting aye.

<u>Vote</u>: Motion to adopt SB 146 as amended carried as follows: House 4-0 with REP. RICE voting aye by proxy and the Senate 3-0.

ADJOURNMENT

Adjournment: 10:55 A.M.

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SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(frs79sb0146aad0.TIF)