MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON SB 146 -- JUDICIARY

Call to Order: By **SEN. DAN MCGEE**, on February 4, 2005 at 11:07 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Dan McGee (R), Chairman
Sen. Mike Wheat (D)
Sen. Jesse Laslovich (D)
Sen. Lynda Moss (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:

Subcommittee Hearing on SB 146

SEN. DANIEL MCGEE, SD 29, said that the issues that need additional discussion are the payment amounts or percentages that cities and counties pay and those issues heard by the Subcommittee at its January 25, 2005, meeting. **SEN. MICHAEL WHEAT, SD 32,** provided a brief synopsis of that meeting.

{Tape: 1; Side: A; Approx. Time Counter: 2.8 - 5.6}

Valencia Lane, Staff Attorney, Legislative Services Division (LSD), provided copies of the amendments presented by **Jacqueline Lenmark, ACLU,** at the January 25, 2005, meeting, but in a slightly different format.

EXHIBIT(jus28b01)
EXHIBIT(jus28b02)
EXHIBIT(jus28b03)
EXHIBIT(jus28b04)
EXHIBIT(jus28b05)

{Tape: 1; Side: A; Approx. Time Counter: 5.6 - 11.6}

The Subcommittee began its discussions on the city and county funding formulas.

Gordon Morris, Director, MT Association of Counties (MACo), said that MACo members have been unable to reach an agreement on that portion of SB 146 that it determined counties would be liable for. He cited current law--state assumption of district court:

> "There is a state funded district court program. Under this program, the state shall fund all district court costs."

Mr. Morris said that previous discussions and the fiscal note indicated approximately $700,000 of what was mysteriously identified as nonreimbursable costs. MACo believes that the limit of the counties' liability, as determined by the MACo survey, is $975,649 for the Justice Courts. He suggested striking the language in NEW SECTION (14) referring to the allocation formula and write an amendment that would hard code that dollar amount into the public defender system by way of the entitlement program.

He added that, according to the Legislative Fiscal Division's (LFD) spreadsheet, the number that it was using for purposes of the public defender cost allocation for Justice Courts was the number that came off of the MACo survey. MACo's preference would be to see counties out of it entirely by virtue of reducing its entitlement program in the amount of $975,649 forever. That money would grow annually and go directly into the public defender

program based upon the allocations and costs set forth in the spreadsheet.

EXHIBIT(jus28b06)

In conclusion, **Mr. Morris** said that counties do not want to be annually responsible for writing a check to the state on the basis of a percentage year-in and year-out. Counties want to be out of it and give the money just like they did for the District Court Assumption Program in 2003.

SEN. WHEAT asked if the $975,649 was the same number used to determine what the counties' allocated share would be. **Mr. Morris** said, yes. **SEN. MCGEE** said, not exactly, the spreadsheet provided came from earlier work. The most current figure is $1,040,000 for county Justice Court public defender costs.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 15.5}

Alec Hansen, MT League of Cities and Towns, said that League members have struggled with SB 146, but there is general agreement that it needs to move forward. The fiscal note shows the city cost of the state assumption for public defender services as $737,546 a year, which he believes to be relatively accurate. He also talked to the League's insurance program people who think there are good reasons on the liability side to support SB 146.

Mr. Hansen agreed with **Mr. Morris** that the money should come out of the entitlement program, an idea that he initially did not support. However, if the state takes the money out one time from the entitlement program, reduces the entitlement to every city and town by that amount, leaves the rest of the entitlement alone, and applies the growth factor to the balance of the entitlement program, the state will receive the entitlement money ($737,546 on the Municipal Court side) in the first year. For budgeting purposes, that amount will grow because, if it remained with the cities, it would be subject to the growth factor of 3.5% per year. The agreement would be that cities and towns will commit $737,546 in the first year of the public defender program and that is it. After that, it becomes a state program, the state will assume the public defender costs, and cities and towns across Montana no longer have to worry about public defender services. It is a fair arrangement.

{Tape: 1; Side: A; Approx. Time Counter: 15.5 - 19.4}

SEN. MCGEE asked about the difference between $737,546 and the 6.7%. **Mr. Hansen** said, there is no difference. **SEN. MCGEE** asked

if there would be a reason that the Legislature would want to do this for only one year, when it deals with every other budget on a biennial basis. **Mr. Hansen** said that one of the attractive parts of SB 146 to the cities and towns is that the state receives the money and the growth on the money and the 6.7% becomes irrelevant. The state is now funding a public defender program that has a commission who is going to set the budget. The setting of the budget and the payment of the costs becomes a state responsibility.

SEN. MCGEE said that it would take an entire biennium or longer to find out if the presumed numbers are reasonable. He said that cities and counties, both, must recognize that the Legislature would not make promises about a "one-time-and-that's-it" payment. He is not in favor on any agreement that would lock a certain amount in. **Mr. Hansen** understood and realized that the Legislature had to start someplace. However, the Legislature must realize that the contribution from both cities and counties will grow because the contribution is money that would normally go to cities and counties and be subject to the growth factor. He added that cost containment within the public defender program is vital in the fact that cities and counties are on the hook for 22.3% of the cost of the program. If the state is not in a position to control the costs and protect its 77.7% and if there are dramatic increases in the program whose costs will be laid back onto cities, towns, and counties, they would come back in the next session and ask for representation on the commission, such as city finance people, to help get control of the costs.

{Tape: 1; Side: A; Approx. Time Counter: 19.5 - 24.9}

Harold Blattie, Assistant Director, MACo, explained a spreadsheet showing the amounts of costs paid by each county for public defense services in Justice Courts. The columns show the apportionment of the gap between the $975,649 (current) and the $1,040,000 (proposed) based solely on county population. He said that the percentage amount included in Section 14 is based upon very sketchy numbers.

EXHIBIT (6)

{Tape: 1; Side: A; Approx. Time Counter: 24.9 - 26.1}

Mr. Hansen asked that the Subcommittee pay special attention to consolidated governments, such as Anaconda-Deer Lodge and Butte-Silver Bow Counties, in the cost allocation formula because there is some indication that they may be getting counted twice. It may be better if they are included in the county side of the cost formula instead of the cities' and towns' side.

{Tape: 1; Side: B; Approx. Time Counter: 6.6 - 7.5}

Pam Bucy, Department of Justice (DOJ), understood that **Judy Paynter, Office of Budget and Program Planning (OBPP),** was putting together language for an amendment that would handle the funding mechanism through the entitlement share.

{Tape: 1; Side: B; Approx. Time Counter: 7.6 - 9.9}

Linda Stahl, Missoula County, said that the total public defender costs for the Justice Court and the unreimbursed District Court public defender costs for Missoula County in fiscal year 2004 was $182,240. The spreadsheet provided by **Harry Freeborn, Legislative Fiscal Division (LFD)** shows Missoula County paying $106,000, considerably less than what it is currently paying; while the allocation proposal provided by **Mr. Blattie** shows Missoula County paying $294,760. Missoula County does not like the proposal because it means that the county will pay $116,000 more than what it is currently paying. Missoula County wants to be team players, it wants the statewide public defender system to work, and it want to pay money and contribute its share of the cost. However, it does not want to pick up $116,000 more than what it is already paying.

{Tape: 1; Side: B; Approx. Time Counter: 9.9 - 14.2}

Referencing her proposed concept amendment (Exhibit #4), **Jacqueline Lenmark, ACLU,** said that references to the Department of Corrections in the amendment should be removed. **Ms. Paynter** is working on a technical amendment to address the problem.

{Tape: 1; Side: B; Approx. Time Counter: 14.2 - 15.6}

SEN. MCGEE said that no action would be taken on the proposed amendment until he has had time to study them. In addition, further work is needed on the allocation formula to make it more fair.

SEN. WHEAT asked if the proposed amendment incorporated all of the issues raised in the first Subcommittee hearing. **Ms. Lenmark** said, yes, and that they are organized by subject matter.

SEN. MCGEE asked if the proposed amendments tried to make SB 146 conform to the National Legal Aid & Defender Association (NLADA) standards. **Ms. Lenmark** said, yes, and to pick up any inadvertent errors that were seen in the drafting of SB 146. **SEN. MCGEE** said that he has been resisting the idea of making SB 146 an NLADA-specific bill. The Law and Justice Interim Committee did not take

up that notion, and now it is being tried again and he was not in favor of it. **Ms. Lenmark** misunderstood the question. She said that the amendments were meant to address issues that the DOJ and ACLU believed still needed to be addressed. They do not violate the NLADA standards.

SEN. WHEAT said that he liked many of the amendments and tried to include them in the public defender bill during the interim but they were resisted.

The Subcommittee will meet on February 8, 2005.

ADJOURNMENT

Adjournment: 11:58 A.M.

_____
SEN. DAN MCGEE, Chairman

_____
MARI PREWETT, Secretary

_____
LOIS O'CONNOR, Transcriber

MW/mp