MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN WALT MCNUTT**, on February 2, 2001 at 5:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Chairman Walter McNutt (R)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)

Members Excused: Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: Judy Feland, Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Subcommittee Meeting: SB 176

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Discussion:
Valencia Lane, Committee Staffer, explained two amendments, **SB017601.avl EXHIBIT(jus27a01)**, and **SB017602.avl EXHIBIT(jus27a02)** to the committee, saying they were suggested at the committee hearing. She reported that **Gordon Morris, representing the MT Association of Counties (MACO)**, requested that a particular section be repealed, 354-04, which allowed the district court to direct the county sheriff to provide court facilities and other items at county expense, and that the 02 amendments (exhibit 2) contained that provision. Numbers 1, 2, 3, 5 and 8, she said, put into the title the amending section, with the last section containing the actual amendment. The number 5 amendment was an internal reference to the section being repealed. There was one other amendment suggested at the previous meeting from the Supreme Court requesting that the state law librarians be exempted as was the administrator, and those

amendments were found in numbers 4,6 and 7. It did what they'd asked on P. 1 of bill.

Ms. Lane explained that she'd prepared the 02 amendments after meeting with **John Andrew and Paula Stoll, Department of Labor; Lisa Smith, acting Supreme Court administrator**; and **Dave Ashley, Department of Administration.** Two issues of concern to labor at the previous meeting had been found on P. 34 and 35 of the bill, found in Sec. 56 and 58, concerning salary and pay issues of former county employees transferred to state employment under this bill. Collective bargaining was the second concern, and both were addressed in the 01 amendment. P. 34. Line 7 contained the rights of former county employees to compensation, which included other rights as well. Leave, particularly accumulated compensatory leave of both non-exempt and exempt employees was addressed on P. 34, Line 11. Subsection 3 was limited to sick and vacation leave, with a new sentence about accumulative compensatory time that would remain with the county, and not transfer to the state. On P. 34, Lines 13-17, she explained, they struck the subsections 4 and 5 and added the new 4 and 5 contained in the amendment. The first one was about collective bargaining agreements. Only one agreement would extend beyond the effective date of the act. The state would become a successor employer as to that existing agreement and the responsibility and obligations of the state and the union will remain the same as to those employees to the expiration, she said. They also added to sub. 5 a provision that when the Supreme Court develops a personnel plan, it may recognize an appropriate bargaining unit, using "may" as opposed to making it mandatory. P. 35, Lines 6 and 7, stated that when the employees came into the judicial branch, they would be entitled to an increase equal to what other employees in that branch received, if any, as opposed to "equal to the statewide average pay plan".

John Andrew told the committee that the 02 amendment was relatively innocuous except the repeal of 354-04, which directed the district courts and judges to provide facilities and other equipment and supplies at county expense. It was highly recommended by county people that it be repealed, but he felt it was controversial. He questioned whether they had a legal analysis of the separation of power and if the judges had that authority, or if it was inherent in their branch without statutory language.

Judy Paynter, Administrator, Tax Policy and Research, Department of Revenue, said she felt the intention was to have the state fund the district court, and if they ran out of money they couldn't ask the county for it. The question was how they would interact with the state legislature, he said. The only thing the counties agreed to do was provide physical space. The money for supplies and other things should be a state issue.

SENATOR LORENTS GROSFIELD said the county government was a subdivision of the state government and he questioned if there had been a legal separation of powers all along.

Motion/Vote: SENATOR MIKE HALLIGAN moved that amendments sb017602.avl Be Adopted. Motion carried unanimously.

Discussion:

SENATOR HALLIGAN asked about the increase allocated to classified employees. **Lisa Smith, acting Supreme Court Administrator,** explained that all employees in the judicial branch are exempt, and not subject to the pay classifications of the executive branch. When the legislature passes the pay bill, they get a cut, though not necessarily 3%, and it's allocated among all the employees. They were concerned that the county employees coming in would get the 3% increase whether they could fund it or not, while their employees would receive nothing. Everyone would be protected if all employees in the judicial branch got the same increase. In answer to a further question, she said judges' salaries are set in statute; they are not counted as judicial employees.

Judy Paynter further explained about the "average" in the pay process, saying that the average was for one year. They were going to have one year to work out the pay plan, so that people would stay at their current level. This would not be equal compensation because they weren't equal now; it differed from county to county. Everyone would have this average now because they would not be slotted as an A,B, or C; there would be no classification to fit into.

SENATOR HALLIGAN asked her to use an example of court reporters coming into the system and how many there would be. She answered, "about 35." The senator further questioned about the 3% increase. **Lisa Smith** said the money was divided among the employees in each program. They couldn't tell an elected official what their increase could be, but they could determined the employees of the law library and the rest of the staff.

SENATOR HALLIGAN was thinking of the moral issue of the two different plans whereby some got an average, and others might get a percent lower. **Ms. Smith** said she was unaware of any inequities in the allocation in the pay plan bill. **Ms. Paynter** interceded, saying for the first year the employee would be guaranteed the same percentage of increase as the others.

CHAIRMAN MCNUTT moved that amendments SB076101.avl Be Adopted.

Discussion:

SENATOR GROSFIELD asked about compensatory time and if the counties were okay with the provision. **Gordon Morris** stated there was an obligation there anyway. **John Andrew** added that they were addressing two contingencies. Comp time for people who would otherwise be entitled to overtime would be entitled to a cash payout, although different counties might have other provisions. At that point, what carries forward is accumulated annual leave and sick leave which is assumed by the new employers.

SENATOR HALLIGAN then asked about on-going grievances and collective bargaining. **Mr. Andrew** said they were unsure about all counties, but there were at least two collective bargaining agreements that applied to juvenile probation, one with a June 30, 2001 expiration. That would have to be processed under that existing agreement. The other expired in June of 2002. He said they had three people in Cascade County that would have full rights under their collective bargaining and grievance procedures. It was a teamsters' contract, he said, so there's a final and binding arbitration provision in it.

SENATOR HALLIGAN asked about compensatory time, bank holidays and other compensation. **John Andrew** explained that under federal law, compensatory time in the form of time off was substituted for immediate cash payment. The intent of this bill would be to clean those things off the books before they transferred over. **Gene Fenderson, lobbyist for the Heavy & Highway Committee,** commented on probation officers. (Tape not clear here.)

SENATOR HALLIGAN asked about an employee on their probationary period at the time of the transfer. **Ms. Smith** said where there's a collective bargain process in effect at that point, that language would be controlling. He asked how they dealt with the assessors that had transferred over. **Lisa Smith** explained that it was a cleaner transfer because it was all contained in the executive branch and the Board of Personnel Appeals did elections, if necessary, to determine appropriate bargaining units. The difficulty in this transfer, she said, was how the positions would fit into the judicial branch. **SENATOR HALLIGAN** asked her about federal labor laws. Her sense was that federal law in collective bargaining shouldn't have any bearing because they were organized under state collective rights. If there was a problem, a small group of employees might file an unfair labor practice and the board would have to resolve that charge. The senator asked that in absence of a personnel plan or policies in place, what would happen? She answered that during the first year, it would be a situation-by-situation case and the judiciary would do everything they could to honor that. But as for the rest, she said, guidance wasn't there. In further conversation about extended probationary periods interrupted by the transfer, she said that everyone in the judicial branch is on a 6-month probationary period as standard policy. She thought if they'd completed four months, they would have two remaining still.

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Gene Fenderson spoke then, saying that the people on probation will probably end up having the same supervision, who will move along with them into the new system. He didn't anticipate much change.

Vote: Motion carried unanimously to adopt amendment SB076101.avl.

Discussion:

SENATOR HALLIGAN told the committee that in talking with the court reporters, they still didn't like the bill, and wanted to opt out. Another issue with them was the advisory councils, that they wanted to be controlled by a judge. He asked for others' opinions on the conflict between what the advisory council could do and what the judge could do. **Judy Paynter** explained that the judicial council, which was comprised of four district judges and one member of the Supreme Court, set the overall policy and procedures for unification. The court reporters would still work under their same employment arrangements, so everyone would still work for the judge, and he would be their hiring person. In answer to a further question, she explained the role of the judicial council: they set work schedules, transcript fees, and hand equipment. It was complicated, she said, in that the court reporters keep the transcripts, but don't get time and a half. Supposedly, the trade-off is that they buy their own equipment. **SENATOR HALLIGAN** asked if they had their own association and **Ms. Paynter** replied that they did, and would continue, just as their employees had theirs, and the assessors did as well. She talked about the three different situations in which court reporters could be hired. The council only set policies and procedures and was made up of five voting members (the Chief Justice and four district court judges) and only they can vote. She thought the court reporter is an ex-officio, non-voting member of the council. **CHAIRMAN MCNUTT** commented that they shouldn't be locked out of the council and that their input was needed. **SENATOR HALLIGAN** observed that the district court judges were extremely independent. **Ms. Paynter** gave her observations of the groups, saying the judges thought of themselves as the voters, and would protect the reporters and not micro-manage them. They would have to talk to each other, she observed.

SENATOR HALLIGAN questioned if judges would have the independence to apply for federal grants, and **Judy Paynter** explained that they would, and that they would have to account for them, just as any agency does. People hired under funds from these grants would be under the same policies and procedures as the others. The intent of the committee was to let the system operate, and if someone gets grants and brings more money in, more power to them, she stated. Asked if it would a require a pre-statutory authorization, she stated that the grant would be under the name of the state. If the grant was given in mid-session and the legislature had not considered the funds, they would seek a budget amendment.

Valencia Lane pointed out that it was current law that the public defenders' office only includes counsel for defendants unable to employ counsel, in response to **SENATOR HALLIGAN'S** inquiry on behalf of **Judge Larsen** of Missoula. She referred to Sec. 41 of the bill, amendment 02, which addresses the current defenders' office, saying the office was to provide public defenders, applicable only to criminal cases. His other question included counsel for juveniles, which was picked up by the state. She also explained about Sec. 18 of the bill, district court expenses, which on P. 10, Line 28 through 30, the state was picking up for abuse and neglect cases, and would continue, as would the juvenile criminals and the abuse and neglect cases. Guardianships, conservatorship and those involving involuntary commitments were currently paid for by the county and not changed by this bill. She said it included public defenders doing guardian ad litems.
He asked about lay guardians for counties that use CASA.
Ms. Lane reviewed expenses incurred by the state that remained unchanged in Title 41, Chapter 346, **SENATOR HALLIGAN**'s concerns among them.

GORDON MORRIS was asked to comment. His concern was in Sec. 41, dealing with public defenders, and he wondered if they would be treated the same as other employees or were they going to the executive branch? **Ms. Lane** responded that they would go to the executive branch to avoid a conflict of interest with the judiciary, before which they would appear and represent clients, the same as the appellate defenders.

Dave Ashley spoke of a concern they had after speaking to a public defender from Billings. A public defender commission was being established in Helena, and no provision for staff was made. He said that Sec. 9 dealt with the duties of the commission.

They felt the appellate defender program, attached to the Dept. of Administration, might possibly share staff, but it might create a conflict of interest. **Judy Paynter** responded that there was no provision for additional staff in the bill, and that it would have to be in HB 2. They had just dealt with current law. **SENATOR HALLIGAN** asked if they needed to address Sec. 9 about the ability to hire staff without saying the specific number, and let HB 2 dictate what allocation it would be. **Ms. Paynter** replied that it would not be necessary in this bill, and they could just appropriate a staff person in HB 2 to the Dept. of Administration.

Discussion followed about co-ordination of amendments with HB 124, to ensure language in case it failed and they wouldn't be funded. A question existed on health benefits, Workers' Compensation benefits, pre-existing conditions, and others on how it would carry over to the new plan. **Gordon Morris** opined that any stipulation of a pre-existing condition would be excluded from insurance under the state plan for a specified period of time and would have to be waived. **Ms. Lane** asked for clarification to say they would waive pre-existing conditions for a transferred employee and he answered in the affirmative.

SENATOR HALLIGAN brought up the question of space. **Ms. Paynter** pointed out that while the county provided the space, the state would provide all equipment and supplies.

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CHAIRMAN MCNUTT was concerned if there were enough sideboards in the district court funding so that it could not be tampered with by the Supreme Court to syphon off money for the appellate court. **Judy Paynter** handed out a chart **EXHIBIT(jus27a03)** and explained it to the committee, assuring each district court would get the same proportion as the 1999 figures, adjusted for inflation, relatively equally, even though some courts were better funded than others. It would guarantee some sideboards for 2002 and 2003, she assured, and after that, they would come to the legislature for 2004-5 appropriations.

CHAIRMAN MCNUTT said he would advise Judge McKittrick that in the first two years, they could not syphon money out of Missoula, for instance, and funnel it out east. That wasn't the intent, he said.

Adjournment: 6:00 P.M.

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SEN. WALT MCNUTT, Chairman

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Judy Feland, Secretary