MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 13, 2003 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Mike Cooney (D)
Sen. Bob Keenan (R)
Sen. Jon Tester (D)

Members Absent: None.

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

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

Committee Business Summary:
Hearing & Date Posted: HB 631, 2/27/2003; HB 564, 2/28/2003; HB 481, 2/28/2003;
Executive Action:

HEARING ON HB 631

Sponsor: **REP. BOB LAKE, HD 60, Hamilton**

Proponents: **George Bennett, Attorney, Montana Bankers Association**
Neil Peterson, Department of Revenue

Opponents: **None**

Opening Statement by Sponsor:

REP. BOB LAKE, HD 60, Hamilton, advised HB 631 is a clean-up and a tune-up of liquor license laws. **EXHIBIT(fcs53a01)**

Proponents' Testimony:

George Bennett, Attorney, Montana Bankers Association, testified the bill addresses an omission from 1999. The **Department of Revenue** controls liquor licenses and for anyone selling a license on credit or lending money on the security of a liquor license, the proposed transferee or purchaser must have the **Department of Revenue** involved in doing the due diligence. In 1999, the statute omitted one of the three methods of determining a default and that was a foreclosure under the uniform commercial code. The uniform commercial code is a complex set of statutes and Article IX was just rewritten. There are a lot of protections for the debtor under the uniform commercial code so when a foreclosure happens under the UCC, there are almost the same protections as in a judicial foreclosure. Until 1999, the **Department of Revenue** had an administrative rule recognizing the UCC foreclosure. They worked with the department in drafting the bill and the department supported it in the House.

Neil Peterson, Department of Revenue, advised the bill adds another reason to help somebody foreclose when they hold the paper on a liquor license and the department supports the bill.

Keith Colbo, Montana Independent Bankers, endorsed the bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. RICK LAIBLE asked what happens to a foreclosed license.

Mr. Peterson advised in 1999 when they put in this particular section of law, they didn't have a mechanism to deal with the issue of a foreclosure. Under the bill, whoever the foreclosing party is can do one of two things. If they want to operate the license, the department can put the license back into their name, put it under temporary authority and have them submit application to operate the license. If they are not qualified or don't want to operate the license, they have to put it in non-use for 180 days and within that 180 days, they have the opportunity to sell the license or get one additional extension of 180 days.

SEN. ROYAL JOHNSON asked what is a non-judicial sale.

Mr. Bennett explained a non-judicial foreclosure is where a court of law is not involved. Oftentimes these liquor licenses are used with real estate where there's a real estate mortgage. That has to be foreclosed in court. When foreclosing on a liquor license in and of itself, it is an item of intangible personal property and Article IX of the Uniform Commercial Code covers security interests, which is a lien on personal property and fixtures. If a security interest is filed with the **Department of Revenue** then a foreclosure can happen under the provisions of the Uniform Commercial Code. There must be a sale which is commercially reasonable, there has to be notice to everybody, and the debtor has to know what the terms are. It is a foreclosure that is not done under court auspices and has a lot of protections for the debtor.

SEN. JOHNSON asked if foreclosure and sale are synonymous words.

Mr. Bennett replied the question here is under what circumstances could the **Department of Revenue** recognize default. The party holding the liquor license has to be in default either under the sales contract or the loan. If the lender takes a foreclosure action without a default they could get into a lot of trouble. This bill simply states the **Department of Revenue** can recognize, as a default, the foreclosure under the Uniform Commercial Code. The department will ask the person who foreclosed to show them what they did to see there has been a proper foreclosure. They can treat that then as a default and then start their administrative proceedings to recognize the new transferee or put the license in suspension. It is a matter of title.

SEN. GREG BARKUS asked about the language on line 25 of the bill. The sentence regarding the non-judicial sale ends in the word "and". He wondered if there is something the sentence needs connecting to.

Mr. Bennett advised if there is a grammatical error, it is his fault. The bill recognizes three types of default: where the debtor acknowledges in writing that they've defaulted, where there is a judicial foreclosure, and the foreclosure under the Uniform Commercial Code.

VICE-CHAIRMAN BILL TASH advised staff would check with the drafter.

Mr. Bennett thought the "and" incorporates "(ii) 'liquor license' means a license issued under this chapter."

Closing by Sponsor:

REP. LAKE closed on the bill. He noted he visited with **SEN. LAIBLE** who agreed to carry the bill in the Senate.

HEARING ON HB 564

Sponsor: **REP. MONICA LINDEEN, HD 7, Huntley**

Proponents: **Dave Gibson, Governor's Office**
REP. JIM KEANE, HD 36, Butte
Andy Poole, Department of Commerce
Web Brown, Montana Chamber of Commerce
Ingrid Childress, Department of Labor and Industry
Riley Johnson, National Federation of Independent Business
John Cramer, Great Falls Development Authority
Liz Harris, Flathead County Economic Development Authority
Gary Amestoy, Richland Economic Development
Linda Beck, Big Sky Economic Development Authority
Evan Barrett, Butte Local Development Corporation
Charles Brooks, Billings Area Chamber of Commerce
Jani McCall, City of Billings
Mike Foster, Sisters of Charity Hospitals
Dick King, Missoula Area Economic Development Corporation
Sue Mohr, Montana Job Training Partnership

Opponents:

Opening Statement by Sponsor:

REP. MONICA LINDEEN, HD 7, Huntley, advised the bill is to attract more high paying jobs by providing workforce training incentives to the businesses that want to relocate or expand to the state of Montana. Montana currently has a number of good programs to help relocating or expanding businesses with physical infrastructure costs. Among others, there is the **Board of Investment's** value added loan program and infrastructure loan program which provide strong incentives for physical property expansion and improvement. Communities are allowed to create tax increment financing districts where they can pay for physical infrastructure improvements in designated areas by capturing the future increases in property tax that result in those improvements. These are good programs and they continue to create good paying jobs. The world's economy is changing and the needs of citizens and business with it. In order for Montana to remain competitive, it is necessary to continuously evaluate economic development tools and make sure they are meeting the needs of Montana now and in the future. In the past decade, access to a skilled workforce and availability of workforce training incentives has become the #1 issue for expanding and relocating businesses nationwide. In this arena, Montana is at a significant competitive disadvantage. Montana is the only state in the county that does not have any dedicated state-level resources for worker training and the bill addresses that shortfall. It allows the state to use a form of tax increment financing for worker training needed for new jobs. The bill does not solve all the issues facing worker training in Montana, it provides a very powerful and much needed tool to improve the skills of citizens and help create the kinds of good paying jobs that move the economy forward. She advised this has been a labor of love over the last two years in putting together the coalition across the state of Montana and working with the economic development folks around the state to put the bill together. She felt the bill represents the best of everyone's ideas.

Proponents' Testimony:

Dave Gibson, Governor's Office, distributed and explained a handout dealing with the Primary Sector Business Workforce Training Act. **EXHIBIT(fcs53a02)** ***{Tape: 1; Side: B}*** He handed out and explained amendments for the consideration of the committee. **EXHIBIT(fcs53a03)**

REP. JIM KEANE, HD 36, Butte, identified himself as a member of the **House Business and Labor Committee** and a proponent of the bill. He advised on page 3, line 24 and 28, those are people who will make up the board. Amendment **HB056401.atp** **EXHIBIT(fcs53a04)** changes the word "state" to "local" and **SEN. SHEA** will carry the amendment.

Andy Poole, Department of Commerce, described a pilot program in the department similar to the way the bill is drafted. About three years ago, the biggest issue for companies who were looking to move to Montana or expand in Montana was in wanting to train

Montana citizens to work for them. Montana was at a competitive disadvantage with other states because there was no incentive program for businesses who were expanding or relocating. They tried to identify a method to address those issues and they started the pilot program. The current rules for that program are that in order to get a workforce training grant from the Department of Commerce using this federal money, there must be a compensation package to each new employee that equates to $12.99 per hour. This is 110% of the state average wage. This is a proven tool and the bill puts it into full gear. He discussed the companies that have been funded through the pilot project and the jobs that have been created.

Web Brown, Montana Chamber of Commerce advised there is a labor shortage in Montana. The Chamber participated over the past year in a program through the US Chamber of Commerce and the US Department of Labor called Workforce 2020. They did the program with the **Helena Area Chamber of Commerce** and the **Bozeman Area Chamber of Commerce** to try to identify things that could be done to help with the labor shortage. A survey found that 76% of employers reported severity in finding qualified workers. Only 40% of the workforce is employees that meet requirements. In two years, the employees who meet those requirements are expected to drop to 26%. They participated in the development of the program and felt it is a great opportunity to provide some resources for training that will bring returns to the state. He encouraged support.

Ingrid Childress, Department of Labor and Industry, as the workforce services division administrator, administers local job workforce centers in 23 communities around the state. These job centers maintain close working relationships with business organizations in their communities. Those centers have heard from their business partners about the desire for some incentive or resource that would provide employee upgrading and job training. She felt the lack of incentive or assistance is one of the biggest gaps in the services of the workforce development system in Montana. They maintain a list of job training providers which they make available.

Riley Johnson, National Federation of Independent Business, advised **NFIB** works with a number of states on their workforce training programs and stands ready to work with the state on this program.

John Cramer, Great Falls Development Authority, testified North Dakota is more competitive than Montana. Montanans are very well educated, but education and training are different. He noted that two different bank systems have software packages that take up to six months to train people on. Having this tool would make Montana competitive. Both banks are fortune five hundred companies and he thinks both are going to end up in Great Falls. The are hoping to employ from 200 to 600 people at $9 an hour with excellent benefit packages. The companies have been told about the jobs training bill and its possibility of passage and that is what is keeping Great Falls competitive. Without a bill like this, they are not competitive. He described a labor availability study by **Mr. Gibson's** office that showed 25,000 out of 110,000 people are looking to enter the labor force or change jobs in his area. 14,000 of those are working for $10 an hour or below. In order to get good paying jobs, this kind of legislation is needed. It doesn't solve everything, such as retraining, but gives a tool to make employees more valuable to corporate America. He felt labor studies need to be done at least every eighteen months.

Liz Harris, Flathead County Economic Development Authority, and **Jobs Now,** a privately funded economic development authority, came to Montana two and a half years ago from North Carolina, a state which has transformed an economy on workforce training initiatives. She agreed Montanans are well educated but not well trained. She described a company that spends about $2000 a year with ongoing training of their employees. The ripple effect on the economy in Northwest Montana has been incredible. Employees take those skills and go into small businesses as more productive and valuable employees. She felt the thing that matters most today in business development is human capital. She felt the initiative is a good investment in Montana's people.

Gary Amestoy, Richland Economic Development, supported **HB 564.** They feel this is a tool that will help stimulate economic development in Montana and believe it will attract new business and expand existing businesses. They like the application process that requires a match, the review process, monitoring process and retainment process.

Linda Beck, Big Sky Economic Development Authority, Billings, stated she has been in the economic development business for about a year and half. The first thing she learned was workforce development incentives are needed in the state of Montana. She supported what everyone else said and asked for support of the bill.

{Tape: 2; Side: A}

Evan Barrett, Butte Local Development Corporation, advised he was also testifying on behalf of the **Montana Economic Developers Association** and the **Montana Ambassadors.** The first thing a business looks at when relocating to the state is not tax structure, it is workforce. Montana has been non-competitive in this area. Those in economic development wanted to see workforce training monies put into place for a long time and have been working for a decade to try to find vehicles to do it. This is a creative vehicle and is not an appropriation. He urged support and noted he has letters of support from a number of organizations around the state at his office in Butte and would supply them to the secretary at a later date.

Charles Brooks, Billings Area Chamber of Commerce, and a **Yellowstone County Commissioner** read from the a policy manual prepared by the Chamber: "Publicly funded work training has become essential in order for Montana to be competitive when it comes to industrial retention, expansion and new industry recruitment. Therefore, we as a Chamber, support the development of a workforce training program."

Jani McCall, City of Billings and **Billings Deaconess Clinic** supported the workforce training act and thanked the sponsor and **SEN. JOHNSON** for their support. The city and the clinic have been strong supporters of economic development in their region for a long time and work closely with the **Big Sky Economic Development Authority** and **Yellowstone Legislative Coalition** to support these efforts. The state needs a dynamic and balanced training program and this bill moves towards that.

Mike Foster, Sisters of Charity Hospitals, advised the issue has been discussed at great length in Billings by a coalition of groups. **REP. LINDEEN** took a leadership role and **SEN. JOHNSON** as well. He felt this is key element in economic development.

Dick King, Missoula Area Economic Development Corporation, supported the bill and liked that it works for **John Cramer** in Great Falls and works for them in Missoula. The tool is flexible to fit in with the economic strategy a community has developed and worked to implement.

Sue Mohr, Montana Job Training Partnership, testified they are a nonprofit corporation that staffs Montana's two workforce investment boards. The two boards receive the bulk of the federal Workforce Investment Act funds and distribute them as grants. They have been engaged for many years in improving workforce skills and working with local organizations to help companies who are coming in. She explained this year they lost 52% of their dislocated worker funds because they had to compete for funds with states that are worse off. They lost $2 million that would be used to provide all kinds of training. These kinds of state funds are very important and Montana is the only state who doesn't do this. She asked for support for the technical amendment to have local representation on the grant review committee so they are aware of activity that's going on in their local areas with employers and can help direct other resources towards those projects as well.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHNSON asked for an example of a primary business.

Mr. Gibson advised an example is Summit Engineering in Helena who has national contracts, pays very high wages, has skilled workers and is working on some expansion projects. A similar but smaller company, is Sonju Industrial in the Flathead Valley. The company started out as a non-primary sector business as an auto body shop. A non-primary business responds to the demand of the local economy and provides a service. The business evolved to supplying Semitool, Lockheed and Boeing. They have now invested in machinery and are doing business all over the country. Because of that they had to train people, hire professional engineering staff, and quality control staff. Businesses that are bringing money into the community are primary sector businesses. As that business grows, it can generate new wealth in the Flathead Valley.

SEN. JOHNSON asked how the loan is repaid if a company goes out of business.

Mr. Gibson advised if a company passes all the financial hurdles and gets approved for a loan and defaults, the loan will default. They will have to come back to the legislature for an appropriation and it is risk they take. The only other way to handle that is with some kind of reserve account. As loans are repaid a little money could be kept in a pot of money to cover loan losses that may occur. They don't think they'll have very many because of the application process. They didn't want to create another reserve account and would rather take their lumps in a future legislature. If a loan truly gets defaulted, his office will owe the Board of Investments money that they can't repay and would have to ask for an appropriation.

SEN. JOHNSON asked about the repayment of the principle on the loan on page 7, line 25. He asked if there is an intent to pay the interest on the loan which was quoted at 3.15% currently.

Mr. Gibson advised the intention is to pay the principle and interest as well as setting aside 5% for workforce study. The loans will get repaid in four to five years. They will take out a ten year loan. The section says that if a company does better than projected and raises wages beyond expectation, the money has to go to early principle repayment.

VICE-CHAIRMAN TASH asked about studying other loan programs, particularly programs designed with retention rather than recruitment, that are administered through the **Board of Investments**. One is the loan program that administers the **Resource Indemnity Trust Fund** monies.

Mr. Gibson advised **Carroll South, Board of Investments** was involved in crafting this. That mechanism did come up.

VICE-CHAIRMAN TASH thought it would have made a better bill.

SEN. JOHN ESP asked about the upper level for loans.

Mr. Gibson stated there is a limit of $10 million outstanding at any one time. It works like a revolving loan fund. This is over 2000 jobs at the maximum grant and 4000 jobs for the average grant. If they loan out $10 million on the first day because some company came in and created 4000 new jobs, as principle is repaid on that loan, the money becomes freed up.

SEN. ESP asked about the eligible provider list for training and if that would be incorporated.

Mr. Gibson said that is what the first amendment he handed out would address. It is his intention for real training.

SEN. EMILY STONINGTON asked about the loan repayment schedule and early principle repayments.

Mr. Gibson explained that is on page 7, line 25.

SEN. STONINGTON declared that just says they have to do reports.

Mr. Gibson said he will find it as it is clearly an issue.

SEN. STONINGTON asked if the bill is not aimed at filling the labor shortage.

Mr. Gibson says that is correct; that would be a previously filled job like **Mr. Brown** illustrated. The point is there is a real need for skilled workers and the help wanted signs illustration is relevant. The company with the help wanted sign isn't going to qualify for this legislation but a new company coming in is going to face the same problems. If a company is expanding and meets the criteria, some of those help wanted signs may be mitigated.

SEN. STONINGTON expressed a concern about other workforce training programs and committees in the state and she wanted to know they need to create a new one.

Mr. Gibson advised this is not like any program in the state with a limited pot of money and a broad base of constituents for making decisions on how to spend it. It is their intent the $10 million is way beyond what they will actually loan in the next year. This is an unlimited program with a cap to make sure it doesn't get too far out of control too fast. If a company meets the criteria of this program, they will get a loan. They felt to manage that, they didn't need a big committee and could get somebody from the **Department of Revenue**, **Department of Labor**, his office and the **Department of Commerce** to look at the application before it goes to the **Board of Investments** for another review. He preferred a small group, but they didn't object to the actions of the House.

SEN. STONINGTON asked if there is another committee in the state that can do the job without creating a new committee.

Mr. Gibson said he is not sure there is. They couldn't use the **Board of Investments** and didn't find another one that would work that well. They came up with the new one and it got expanded. He said it could be done the other way but it is not a real big hurdle.

SEN. COREY STAPLETON asked about a huge company that sells their company to a new primary sector business who has never had a presence in the state and eighteen months later they sell to another company that never had a presence in the state. The way he read the bill, each one of those events is a qualifying event and would obligate the state to millions and those are essentially the same jobs although they meet the definition of new jobs. They meet the requirement of being a primary sector business. He asked **Mr. Gibson** to explain why that would be a good deal.

Mr. Gibson acknowledged that wouldn't be a good idea. It would not be their intention for an acquisition that didn't truly create new jobs in the state to qualify. If the company laid everyone off and went out and rehired, it might qualify but that is not the way it works. The bill could be amended or it could be taken care of in administrative rule.

SEN. STAPLETON advised that is not addressed in the bill.

{Tape: 3; Side: A} *(Note: Tape 2 Side B was not recorded on)*

Mr. Gibson explained the business needs to be new in the state or expanding. He admitted there are limits to the bill but it could be expanded in subsequent sessions.

SEN. BARKUS asked about a concern with financial issues in the Flathead area and the limit in Section 9, page 8.

Mr. Gibson advised there is a limit to the total number of loans. The loan is specific to a project.

SEN. ED BUTCHER asked about the difference between education and job training. People with degrees are unemployable. After spending millions of dollars on post-secondary education, these people are not trained for anything.

Mr. Gibson say he was not talking about education system providers but the ability of businesses to go the educational system and fund that kind of training.

SEN. TRUDY SCHMIDT asked about the history of defaults in North Dakota.

Mr. Cramer advised there were no defaults in nine years in North Dakota. In fourteen years in Iowa, there were no defaults.

SEN. SCHMIDT asked about training and the well educated workforce Montana has and how that transfers into a well-trained workforce.

Mr. Cramer advised in efforts to market Montana, they show companies the quality of Montana's labor. In comparison to Mississippi or Texas is very highly educated. There must be education in order to have training. People who can't comprehend, read, write or operate a computer in today's world can't be trained. Education and training are two separate items. Training involves learning different systems.

SEN. SCHMIDT asked about his experience in determining who gets a loan application.

Mr. Cramer advised he sat on the oversight panel in North Dakota until they determined they didn't need the panel any more. They scrutinized it as the ability of the company to repay the loan. If that was questionable, they weren't given the loan. They analyzed balance sheets, income statements and everything. He was sure the **Department of Commerce** would be setting that pattern.

SEN. SCHMIDT asked about the multipliers in the primary sector.

Mr. Cramer said if you listen to **Paul Polzin, University of Montana**, it is seven times. He tends to use 2.3. If we spend $10 million, that $10 million represents probably another $23 million in income taxes. Employees pay for goods and services in their communities. Employers have employees who pay state income taxes and that's the multiplier.

SEN. JOHNSON questioned the loans being paid back as rapidly as four or five years unless that person's income increased substantially. This is a tax increment loan for tax improvement. If you pay 3.15% for the cost of the loan and a person earns $25,000 his tax if currently $500. If he had an increase, the 3.15% has to be paid off too. It increases his tax liability by $50. The program only gets the increase and if that is $50 and they had a $5000 loan out, it won't pay off in five years.

Mr. Poole advised the program only works for new employment and that is a new job. Any new tax that is paid to the state would be used to amortize the loan. It wouldn't be the $50 increment over and above what they were making before, because they weren't making anything before. It is a new job, so all the new tax would pay for that loan.

SEN. JOHNSON said he read in the bill that it could be used for people that are currently employed to increase their value.

Mr. Poole said that is not correct.

REP. LINDEEN advised that if an existing business wanted to apply for the grant to create new jobs in order to expand their business, it wouldn't be taking an existing job and trying to increase the value of that job. It would be creating a whole new job.

SEN. JOHNSON said assuming that is correct, on a $25,000 income per year, what would be the average family income tax.

Mr. Poole said there is a chart that shows the income tax rate on average in Montana based upon the wages a person would make. He thought it was about 2.9% at that level.

CHAIRMAN ZOOK advised it is in the fiscal note.

Mr. Poole advised the maximum allotted grant that any company could get for a new employee is $5000. In doing the financial analysis of a company and that's going to create ten new jobs, the amount of the grant they actually get would be based upon the rates of pay to those new employees. It may be $2500 or $1000. It depends upon the kind of training one would get, how much that's going to cost, and the kind of wages that are going to be paid. All of that will be analyzed as part of the loan review package. He wouldn't expect each grant would include $5000 per employee and it would probably be less than that.

SEN. JOHNSON advised he only used that number because that was the number in the example **Mr. Gibson** used.

Closing by Sponsor:

REP. LINDEEN closed on the bill.

HEARING ON HB 481

Sponsor: **REP. DAVE LEWIS, HD 55, Helena**

Proponents:
Tom Beck, Governor's Office
Bob Olson, Montana Hospital Association
Chuck Hunter, Department of Public Health and Human Services
Mike Foster, Sisters of Charity Hospitals
Jani McCall, Billings Deaconess Clinic
Mona Jamison, Shodair Hospital

Opponents:

Opening Statement by Sponsor:

REP. DAVE LEWIS, HD 55, Helena, opened on HB 481 which would impose a utilization fee on hospitals for acute in-patient care days. He explained this is not a tax, it is a free-will offering. The hospitals in Montana are being given an opportunity to give the state $1 and the state will give them back $4 with the Medicaid match. The fiscal note states they will levy a fee that will generate $7 million the first year and $8.3 million the second year. They will transfer that money to the state and the state will match it out of Medicaid and give that money back to them. That is in the best interest of the state because currently the gap between what the state pay hospitals for taking care of Medicaid patients and what it costs is about $30 million a year. They are absorbing about $30 million a year and are shifting that cost to private pay and other insured patients in the state. If the state is able to generate enough money to pay closer to the actual cost of caring for Medicaid patients, everybody wins. This proposal will generate about $40 million a year of new Medicaid dollars that will go into the healthcare system in Montana. This will cover the costs of operation in hospitals. It may not lower rates but will mitigate the increases in the future and make it a much more fair system.

Proponents' Testimony:

Tom Beck, Governor's Office, advised he is in support of HB 481. It raises money that will help fund hospitals and help individual families across Montana maintain local access to quality healthcare. It provides an opportunity for the legislature to join a successful partnership that will bring needed dollars to our hospitals and our communities. The Governor supported exploring options like the one presented in the bill during the Governor's Health Care Summit held the previous year. In the past eight months the **Department of Public Health and Human Services** and the **Montana Hospital Association** have pursued this concept and the Governor's office commends them for developing this proposal. **HB 481** brings about $40 million in new federal dollars over the biennium to hospitals using the mechanism that has worked well for the nursing homes since 1992. This is money that they would have to cut or raise hospital rates without the bill. It will provide increased funding to rural and urban hospitals and is a shot in the arm to hospitals and local economies. It provides money to cover the cost of care for poor and needy individuals and employers who are worried about escalating health care costs. It affords the opportunity for Medicaid to pay hospitals at cost. It addresses the cost shift to patients who are covered by private insurance or pay in full and should assist in slowing down the cost of health care in hospitals. It is an opportunity to keep the rates viable in hospitals as much as possible and shifts the expense back to the federal government to a certain extent. They have to do a waiver in order to do this but they are hopeful this can be accomplished. The Governor wanted to go on record in support of this type of funding.

Bob Olson, Montana Hospital Association, distributed information. He explained the graph of unpaid Medicaid costs. **EXHIBIT(fcs53a05)**In the year 2000, the gap was $3.5 million. Over time, the budget of the state of Montana deteriorated and there are now more people on the program. In 2003, the state is projecting a loss for hospitals of $15 million and that is projected to grow over the next two years to $20-$25 million a year if nothing is done. It is predicted that hospital payments will be even from the year 2000 to the year 2005. Hospital payments have been cut seven separate times. They are being paid less now on a per case basis than they were three years ago. The other graph is an explanation of what the bill does and how the system works. **EXHIBIT(fcs53a06)** The decision is absent the state funding necessary to pick up the full Medicaid program, should medical providers take what payments they can and shift what they don't receive onto everybody else or step forward with a solution. Hospitals will put forward the money to match the federal money. Those dollars will come back to hospitals to pick up the cost of care. They will not recover all of their costs because they are putting money forward. They will get their money back plus the federal money. They will not be assessing fees on patients because it is against the law according to the bill. The hospitals end up with the money back that they put forward and there is no new net cost for the patient to bear. There is not guarantee of dollar for dollar payment as that is against federal rules. The tax is levied in January of each year. The first year, hospitals will pay a fee of $32.44 for each day of inpatient care. That is high because they only have six months of days in the first year to cover a full year's worth of spending so they doubled the rate for the first six months. The second year, it changes to $19.43 for a full year's worth of days. Hospitals make that payment on a one-time basis through the **Department of Revenue** to the **Department of Public Health.** They match it and pay hospitals back within 30 days. He pointed out it is a state special revenue account and these dollars are not going into the base. They are not going to hike general fund spending or permanent hospital payments. This is a one-time, once-a-year situation. The reason they didn't put this into the base, is the federal government is not enamored with this. It is legal and in federal law but the federal government would prefer the state spend general fund too, because they know the state doesn't have it. The federal government will increase their spending but, as they are a partner to this program, they will make sure hospital's costs are covered and they are not shifting payments onto private insurers and private patients. Hospitals are able to close the gap with the costs.

Chuck Hunter, DPHHS, reiterated the bill closes the gap between cost and reimbursement and does so in a manner that doesn't cost the general fund any money and lessens the cost shift for private payers. It provides and preserves access to good quality medical services across Montana, not just in the cities but in small hospitals around the state as well. It provides about $40 million in economic benefits to the state and is a win-win proposition.

Mike Foster, Sisters of Charity Hospitals, expressed support for **HB 481**. They have taken a cautious approach in shaping the bill and lending their support because the concept of imposing a fee upon themselves and trusting the government is inherently risky. With assurances from **REP. LEWIS,** legislative leadership and **Governor Martz** that the revenues from the fee will indeed be used only to obtain matching federal funds for Medicaid that will then be distributed back only to the payers of the fee have convinced them to support the bill. If those assurances prove otherwise and the revenue collected is used to fund other programs or to reimburse providers who have not paid the fee, then their support for **HB 481** will disappear. Hospitals in Montana have absorbed sizeable cuts in Medicaid reimbursements over the last two years. The money generated from this bill will not completely fill that gap but will take a significant step in the right direction. One of the benefits of the bill will be economic maintenance if not economic development.

{Tape: 3; Side: B}

Jani McCall, Billings Deaconess Clinic testified in support of the bill but maintained any funds generated must go to the providers who put the money into the system. **Billings Deaconess Clinic** has 2700 employees and is the largest employer in Yellowstone County and the largest health organization in the state of Montana.

Mona Jamison, Shodair Hospital, strongly supported the bill as amended. She advised that **Shodair** operates a psychiatric hospital for children and adolescents and an inpatient psychiatric residential treatment facility. She explained the bill taxes hospital providers so the state can leverage the tax dollars with federal Medicaid which would then be returned to the providers to cover the Medicaid expenditures that they now are not receiving. **Shodair's** total patient days in Montana are 19,337 and 14,000 of those are Medicaid days. In the first six months, if the bill passes, **Shodair** would pay an estimated $699,288 in taxes that would leverage $2.1 million. **Shodair** is the largest Medicaid provider in the state and provides 22.9% of the Medicaid services in the state. The bill allows hospitals to be a part of the solution. The benefits back to the hospitals in just being able to survive will be huge.

<u>Opponents' Testimony</u>: None.

<u>Questions from Committee and Responses</u>:

SEN. LINDA NELSON questioned whether the charge would be added to the price of a hospital room.

Mr. Olson indicated there would be no change to a hospital bill at all. Absent passage of **HB 481,** the hospitals are going to have to find a way to finance those unpaid costs that will materialize over the next two years. Hospitals will see additional revenue as a result of the bill and won't require additional payments from patients to make this happen.

SEN. NELSON asked if he feels confident this won't happen.

Mr. Olson declared he felt confident of that.

SEN. NELSON asked if there is a chance the feds will pull the plug on this.

Mr. Olson indicated that is their fear; as the federal statutes stand currently, this is a completely legitimate thing to do and well within the confines of federal law and regulations. It is a circumstance where the federal agencies will probably drag them through a long process of procedural review before they approve it. It is not a done deal with the federal government, but they had done everything in accordance with federal statutes and regulations. The indications thus far from the federal agencies is Montana's plan is applicable to federal laws.

SEN. ESP asked if the fee per day is calculated by bed days available or bed days actually used.

REP. LEWIS advised it is by bed days used.

SEN. ESP expressed concern about the estimates.

REP. LEWIS said his concern is that the numbers are too low rather than too high. If the numbers are too high, nothing happens because no money comes in that can be dispersed. If the estimates are too low, they will have to move spending authority from the second year of the biennium to the first year and get a supplemental.

SEN. ESP asked what will happen to the fees that have been collected if the federal government does not approve this.

REP. LEWIS advised the reason for the language on page 7, (3), is because the bill has been broadened to include facilities such as **Shodair**. There is a little concern that may or may not meet federal scrutiny. The language says without federal approval for those things, they are not covered by the act. There is confidence these facilities will be approved, but this is wiggle room.

SEN. ESP asked if the fee is collected and the feds do not approve the program, what happens to the fee.

REP. LEWIS guessed they wouldn't collect the fees without the federal approval.

SEN. ESP asked if he did not perceive a situation where the fee had already been collected and the rug is pulled out.

REP. LEWIS advised they won't proceed with the development of the program and implementing the rules until they have federal approval.

SEN. STONINGTON advised they first heard the bill in subcommittee and the negotiations with **Shodair** were occurring at that time. There was discussion of the financial impact of **Shodair's** inclusion or non-inclusion in the bill. She asked if further financial analysis had been done of what that inclusion will mean in terms of reimbursement levels.

Mr. Olson replied when **Shodair** was being considered for inclusion, the assessment of the fee on the number of days they produce was pretty well known and the amounts of unpaid costs they had in their historical operation were pretty well known. There was some thinking there would be a few thousand dollars **Shodair** would pay that would not be consumed if **Shodair** was brought up to the full cost payments. As **Shodair** has worked with the department, it was determined **Shodair** will enhance their program. There are kids located outside the state in special ed programs and those programs will be developed at **Shodair.** Those kids can come back inside the state and those dollars will be consumed within that program. They don't anticipate there will be additional revenue not used within the program.

SEN. STONINGTON advised it would be good to bring some of those kids home. She asked if the rules will be developed and the timing such that fees won't be collected until rules are adopted and adopted rules will coincide with the federal approval.

Mr. Olson said that is exactly their intent. They had to pick a time when they would actually have to make a payment and then deal with the distribution. Picking January and February of 2004 was not by accident. That gives until next January to receive federal approval and make sure the rules and regulations are adopted. The contingent voidness section is protection that if the federal government does not approve this, the tax itself will not be made. If the federal government gives its approval and later recants or rescinds it, the payments will already have been made and the federal government will have to do that respectively.

SEN. STAPLETON asked if **Mr. Olson** was the drafter of the bill.

Mr. Olson indicated yes and that there were a lot of other hands on it.

SEN. STAPLETON advised the "whereas's" on the bill were not necessarily a value shared by all and not by him. He did not necessarily see it as a failure on behalf of the legislature to pay for able-bodied adults who've made a series of choices in their life and therefore request government services. He felt those life problems sometimes draw people into a more healthy direction. He thought of the country as a young country but pointed out what that kind of thought did to the former Soviet Union. He suggested it is a choice and prioritization regarding the general fund. The state budget has grown 5% a year each and every year on average. He had no problem when a special interest or any constituency finds a good deal and can leverage it, but the state is being asked to broker the deal for free. He asked why the broker would not have a commission of ten or fifteen percent. Otherwise hospitals could just go do it themselves.

Mr. Olson indicated when it comes to paying the assessment, every facility will make the payment regardless of the amount of services they can expect to be paid for. They are going to pay based on the number of days of service they render but the amount of payment they get back is not a guarantee. If the state were to take fifteen percent of the pool, that would expose a certain number of the smallest hospitals in the deal to paying a fee they could not recover. The whole thing unwinds as the federal funds disappear. Having those small facilities incur a cost means they would put it on their patients bills because they wouldn't be able to recover through enhanced Medicaid payments. They are paying the new administrative costs for the department. It's true the state is not taking a portion of these dollars in order to finance part of the general fund. If the state were to want to do that, they would not bring the bill forward. If it is to be a general fund program, and if the state chooses to raise those dollars, they would be back into tax policy on what's the best way to raise dollars generally for the state of Montana. All medical providers were invited by the Governor to come forward with solutions like this. They took the risk to bring this forward to try to solve a problem. Other medical providers chose not to.

SEN. STAPLETON allowed that several industries do the same thing; it is done in energy and telecommunications. Each of those special interests get some sort of benefit and hospitals do too with the tax status. He wondered why not deal directly with the feds.

Mr. Olson replied they cannot.

SEN. STAPLETON said then they need the state as a broker. He suggested the legislature gets trashed for some of the decisions in the last ten years about good deals they give major special interests without the state getting what it probably ought to. They are seen as a bunch of rubber stamping puppets. He asked if they give one dollar and get four back, why would it be so odd to contribute to the general fund. He understood the way the bill is drafted the mechanism doesn't exist, but it could. The state could act as the broker and, minus the commission, the state would give hospitals the three to one.

Mr. Olson said it is true that could be done. It is legal but would draw more federal scrutiny. The more important issue is it would expose some hospitals to paying a fee they could not recover. Not every hospital gets three for one back. It is illegal to guarantee that kind of return. Some hospitals will only recover the amount they are paying in by virtue of their exposure to the Medicaid program. An example is **Bozeman Deaconess Hospital.** Bozeman is not a major Medicaid provider relative to their patient load. If the dollars were taken out, some hospitals would be asked to pay a fee to finance the state's general fund needs but couldn't recover through the additional payments and couldn't guarantee not to put it on the patients. They would not support the bill and the whole thing would come unraveled. That is why the bill survived negotiations with the department and the Governor. It is a pointed effort at a specific program. Many providers don't serve Medicaid, but the one provider group that has always done so regardless of payment issues are the hospitals. There are federal laws dealing with emergency circumstances but it is part of the mission of those hospitals to stand with the Medicaid program and continue to serve all other residents. The problem they face is financing that.

SEN. STAPLETON said he appreciates that hospitals do that. In his community, there are two competing hospitals and they can't gobble up real estate fast enough. They have a lot of high paying jobs and the industry is good and good for a community. He wondered if it is proportionate. If the bill raises $40 million over a couple of years, he wondered if it is too much to think that 10% or $4 million could go into the state's general fund so **DPHHS** can oversee the equitable reimbursement to the hospitals.

Mr. Olson said other medical providers chose not to be part of this. He didn't think it reasonable for hospitals to put the money forward and the providers who sit back saying they'll take what they can get then benefitting from the program. The problem they're trying to solve is covering the costs they're going to incur. If they were to take dollars out of the deal to do other things, even a part of the dollars, they are left with figuring out how to make up those costs. This is a solution to help make up those costs. They don't make up all of the costs because they are putting forward the state share. Out of the $55 million for both years, they have to still make up $12 to $15 million of costs. As dollars are moved out it keeps adding to the problem they're trying to solve.

SEN. BEA MCCARTHY advised the district she represents is mainly small hospitals which are combined with nursing homes. She asked if the reimbursement plus the fee will simply go to that portion of the facility that is the hospital.

Mr. Olson said that is correct.

SEN. MCCARTHY asked if **Shodair** is the only other facility that is eligible under this proposal.

Mr. Olson advised **Shodair** is a hospital and as such is included in the proposal. There are residential treatment facilities that are free standing. They neither want to be included nor are they under this proposal because they are not located within a hospital.

SEN. MCCARTHY asked if they were approached as they worked through this.

Mr. Olson replied actually the **MHA** did not approach the Yellowstone Boys and Girls ranch because they are not a member of the **MHA**. The Children's in Butte is a member of **MHA** and they were involved in this from the start.

{Tape: 4; Side: A}

SEN. KEITH BALES asked why there is a difference in the figures.

Mr. Olson advised the rate for the first year captures six months because a fee or tax can't be retroactively imposed. They had six months worth of days to capture a full state fiscal year of match. The rate is essentially doubled for a six month period that raises the necessary match for the first state fiscal year. The second year they will be paying $19.43 a day for calendar year 2004. The reason the rate stays for the following six months is that the rate itself has to extend as long as the bill lasts. The bill sunsets on June 30, 2005 so the rate stays in effect until June 30, 2005. If this meets federal approval and if everybody comes out of the two year experience accepting of the process and the mechanism, they would come in next session and strip the sunset or extend it. By leaving it in the bill for that next six months, they don't run into the problem of having one six month period in subsequent years to work with.

SEN. BALES asked about Medicaid allowable fees.

Mr. Olson explained the way the Medicaid program works, the federal government has a matching relationship. They are willing to match certain state expenditures. They leave it to the state to determine the actual rate of payment that is made to the medical providers. For some medical providers, including hospitals, there is a maximum rate the federal government will allow the state to pay.

SEN. BALES asked if they are at the limit now on Medicaid or below.

Mr. Olson said they are below that amount and the first chart explained how far below that amount Montana falls.

SEN. BALES asked in setting those Medicaid fees, is there a possibility it may be passed along.

Mr. Olson restated hospitals, like any private organization or private business, set charges for services. It does so as to what it needs to recover from all of its patients, not just Medicare and Medicaid. The law says you have to use the same charges for everyone. The state controls how much hospitals are paid and are not really worried about what hospitals charge. That will continue under this proposal.

SEN. BALES asked about setting up a special fund and the concern about the legality. He wondered why the amount that comes in couldn't be allocated to Medicaid in **HB 2**.

REP. LEWIS indicated the dollars are simply spending authority. When the hospitals send in their money, it goes into the special revenue account and is matched with federal revenue and then when they send a check back it is charged to the account. The only money in the account is the money that comes in. It really needs to be kept in a special revenue account simply to segregate it from the general fund. There would be legal and political issues otherwise.

SEN. SCHMIDT asked **Mr. Hunter** about his part in the writing the bill.

Mr. Hunter advised he was involved in helping craft the bill.

SEN. SCHMIDT asked about the reason for crossing out the word "acute" on page 2 and inserting "in-patient care".

Mr. Hunter advised that was to deal with the issue of **Shodair Hospital** and to try to insure that they could, if given federal approval, bring the RTC component of the hospital into the bill so they could provide reimbursement to them.

SEN. SCHMIDT asked if he had any idea about when the federal government's decision would be made or the time-lines.

Mr. Hunter advised the bill is the tax portion. They are confident the way the tax is crafted will meet federal muster. The reimbursement side is where they will have to create a different state plan and get the state plan approved to repay these monies to hospitals. Typically, that is a 180-day process from the time it is submitted. They expect to be working from the passage of this bill with the **Hospital Association** and expect to have a state plan amendment submitted around the first of July. They would have a decision by January 1st at the latest.

SEN. BUTCHER asked if the average differential between actual costs and Medicaid funding is about 40%.

Mr. Olson said the state's latest estimate is that the payments run from 12% to 17% below costs on average. The payment based on charges is around 52%.

SEN. BUTCHER asked if they differentiate between the two.

Mr. Olson advised if they measure the Medicaid payment against what is charged for the service, they are required to charge everybody the same. When the Medicaid payment is received, that percentage of what the payment is to what that charge is runs around 52%. Their charges are higher than their cost, like any business. Since most government payers pay below cost, the charges will then be a lot higher than what it costs to deliver services. That is the cost shift and why privately insured people perhaps pay more because hospitals are subsidizing federal and state programs that pay less than the cost. Payment as a matter of costs comes far closer as a percentage of what it costs the business. The ratio currently is somewhere in the 80's.

SEN. BUTCHER asked if that could be narrowed by a little so private payers aren't having to pick up the gap.

Mr. Olson advised that is exactly what they are trying to do. They can't control what the state does. A lot of hospitals run nursing homes and the association is also supporting a tax increase on nursing homes to enhance Medicaid payments there. **HB 2** doesn't have all the funds that medical providers would like. They are trying to make sure they don't have to pass Medicaid costs on to others.

SEN. BUTCHER asked how much they anticipate that they could be able to drop the costs to those who pay privately.

Mr. Olson advised every hospital is different. The hospital in Superior, Montana, is running a $250,000 year loss. **HB 481** will give them additional money for their hospital. They are not a big Medicaid provider when it comes to the hospital but when it comes to the nursing home, they are. If their hospital payments are approved, they will be very grateful. It will not close their $250,000 loss. They will probably have to hike their fees in the next year and look at the services they offer. There are other hospitals that will receive considerably more money. In Lewistown, the dollars that will flow to that facility will change the rate hike from 5% to about 2%. Over the last five or six years, hospitals have not been hiking their charges in any substantial way. They surveyed the hospitals in 2002, and the average rate hike for hospitals with charge increases has been around 3.5%. Hospital payments and insurance premiums are going up faster than that, but it's not because hospitals are hiking their charges. A lot of hospitals haven't raised their charges at all in the last five years. Passing the bill will affect the issue directly.

VICE-CHAIRMAN TASH asked if the bill will affect sole community providers that have a critical care facility.

Mr. Olson advised the critical access hospitals are included in this proposal. They are usually very small Medicaid providers. They will pay the assessment and receive some dollars. It depends on how much Medicaid is delivered. The hospital in Dillon will receive a substantial infusion of the dollars from this proposal. Hospitals in Ekalaka and Terry who deliver almost no Medicaid will barely recover the assessment.

Closing by Sponsor:

REP. LEWIS closed on the bill. He was concerned about the line of questioning **SEN. STAPLETON** was pursuing. In this case, he thought diverting money would be a bad mistake. The estimate in 2005 is that the hospitals would have to eat $30 million of the costs of caring for Medicaid patients without this bill. That is being shifted to private pay patients and the other insured. Even with the bill there is still going to be $10 million a year. He thought it would be a mistake to divert some of the money because everybody would pay in the long run. He thought it would be bad faith. The hospitals came forward and made an effort to work with the state to come up with a plan and put a lot of money into health care in the state of Montana. The main beneficiaries are going to be those having to pay through cost shifting. He asked for approval of the bill.

ADJOURNMENT

Adjournment: 10:21 A.M.

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SEN. TOM ZOOK, Chairman

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PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT(fcs53aad)