MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK,** on April 9, 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. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (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. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

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 360, 3/29/2003; HB 12, 3/27/2003; HB 10, 3/27/2003
Executive Action: HB 12; HB 10; HB 369

HEARING ON HB 360

Sponsor: **Rep. Dave Lewis, HD 55, Helena.**

Proponents: **SEN. BILL GLASER, SD 8, Huntley**
Tom Schneider, Montana Public Employee's Association
Todd Luchene, MEA and MFT
Rep. Dave Kasten, HD 99, Brockway
Mark Taylor, Association of Montana Highway Patrol
Lorrie Hinck, Department of Agriculture

Opponents: **Chuck Swysgood, Office of Budget and Program Planning**

Informational Witnesses: **John McEwen, Administrator, State Personnel Division**

Opening Statement by Sponsor:

Rep. Dave Lewis submitted information to the Committee highlighting the components of the HB 360 package. **EXHIBIT(fcs76a01) Rep. Lewis** explained HB 360 is designed to do two things: downsize state government and address personnel management issues in much the same way as private businesses. HB 360 will allow employees to make decisions regarding their future in state government. **Rep. Lewis** worked 27 years in state government and felt he has some understanding of the organizational culture of state government agencies. He sees this as a positive opportunity to give an incentive to 1,000 people, excluding the **University System**, to terminate their employment with state government. They have estimated permanently eliminating 400 positions. He acknowledged the concern of department directors and the Governor. **Rep. Lewis** explained Exhibit 1 and the General Fund impact it would have for the 2005 Biennium. The cost of the terminations for 1000 employees would be $18 million. **HB 2** would be reduced by about $17.9 million in elimination of positions. Positions filled would be at 90% of the cost of the person who left. The House didn't feel comfortable doing this without the pay raise in **HB 13**, and that is where the $13 million cost comes from for the biennium. **HB 363** will designate one-time money of $26.248 million to pay for the cost of the early termination program. Future biennium savings of approximately $20 million are projected, providing the 400 FTE that are permanently reduced are not restored. In effect, the one-time money from work comp "old fund" excess reserves pays for the termination costs of HB 360, and then freed up positions will offset about 80 percent of the cost of the pay raise adopted in HB 13. HB 360 will establish a voluntary termination incentive which is three percent of an employee's salary times years of service. This money would be paid into a fund that the employee can draw out either in a one-time payment or over a period of time. The idea would be for this money to be used to pay for health insurance since it would now be the employee's responsibility to pick up that cost. One of the disincentives to taking retirement or terminating is the rising cost of health insurance. **Rep. Lewis** feels many of the state's major policy decisions in the future will be due to the rising cost of health insurance. The Directors are very concerned about reducing the number of employees in the agencies. **Rep. Lewis** stated those employees who leave will have the ability to come back and work half-time if they wish and work up to 960 hours a year. They would not lose retirement benefits by working part-time. **Rep. Lewis** felt a mechanism needs to be developed to downsize state government which allows for employees to make their own decisions. **Rep. Lewis** stated he did not develop this concept, but feels it is very creative. He acknowledges this is a big step, and that the Directors are concerned about operating, but feels this is a start for the state to begin downsizing.

Proponents' Testimony:

SEN. BILL GLASER, SD 8, Huntley, testified the bill is about change and assumes the state government is too large. It also assumes the right thing to do is to work out the change with employees and treat them like you would like to be treated. Those who do not like this bill, do not like the inconvenience of change and do not like to rethink where they are and where they are going.

Tom Schneider, Montana Public Employee's Association, submitted a list of petitions in support of HB 360. **EXHIBIT(fcs76a02).** **Mr. Schneider** believes **HB 360** is not a union bill. The **Montana Public Employee's Association** unanimously supports the concept in HB 360. **Mr. Schneider** stated that if the state employees cannot be paid, they at least need to be provided with an honorable way to leave. This is not an early retirement bill and will not put a drain on the retirement system. The bill is about health insurance for most people who are looking at leaving state employment, but cannot afford to pay $500 a month to keep their health insurance. If we are concerned about losing these individuals who are employed by the state, **Mr. Schneider** wondered why we are not paying them more. In Glendive, 97 employees will be laid off. **HB 360** will help those individuals.

Todd Luchene, MEA and MFT, stood in support of HB 360 on behalf of their 2,300 state employee members. This bill as originally introduced, called for 400 FTE reductions without any money going toward state employee pay. At that time, **Mr. Luchene** opposed the bill. If 400 positions are going to be eliminated, **Mr. Luchene** feels the people who are left should receive a raise to keep current with health insurance costs, and the increase in the cost of living. The **State Administration Committee**, therefore, added $.45 per hour as a raise, and they began to support **HB 360.** The have not heard the Attorney General, or anyone from his office, support the pay raise in **HB 461** or **HB 13.** The employees who are left have to be paid, and they need to be paid decent wages. Petitions continue to come in and are signed by not only state employees, but grade K-12 teachers and University professors. **Mr. Luchene** urged support of **HB 360**, and its correlation with **HB 13** stating they are both good bills.

Rep. Dave Kasten, HD 99, Brockway, commented on **HB 360**, stating it is a new idea and something the Legislature should take a very serious look at. Almost every company in the United States has made similar moves. This bill carries the idea that the state needs to take care of its employees. Government continues to grow, and this move needs to be taken. As **HB 2** left the House, it eliminated 301 employees. As federal money comes into the state, the number of FTEs grow. **Rep. Kasten** asked the Committee to take a long, hard look at the bill, and he urged the Committee's support.

Mark Taylor, Association of Montana Highway Patrol, said the association consists of 200 active patrolmen and 200 retired patrolmen. **Mr. Taylor** had one criticism of the bill because the existing contract agreement prevents the 90 percent base pay. The existing union agreement terminates July 1, and future discussions and negotiations will take that into account should the bill pass.

Lorrie Hinck, a state employee with the Department of Agriculture, testified she has worked for the state for seven and one-half years. This bill allows employees who leave to have something for medical bills. She supports the pay increase in **HB 13** because the employees of the **Department of Agriculture** are good, hard workers, who go beyond their job duties. They are civil servants to the farmers and ranchers of Montana. In order to see college graduates stay in Montana, we need to pay them a fair wage and compete with other industries. It is time for the state to step up to the plate and look to the future and determine where we want to be in ten, fifteen, or twenty years.

(Tape : 1; Side : B)

Opponents' Testimony:

Chuck Swysgood, Director, Office of Budget and Program Planning, stated the Administration opposes this bill. He asked representatives of individual agencies not to testify in opposition to the bill. This bill will require a few things be done in order to make the bill happen. First, implementation will fall on his agency, but he is not sure of the results. **Director Swysgood** referred to Exhibit 1 and stated this bill will require removing $42.2 million from **HB 2**, which is a considerable amount of money. Only $17 million of that amount is general fund, and the rest is either state special revenue, federal monies, or whatever else is associated with employee pay. A four percent vacancy savings has already been implemented on agencies, which equates to approximately $38 million total funds. **Director Swysgood** asked the Committee to keep in mind the $42 million is on top of the current reduction. **HB 13** implies another 1/2% vacancy savings to pay for the reserves for the health insurance costs. This creates considerable difficulties for agencies to continue to perform their functions and represents a fairly significant hurdle for the agencies. Of the $42 million, only $17 is general fund. **Director Swysgood** stated the sponsor's fiscal note mirrors the budget office fiscal note except for a couple of variances. One being the sponsor included on his fiscal note the $18 million from **HB 363**, which is the transfer of the "old fund" excess and the ten percent reserve in the old fund to pay for the cost of this bill. The problem with this is that all but $9 million of that $26 million was used in the Executive budget to address the revenue shortfall experienced earlier in the biennium. This will create a deeper hole than what already exists. The other question is eliminating the 400 employees, and how is it going to be done. **Director Swysgood** assumed they would take the $42 million out of the budget and then he would have to figure out which 400 people to eliminate, while holding the rest of them open for three months. This will be difficult because not all those people that the incentive is put in place for will take advantage of this option. It is not unusual for state government to employ people for 20 to 25 years, who are only 55 years old and some of these individuals may not want to take advantage of this offer. **Director Swysgood** does not think eliminating 400 employees will make $17 million. In addition, not all of these individuals are paid with general fund monies. Some are paid with other funds. In a rough calculation, **Director Swysgood** used an average cost of $35,000 to $40,000 per position and applied it to see savings would be generated using from 100 to 500. The total savings for 500 people generated a total of $21 million. Of that $21 million, only $9 million was general fund. **Director Swysgood** is concerned that what the bill wants to do as it relates to savings might be more than what was indicated in the bill. The other concern **Director Swysgood** expressed is that the bill requires 400 positions remain open forever. **Director Swysgood** expressed concern that those that follow him in his position or of agency directors will know what those positions are and be able to keep track of the positions. **Director Swysgood** stated there were a lot of proponents to the bill who would not have testified if the bill, as originally introduced, addressed the shortfall instead of being used to give state employees a pay raise. **Director Swysgood** opposed the bill, but not because state employees are not dedicated or deserve a raise. The bottom line is the state just does not have the money. This bill is trying to manufacture the money and sends a false hope to people. The Administration's proposal to state employees was to pay for their health insurance. If this bill passes, **Director Swysgood** directed the committee to Exhibit 1 which shows the savings is $20 million in general fund, but under **HB 13**, the cost of the .45 raise is $26.7 million per biennium. For the past year and one-half that **Director Swysgood** has come to the office, he would like to have had just one day of good news. The bottom line is Montana, along with every state in the nation, is going through a budget crisis. This is a situation that must be addressed. **Director Swysgood** understands what is behind the bill, and is concerned that it creates major problems for the ability of state government to deal with the constraints it is already under. The cost of this bill is significant. One item left off the sponsor’s fiscal note is the reference under item No. 14. There is significant cost to this bill because the only way to make this bill work is to eliminate top positions that generate high revenue. Eliminating those top positions will increase payout costs because it is three percent of the base salary plus vacation and sick leave. Eliminating 220 positions, the lowest cost of payout was $70,000, and it went up from there. He projects the cost of this bill to be about $39 million. Also, the fiscal note does not consider the fact that this will be supplemental income and will have to be taxed. There are an awful lot of employees, especially in the Montana Highway Patrol, who are not funded with general fund. **Director Swysgood** reiterated that he does not feel this bill will work and expressed concerns over implementing the bill and deciding which 400 employees will be affected. **Director Swysgood** suggested if they would like to fill the hole, they should just eliminate 400 people out of the budget and let them manage it. It would be very difficult, but at least they could manage that.

Informational Witnesses:

John McEwen, Administrator, State Personnel Division, submitted written testimony regarding the state’s workforce and **HB 360**. **EXHIBIT(fcs76a03).** Exhibit 3 shows a distribution of state employees by age and service and then a comparison of the state's population rate and state government workforce. This comparison shows the state is over-represented in the 45 to 60-year-old age group and under represented in the 25 to 34-year-old age group. This comparison indicates the state may experience difficulty in finding replacements for people as they retire. **Mr. McEwen** asked the Committee to consider that an unintended consequence of involuntary termination could be losing the people they are working hard to retain. There are other costs to turnover, including retraining, recruitment, and reassignments. Exhibit 3 gave examples of what the termination incentive might cause to happen in various agencies. **Mr. McEwen** pointed out that there are protections under the existing law and the fact that there are certain benefits available for employees under Reduction in Force (RIF), including RIF preference, retraining, purchase of additional years of service in the retirement system, and payment of the state's share of health insurance for six months.

Questions from the Committee and Responses:

SEN. JON TESTER asked **Rep. Lewis** about the $26 million, and the fact that $19 million was taken out and it's in the Governor's budget. There is only $6 million left, and he asked **Rep. Lewis** to provide some clarification.

Rep. Lewis explained **HB 363** originally had $9 million. It was then taken up to $26 million and was made effective for this fiscal year because the Budget Director needed the cash flow. As it stands now, it is a $26 million transfer to the general fund.

(Tape : 2; Side : A)

SEN. TESTER expressed concern about double counting.

Rep. Lewis stated they are using it to pay the up-front incentive payments in **HB 360**. The fiscal issue arose when the pay raise was added in--the extra $13 million. The money is in the general fund balance, but looking at **HB 360** by itself, it is a wash because $18 million is used to pay for this, but it will generate $17.9 million in savings. The extra cost is from the $.45 pay raise.

SEN. TESTER asked **Director Dave Galt, Montana Department of Transportation (DOT)** for a percentage of employees in his agency who are paid out of the general fund.

Director Galt responded there is zero general fund salaries in the DOT. Salaries are paid by state special revenue and/or federal special revenue.

CHAIRMAN ZOOK then asked who pays for DOT employees' health insurance.

Director Galt replied that is also a mix of state and federal special revenue.

SEN. TESTER stated if the dollars are doubly spent, the program will not work.

Director Swysgood explained exactly how **HB 363** works and the rationale behind it, and how they used some of that money when they put their budget together. When **HB 363** was presented to **House Appropriations**, it only had that part that related to the ten percent of the reserve. They had a bill request in for the money that was left from the excess reserves taken in the special session, plus the ongoing excess reserves which totaled another $7 or $8 million dollars. This bill did not get picked up or introduced. They asked to amend it into **HB 363. Rep. Lewis** thinks bill is a wash to the general fund. **Director Swysgood** feels the bill costs to the general fund. Higher paid positions would have to be eliminated, and **Director Swysgood** feels it will take more than 400 permanently eliminated positions to generate the savings.

SEN. TESTER verified with **Director Swysgood** that 500 employees would save $9 million from the general fund. **SEN. TESTER** asked **Rep. Lewis** if he has an idea how this could be implemented to maximize the advantages to the general fund.

Rep. Lewis explained it could not just be made available to general fund agencies or general fund employees because it would be unfair. In order to be able to access the federal funds, it has to be made available to everyone. In figuring the cost, they figured the cost of the federal employees as being paid for by the general fund, but that they would get reimbursement by 2007. It does not really work to place this on only general fund employees.

Upon question from **SEN. JOHN COBB, Mr. McEwen** explained vacancy savings were applied across the board. For the cost of the pay plan, the insurance, and the $.45 increase he used the FTE counts as of November 1.

SEN. COBB asked if **HB 360** were to die, and there was still $9 million that wasn't technically counted yet, there could still be a $.45 cent pay plan increase. It would only cost $3.3 million more general fund.

Rep. Lewis explained to **SEN. COBB** that the problem is to make sure the cost was covered in the out years. If you are eliminating 400 positions, there is about $20 million is savings. The extra money that was in **HB 363** was tied to enactment of **SEN. STAPLETON's** bill on signing bonuses for teachers. It wasn't really in the general fund as free money. Subsequently that language was taken out of **HB 363.**

SEN. COBB clarified his question by stating if **HB 360** dies and there is $9 million left, the pay plan is $13 million, .45 the first year, .45 the second year, and that will cost about $6 million in the biennium. There may be another alternative to consider with some kind of pay plan and killing this bill.

Rep. Lewis the $.45 and $.45 could be paid for unless there is an FTE reduction, and **Rep. Lewis** felt he would have to pencil through the calculations.

SEN. JOHN ESP stated from a common sense standpoint, term limits were also thought to be a good idea, but some now recognize they lost some knowledge in that process. He wonders if that will be the result by cutting FTE positions and felt that would do a disservice to Montanans.

Rep. Lewis replied this is a voluntary program. All they are getting out of the incentive is the potential to cover the cost of health insurance. The decision will be made by employees who are tired of what they are doing, and do not see it getting any better in the future. He questioned whether productivity would be lost. This will give these individuals an opportunity to get out. This is not saying these individuals are not valuable employees, but he also feels you need to recognize that people get burned out.

SEN. ESP rebutted that he was not suggesting it was all a loss, but was suggesting there could be a great deal of loss.

Rep. Lewis directed the Committee to page 3, line 19, which states an employee who voluntarily terminates employment receives benefits provided under subsection (2) may not return to employment with any agency for more that 960 hours in a calendar year. **Rep. Lewis** feels this will provide a safety valve. This means an employee may not necessarily say goodbye forever.

Upon question from **SEN. ESP, Rep. Lewis** explained the 400 figure was based on an estimated 963 current state employees who voluntarily leave employment. This means roughly 600 will retire and 400 positions will be eliminated.

SEN. ESP stated he has a constituent who wrote and asked **SEN. ESP.** to support the bill because he has been working in the field for 25 years and, for the past 10 years, the constituent saw an increasing amount of resources being plugged into middle management in Helena, and no one was doing the real work that needed to be done out in the field. **SEN. ESP** thought maybe they should take a look at each agency and eliminate positions, not voluntarily, but with some forethought.

Rep. Lewis replied he has received a number of e-mails about middle management in state government, and there seems to be a lot of feelings about the way some of the agencies pay their employees and the way raises are determined.

SEN. EMILY STONINGTON understood **Director Galt** as saying his employees are federally funded. She was under the impression that if a federally funded employee retires, they have to transfer the money that employee would be paid under this incentive program into a special revenue account. If you could not pay the money, then they would have five years to pay it off, with interest. One of the technical notes on the fiscal note says they would need approval from the federal government to do that, and that the federal government would have to decide on a case-by-case basis. **SEN. STONINGTON** was curious how this would play out if one of **Director Galt's** employees were to retire.

Director Galt responded this is a complex issue, but it is his understanding that the first year in the payoff of the transfer would be with state funds and then they would pick the federal share back up the next year. They would be able to do it, but they would have to get their federal funds back for the next year.

SEN. STONINGTON state she was not quite clear how the 400 person reduction in force would occur, but she wondered how that would impact **DOT.**

Director Galt stated it was a tough question to answer, but from the **DOT** perspective, he believes they have 466 eligible employees. They called each one of those 466 individuals, of which 310 reside in the field, and 156 reside at headquarters. They determined that 102 said they would leave, and 167 said they would stay, 71 were undecided, and 126 did not respond. Therefore, he would guess that 175 would opt out.

SEN. STONINGTON was concerned because there is no wording in **HB 2** or the bill that directs any of this. The bill just sets up the voluntary retirement, and everything else is assumptions. **SEN. STONINGTON** then asked **Director Swysgood** how they get to the 400 and how it would play out in the direction the Legislature, through this bill or HB 2, would give to directors if it is not coming through subcommittee work and department budgets.

Director Swysgood agreed stating these are his concerns as to how to make this work and realize the savings at the same time. **Director Swysgood** utilized the **Highway Department** as an example stating all their employees are state special revenue or federal accounts, or a combination of both. If 175 decide to leave, that would generate "X" amount of dollars to apply to those federal funds or state special revenue funds. It does not generate any savings to the general fund unless the Legislature takes those special revenue funds and appropriate them back to the general fund. This could be a constitutional violation of diversion unless there was a 2/3 vote to divert gas tax monies. The feds would have to accept this as a bona fide plan in order to recover federal funds through the indirect cost process. The rest of the state special revenue funds would go into the state revenue account. Depending upon the amount of authority the department has for expenditures of state special revenue funds, those could be used for more road construction, etc. Since less people would be employed by the Highway Department, it would require an increase in contracting out. **Director Swysgood** was not sure this would accomplish saving any money if they had to contract more work out. ***{Tape: 2; Side: B}*** There is such a mismatch of funding one Department could have all general fund positions, and another Department could have a 70-30 funding split. Therefore, **Director Swysgood** is concerned it may take more than 400 people that are permanently eliminated to come up with this kind of savings. You can hire back individuals who retire for 960 hours, but you could only hire them back in the positions that you would hold open for three months to create the other savings, because you would have to keep at least 400 positions permanently eliminated. It would work in some agencies with seasonal employees. This will create a real concern as to how to make this bill work. As legislators, their requirement is to eliminate $42.2 million from the budget, **Director Swysgood's** requirement is to figure out how to get that savings.

SEN. STONINGTON followed up by asking if this bill does not pass, what happens to the fiscal picture.

Director Swysgood replied he does not believe the **Legislative Fiscal Division** is carrying **HB 360** on the status sheet. If the bill fails, they have never assumed any of this savings.

Taryn Purdy, **Legislative Fiscal Division,** stated what is in the status sheet right now is all of the revenue from **HB 363.** It also includes the pay plan for everything but the $.45. The projected fund balance has all of **HB 363,** and just the insurance increase in the pay plan. **HB 363** is not included either in the projected cost or in the reduction in **HB 2** that will accompany it.

SEN. LINDA NELSON had similar thoughts to **SEN. STONINGTON** and wondered how **Rep. Lewis** sees the first 400 positions eliminated.

Rep. Lewis referred to page 13 which requires taking $42 million out of **HB 2** or the bill is void. On the bottom of page 11, it talks about the managed work force reduction with the approving authority of the executive branch to transfer up to 50 percent of the program's personal services budget from state agencies. There is authority for interagency loans to handle cash flow. In effect, employees will have to make a choice. There are a couple of possibilities: there is one window of opportunity through October 1, and there are two additional windows throughout the year. Once the approving authority knows where the retirements are going to be, and what the needs of the agencies will be as far as dollars, they can reallocate within state government to cover the needs of the agencies. They will make the choice in conjunction with the agencies on where the 400 positions are eliminated. They will only have enough money to pay the payroll, minus 400 positions. They will need to allocate based on the information that becomes available on where the terminations will be made. Directors are going to have to manage. They will need to look at their agencies and make decisions on whether they fill management positions or field positions. They will have to come back to the Budget Director, and if they can't do it within their existing appropriations, the Budget Director has the authority to make transfers between agencies. This bill will give tremendous flexibility to make those decisions.

SEN. NELSON asked if they will be looking at eliminating the highest-paying positions to get more bang for their buck, or if the positions would be pro-rated by a larger department being required to give up more positions than a small department.

Rep. Lewis did not know if proration makes a lot of sense, and it could cause backfill being required if, for example, a lot of prison guards retire from the **Department of Corrections.** There will have to be a lot of value judgments made and this bill gives the flexibility to make those judgments. The department directors will really have to manage and set priorities.

SEN. NELSON stated they would not really be looking at eliminating any positions from **DOT** since those positions are not funded by the general fund.

Rep. Lewis stated they will need to reduce those positions, and there may be a lot more contracting out.

SEN. NELSON stated that she remembers the last time there was an early retirement incentive package, and a great deal of people left **DOT.** She remembers that projects did not get let, and things did not get done because of this. She asked **Director Galt** to comment.

Director Galt remembered that he was in the **Motor Carrier Services Division**, but he stated there would certainly be a brain drain and certainly they would lose some highly technical individuals. He recalled that came in the mid-90s about the time there was a 60 percent increase in highway program funding.

SEN. BEA McCARTHY asked **Jan Sensibaugh, Director, Montana Department of Environmental Quality (DEQ)**, about her department being short in many areas and their need to contract for services. **SEN. McCARTHY** wondered if they had saved any money by contracting for services.

Director Sensibaugh stated **DEQ** has not saved any money and found independent contracting costs cost more than hiring their own internal staff.

SEN. McCARTHY followed up by asking if, in many cases, those independent contractors have been former employees.

Director Sensibaugh responded they have been former staff. **DEQ** has had a hard time recruiting and retaining employees.

SEN. McCARTHY asked if this proposal would save **DEQ** any money.

Director Sensibaugh responded **DEQ** would not save any money.

SEN. TRUDI SCHMIDT asked **Director Swysgood** to comment on **SEN. NELSON's** questions about the elimination of 400 positions.

Director Swysgood stated the bill is very complex and it gives the approving authority a lot of flexibility to make it work. It requires taking $42.2 million out of the budget, and about $17 million of it is general fund. Common sense says the people taking advantage of the bill will be those who have a significant amount of time in state government. Some of those will generate a significant savings. The other concern **Director Swysgood** has is with the 400 positions that have to remain open. **Director Swysgood** stated he could take 200 positions from **DOT** which does not have general fund money. There are other people from the Legislative Branch and the Judiciary Branch that could take advantage of this, and **Director Swysgood** is not the approving authority over those entities. Therefore, he is unsure how to make that work. **Director Swysgood** pointed out that he only deals with Executive agencies. He stated there are a great number of employees within those agencies who, if they take advantage of this opportunity and terminate their employment, will not generate any money for the general fund.

SEN. SCHMIDT asked about the tax base and how that would be affected by income tax revenue.

Director Swysgood assumed there would be some potential loss of revenue of income tax, but it would be difficult to quantify since some of those individuals may start their own businesses or will work other places and still contribute.

SEN. SCHMIDT asked **Bill Slaughter, Director of the Department of Corrections,** about the number of people from his department who would consider taking advantage of this offer.

Director Slaughter thought there were 40 to 45 individuals out of a work force of 1,100, and stated he thought they would incur significant amount of overtime. In addition, **Director Slaughter** reminded the Committee that they just placed 537 new offenders onto the caseloads of probation and parole officers. He feels this will create a public safety issue.

Mike Billings, Department of Public Health and Human Services, felt there would be a significant impact on the Department. **DPHHS** is in the process of conducting a survey to see how many of its employees would be interested. **Mr. Billings** had no doubt that this would have a significant impact to **DPHHS.** This would be a very substantial hit over a short period of time, and he felt they would deal with it and would make an effort to keep essential jobs filled. There would be a significant brain drain since they have a lot of employees that are grade 17 and higher that are over the age of 55. While he is confident **DPHHS** could handle the situation, **Mr. Billings** admitted it would be a lot of work.

SEN. EDWARD BUTCHER feels there is a general policy in this administration to streamline government to increase the level of efficiency. He asked **Director Swysgood** if this presents an opportunity for the administration, through its directors, to replace burned out employees and improve the administration overall.

Director Swysgood stated the bill affords the Governor and Budget Director a great deal of latitude in meeting the requirements of the bill. There are capable, bright employees in state government that could move up and fill these positions. **Director Swysgood** reminded the Committee that the bill only requires him to fill the positions at 90 percent of previous pay and continue to hold a number of positions open indefinitely. Some of those positions are difficult to fill at the present rate of pay because of the responsibility that goes with them. **Director Swysgood** commented that if they want to streamline the government, it can be done a lot cheaper than the provisions of **HB 360**.

(Tape : 3; Side : A)

SEN. GREGORY BARKUS, stated there are about 1,600 state employees in the 55-59 years of age category. He wondered if **Mr. McEwen** had an estimate of how many of those individuals are currently in line to retire.

Mr. McEwen stated there are 184 employees with more than 30 years of service. The chart (Exhibit 3) exhibits approximately 1,000 people who will retire within the next few years.

SEN. McCARTHY informed **Director Swysgood** that she had an amendment in **HB 2** that would have helped with the vacancy savings on 24/7 positions needed to cover services at Warm Springs, Boulder, and the state prison. If this bill goes through, **SEN. McCARTHY** thought it would compound the problem.

Director Swysgood stated any 24/7 position they are required to maintain will either be filled, or employees will be paid overtime. When vacancy savings are applied, they are included in the mix. Some of them are exempt from vacancy savings. The extra burden will be thrown back on other positions.

SEN. McCARTHY was worried because the state is short in that area now and this would certainly not help that situation.

Director Swysgood stated because of the requirements of the bill to eliminate 400 positions and the **Department of Corrections** is general-funded agency, a lot of 24/7 people could be affected, and this is one of **Director Swysgood's** concerns about **HB 360.** It absolutely will compound the problem.

SEN. KEITH BALES asked **Director Swysgood** about the 400 vacancies and whether a certain percentage has to be maintained.

Director Swysgood replied that the bill is all encompassing except that the **University System** and some positions will be exempt. There are a number of individuals in the Legislative Branch that could take advantage of this. **Director Swysgood** admitted he is not sure how it would work with the Legislative Branch, but thought it might fall back on one of the Executive agencies to make that up.

SEN. BALES asked if he knew off hand what percentage of the general fund employees is under the Executive Branch and what percentages fall under other branches which he has no control over.

Director Swysgood replied a significant amount would be under the control of the Executive Branch. Human Resources, Revenue, DNRC, and the Governor's Office have a fair amount of general fund employees.

SEN. BALES asked about additional tax consequences discussed earlier.

Director Swysgood explained they did not figure the cost of the withholding portion of the incentive payout. He figured this cost would be about $1.9 million in additional costs.

SEN. JOE TROPILA asked if any of the proponents wanted to add anything to the discussion. None of the proponents responded with comments or questions.

SEN. RICK LAIBLE felt the intent of the bill was to provide savings to the general fund and asked if that was correct.

Director Swysgood that was correct.

SEN. LAIBLE followed up by stating the point was made that if they want savings, they should just go through and lay off whatever employees are necessary to meet financial targets.

Director Swysgood did not want to be misunderstood and stated he does not advocate doing that at this point in time. His answer was if the intent of the Legislature is to downsize government and save general fund money, it can be accomplished a lot less expensively than what is provided in **HB 360**.

SEN. LAIBLE followed up by stating when large companies go through a downsizing and find they have lost expertise, they will use past employees as consultants. He asked if when employees retire, if the state ever offers them a consulting position on a special project or on an hourly basis.

Director Swysgood replied they do and spoke of having the ability to hire someone at 960 hours a week so they can still maintain benefits.

SEN. BUTCHER asked if the purpose of the bill is to save money.

Rep. Lewis stated that he has reached the conclusion, as others have, that we will see a downsizing in state government over the next few years. Almost every state is going through reductions. **Rep. Lewis** feels the absolute worst way to do this is through a Reduction in Force (RIF) because you lose the wrong people. The best thing to do is to begin downsizing in a rationale manner and allowing incentives for people who are toward the end of their careers to terminate, rather than riffing the people who are at the beginning of their careers.

SEN. BUTCHER followed by saying if they have a union problem, they do not want to use the young, bright guys, so they lay off the older, burned out guys.

Rep. Lewis commented he believed that statement was a little harsh. He believes there are more creative ways to downsize other than a RIF.

CHAIRMAN ZOOK asked **Rep. Lewis** to respond to the note on Exhibit 1 that states "When annualized in future biennia, the general fund cost of this 45-cent raise is $26.7 million per biennium." **CHAIRMAN ZOOK** specifically asked when is the future.

Rep. Lewis stated the future they are talking about is 2006 and 2007. In other words, if you do a $.45 raise and you get a full load in the out years, that is where the $26 million comes from, compared to the projected savings if you eliminated 400 positions. If you eliminated 500 positions, the savings would be more; however, the bill targets 400 positions.

CHAIRMAN ZOOK asked how **Rep. Lewis** would answer the statement that it would take 500 people to generate $9 million in savings.

Rep. Lewis admitted he did not follow that through.

CHAIRMAN ZOOK stated a lot of the people are not just general fund salary; their salaries are made up with a combination of funds. He wonders how that will generate savings to the general fund.

Rep. Lewis stated the reason to apply this to everyone is to get access to the federal dollars. If they offer an incentive like this, it has to be offered to everyone in order to utilize federal dollars to pay part of the cost of the termination. In looking at what is happening in other states and other jurisdictions, he feels this is a step forward, as opposed to waiting and then having to implement a RIF.

Closing by Sponsor:

Rep. Lewis closed by saying if he has learned anything in the last four months, it is that maybe they are going to paper together a balanced budget, but if they do, it will be hanging by a thread. He does not see the kinds of improvements coming that will make the next legislative session and the next budget any easier. Beginning to take a look at a rational reduction in state government payroll is a good first step. **Rep. Lewis** senses that everyone is using the same sources for numbers, so there should not be any disagreement on what those numbers are. In addressing the concern voiced by **Director Swysgood** about the Legislative and Judicial Branches, the bill provides that the approving authority for the Executive Branch may transfer up to 50 percent of the program's personnel services. Therefore, he has the ability to go in and adjust the budgets of the Judicial and Legislative Branches as well. Obviously, this would need to be done with very careful coordination. In addressing the concern of the size of the pay outs, **Rep. Lewis** asked the Committee to remember that the additional cost of this bill is the three percent of the final salary times years of service. Some numbers have lumped all of that together. The cost of 25 percent of an employee’s sick leave is a fixed costs, and 100 percent of their annual leave balance is going to be paid off. Regarding the issue if this is taxable, he said the staff that worked on this believes it is not taxable and there may have to be restrictions placed on the term of the withdrawal. It can be structured as a nontaxable reimbursement. The way the bill is written, the general fund money will be taken out of **HB 2** and the approving authority will be given the flexibility to move that deficit from agency to agency. The question was raised whether they will get that many general fund employees. They will get the money up-front and the approving authority will have to adjust the employment levels of the agencies. **Rep. Lewis** understands this is a complex piece of legislation and is probably far-sighted. However, he feels it is better to manage the situation now rather than wait until they have to take a RIF. He knows this is difficult to get your arms around, but **Rep. Lewis** urged the Committee to take a serious look at this bill.

The Committee recessed at 10:25 a.m. and reconvened at 10:42 a.m.

HEARING ON HB 12

Sponsor: **Rep. Dave Kasten, HD 99, Brockway**

Proponents: **Tom Livers, Department of Environmental Quality**

Opponents: **None.**

Informational Witnesses: **Jane Hamman, Office of Budget and Program Planning**

Opening Statement by Sponsor:

Rep. Dave Kasten, HD 99, Brockway, opened on **HB 12**, which saves energy money for state government. There are 41,000 state buildings and the combined square footage is over 21 million square feet. The annual cost for electricity is $13 million and for natural gas it is $7 million. Under this program, the state sells general obligation bonds to finance energy efficiency and conservation improvements in these facilities. The resulting energy costs savings cover the debt service and all program costs. Typical projects include upgrades, replacements of boilers, ventilation systems, and lighting. **Rep. Kasten** directed the Committee to the top of page three and the six projects for this session. Any additional savings above the costs are swept annually into the long-range building program. Over the past ten years, this program has contributed a million dollars in net savings to the long-range building program. The **Department of Environmental Quality** comes before the Legislature each session to request bonding authority for the coming biennium. **HB 12** authorizes $2.5 general obligation bonds for the coming biennium. Because this authorizes state debt, it must be approved by a two-thirds vote of each house. **HB 12** also authorizes funds from the bond proceeds to cover various program costs, including project engineering analysis, training of state building operators, and program administration. Each biennium, a portion of the bond proceeds is set aside to pay for these costs for the next cycle utilities. In this manner, the program re-seeds itself and continues to operate without any general fund expenditures. In this manner, the program re-seeds itself, and is able to continue to operate without any general fund expenditures.

Proponents' Testimony:

Tom Livers, Department of Environmental Quality (DEQ), testified this is a program that covers it costs, operates like a business, and is driven on return on investment. The state sells general obligation bonds and uses those proceeds to invest in energy efficient improvements in state facilities and the resulting energy cost savings cover the program costs and debt service on the bonds. It is structured so that even while the bonds are being repaid, there is a net savings. In ten years of operation, after all costs are covered, each year they sweep the remaining savings to the long range building program. Over ten years, they have produced net savings of close to $1 million. In August of this year, they will retire the first bond sold under this program. They are statutorily authorized to sell bonds up to 15 years, but they have kept them at ten years so the financing is complete while there is still useful life on the investments. Once the bond is retired, the entire amount of the savings will be swept. The work is contracted out to the private sector, they work closely with the **Architecture and Engineering Division**, and they cost share some projects with Northwestern Energy.

Opponents' Testimony: None.

(Tape : 3; Side : B)

Informational Witnesses' Testimony:

Jane Hamman, Office of Budget and Program Planning, stated that they have incorporated $1.9 million into agency budgets as a result of this program.

Questions from the Committee and Responses:

Closing by the Sponsor:

Rep. Kasten closed and thanked the Committee.

EXECUTIVE ACTION ON HB 12

Motion: SEN. McCARTHY moved HB 12 BE CONCURRED IN.

Vote: SEN. McCARTHY's motion that **HB 12 BE CONCURRED IN carried UNANIMOUSLY. SEN. TROPILA** will carry **HB 12** on the Senate floor.

HEARING ON HB 10

Sponsor: **Rep. Rick Maedje, HD 81, Fortine**

Proponents: **Tom Livers, Department of Environmental Quality**
Jane Hamman, Office of Budget and Program Planning

Opponents: **None.**

Opening Statement by Sponsor:

Rep. Rick Maedje, HD 81, Fortine, opened on **HB 10,** the state's portion of funding that is required to provide to the Superfund Asbestos Re-mediation in Lincoln County, specifically for Troy and Libby. He stated after World War II a substantial deposit of vermiculite was located outside of Libby. It was used for fertilizers, and in order to separate the vermiculite from the asbestos, it had to be crushed through a milling process. It was also discovered that vermiculite is an excellent insulation material for buildings. No one knew then that asbestos would turn out to be so harmful because it takes about thirty years for the disease to manifest itself. Vermiculite was used in the Libby/Troy area in lawns, buildings, gardens, and the school track. During the early 70s it became clear that asbestos was a killer. By 1999 it was found that at least 192 people had died of asbestos exposure and at least 375 had been diagnosed with a fatal disease. In January 2002, **Governor Martz** designated Lincoln County's asbestos remediation as a one-time superfund site and pulled the trigger on what is called the Silver Bullet. This gives a one-time shot where the federal government agrees to provide the full weight of its expertise to aggressively remediate the designated site and will also pay for ninety percent of the costs of remediation. The state is responsible for the remaining ten percent. **HB 10** accomplishes covering that remaining ten percent. Because of the budget crisis and realizing there is no ability to come up with the remaining $7 million to $9 million to cover Montana's share, the **DEQ** and the Governor's office worked diligently to design a doable funding mechanism. They negotiated with the EPA to allow Montana to come up with only $5 million of the estimated $9 million this biennium, with the remainder provided in the next biennium. Instead of a direct appropriation for the state's share, the Governor's office and **DEQ** designed a bond debt service scenario through **HB 10. HB 10** creates a $5 million bond obligation to the state and the debt service on the obligation will be up to $430,000 per year, but could well be less because of market rates. The debt service will be paid for out of the Resource Indemnity Groundwater Account (RIGWA) and will be serviced by taxes originally collected from the mining for vermiculite. In the end the taxes collected on the mining will fund the remediation, and **Rep. Maedje** feels that is an appropriate use of the money.

Proponents' Testimony:

Tom Livers, representing the Department of Environmental Quality, stated this bill had a good hearing in **Long-Range Planning.** Passage of this bill will essentially makes it possible for the state to provide its ten percent share for the cleanup of Libby. It will be funded through existing bond authority for Comprehensive Environmental Response Compensation Liability Act (CERCLA) bonds. **HB 10** does not authorize the bond, but comes up with the debt service mechanism for repaying those bonds. The total costs projected for Libby are in the $60 to $65 million and another $10 to $15 million for Troy. The state's share will be approximately $7 to $8 million. They had originally projected bonds in the $7 to $9 million range, which would have been about $700,000 in annual debt service, which they felt was more than the RIGWA taxes could absorb at this point in time. It would have had too great of impacts on other programs that receive those taxes. The EPA was cooperative and let them scale back this biennium's bond issuance to the $5 million, and this create a debt service projected at about $430,000. They hope it will be better. It is assuming a 20-year obligation bonds, tax exempt, at 5.85% interest. They felt this is a realistic, but conservative, estimate. They have worked closely with the Budget Office and the impacted agencies to make sure this is something that can be done without crippling other programs funded through RIGWA. This is one of the taxes that originally built the Resource Indemnity Trust which was recently capped at $100 million. Once that happened, the full amount was diverted to other activities, such as this.

Jane Hamman, Office of Budget and Program Planning, expressed the support of the administration toward this bill, stating it is one of the Governor's high priorities.

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

<u>Questions from the Committee</u>: None.

<u>Closing by the Sponsor</u>:

Rep. Maedje closed stating he appreciates the work done by **DEQ** and the Governor's Office.

<u>EXECUTIVE ACTION ON HB 10</u>

<u>Motion</u>: SEN. McCARTHY moved **HB 10 BE CONCURRED IN.**

<u>Vote</u>: SEN. McCARTHY's motion that **HB 10 BE CONCURRED IN carried UNANIMOUSLY.** The bill will be carried by **SEN. AUBYN CURTISS** on the Senate floor.

EXECUTIVE ACTION ON HB 369

Motion: **SEN. STAPLETON** move **HB 369 BE INDEFINITELY POSTPONED.**

Vote: **SEN. STAPLETON's** motion **carried UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 11:20 A.M.

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SEN. TOM ZOOK, Chairman

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PRUDENCE GILDROY, Secretary

TZ/PG-CAP

EXHIBIT(fcs76aad)