

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC SAFETY

Call to Order: By **CHAIRMAN TIM CALLAHAN**, on January 7, 2005 at
8:00 A.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Rep. Tim Callahan, Chairman (D)
Sen. Keith Bales (R)
Sen. Steven Gallus (D)
Rep. Cynthia Hiner (D)
Rep. Walter McNutt (R)
Sen. Trudi Schmidt (D)

Members Excused: Rep. John E. Witt (R)

Members Absent: None.

Staff Present: Brent Doig, OBPP
Harry Freebourn, Legislative Branch
Shannon Scow, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: Public Service Commission (PSC)
Testimony, 1/5/2005
Executive Action: None

***{Tape: 1; Side: A; Approx. Time Counter: 1.5 - 9.8; Comments:
Commissioner Jergeson, Public Service Commission}***

Commissioner Jergeson, Chairman of the Public Service Commission (PSC). The commission is comprised of five members and three divisions, which are responsible for both utility and transportation regulation. The Transportation Centralized Services Division manages the budget details and it is administrated by Wayne Budt. The largest division is the utility division, which includes all of the commission's various analysts. The administrator is Kate Whitney. The Legal Division is headed up by Robin McHugh. This division helped Northwestern Energy through their bankruptcy, and was also assisted by the attorney general's office and governor's office. The Governor helped supply fees to fund the assistance.

Commissioner Jergeson covered new emerging issues, including the regional transmission issues. The commissioner was involved in the organization of Midwest Independent Systems Operator (MISO) states, which is authorized by the federal energy regulatory commission to oversee MISO. They are charged with building a transmission market throughout the upper Midwest. This region affects consumers in eastern Montana.

There is a funding source to pay for some of the commission's travel for the MISO program, but there are not yet funds for the western interconnect. This is one of the budget issues.

Centralized Services Division

***{Tape: 1; Side: A; Approx. Time Counter: 9.8 - 22.6; Comments:
Wayne Budt, Centralized Service Division, PSC}***

Wayne Budt, Administrator for the Centralized Services Division, began by explaining that the PSC is not a general fund agency. Funding comes from the PSC tax, which is collected from the regulating agencies from the tax revenue department. These fees are collected quarterly and deposited into a state special revenue account. Any extra money left after the fiscal year reduces taxes for the next fiscal year. The decision package (DP) is listed in the Legislative Fiscal Division book.

DP 1, seen on D-62, is computer replacement. The PSC follows Information Services Technology Division's (ISTD) recommendations of replacement every four years of hardware equipment. Therefore, this cost will not be needed every biennium. Twenty-six desktops purchased in August 2001 need to be replaced in FY 06, as well as six laptops purchased in July 2000 and 2001 and a

server. The second fiscal year the PSC needs replacement of seven desktops purchased 2002 and one laptop purchased the same year. This hardware is already over the four-year recommendation.

The commission has 39 Full-time Equivalent (FTE) including the commissioner. Every employee has a desktop computer, and laptops are used for hearing, training and meetings. A new online filing system is the PSC's goal for the near future to ensure a more effective case management system.

DP 2 is for travel and training. The PSC is requesting \$7,500 above their base budget. Of the \$7,500, \$3,500 allows the PSC to participate in the regional transmission organization. The remaining \$4,000 would cover the travel and training of the two commissioners recently appointed. The \$4,000 would be for just this biennium, while the \$3,500 would be ongoing.

DP 3 is a biennium \$100,000 for consultant funds. An example of where this fund would be used is in cases like the Northwestern Energy bankruptcy. This fund also allows the PSC to participate in federal cases in Washington, D.C., or if expertise are needed that are not on staff at PSC. The PSC requests this tax during the first year of the biennium. If not spent the first year the PSC tax the next fiscal year will take into account that the PSC has not spent that money. This \$100,000 has been requested at least the last 10 biennium. Some FY is it not used, others is it used entirely and additional funds requested.

DP 4 is for building rent. The PSC rents office space which, under contract with the Department of Administration, inflates the rent cost 3% each year.

The final request is a new proposal concerning vacancy savings. Vacancy savings are 4% of personal services budget which is not funded in the system, amounting to \$75,000. The PSC suggests either eliminating completely vacancy savings from the PSC, or granting leeway to the number of staff applied to vacancy savings. The PSC has 34 staff FTE. If a small business has 20 FTE or less their vacancy savings do not apply. The agency asks the first 20 of their employees be exempt from vacancy savings. This would bring the amount from \$75,000 to \$31,000.

LFD Issues

***{Tape: 1; Side: A; Approx. Time Counter: 22.5 - 29.5; Comments:
Comments and Issues from Legislative Fiscal Division}***

Mr. Freebourn began by explaining the elected official new proposal. They have the ability to go directly to the legislature to propose issues for funds that may have not been put in the budget by the Governor's Office.

Mr. Freebourn explained the fees appropriated to the PSC, starting with their \$2.7 million base budget. This is funded through fees charged to the entities which they regulate. The PSC has an additional \$13,000 federal special fund from the US Department of Transportation. This is for the Natural Gas Pipeline Safety Program. Present Law Base Adjustment requested is \$254,000 in FY06 and in \$93,000 in FY07.

The LFD put the Northwestern bankruptcy into the analysis block for committee members to see how the issue was handled. All agencies that were involved were reimbursed by Northwestern for all costs incurred.

SEN. SCHMIDT asked for a clarification on what is meant by the "general fund," to which all money borrowed was returned. **Mr. Doig** responded that the government has \$50 million no-strings-attached money to be used in instances such as the Northwestern bankruptcy. This money, by law, went back to the general fund when they were reimbursed by Northwestern Power.

SEN. BALES inquired about the base adjustment difference between FY06 and FY07. He asked why the base adjustment for FY06 is twice as much. **Mr. Freebourn** noted that the requested consultant funds in budget package three asks for \$100,000 to be captured in FY06, to be used in either FY06 or FY07.

SEN. BALES inquired if this difference will affect fees charged to the entities. He asked if it will increase their fees by 5%, then decrease by 5%. **Mr. Budt** answered that if it increases, it will be minimal. The tax is currently 0.0030%, based on approximately \$1 million in revenues.

Mr. Freebourn pointed out a biennium comparison that shows a potential decrease between bienniums. As for decision package one, computer updates, it appeared that the PSC wants more computers than there are people. However, the additional computers are laptops used for meeting and training away from the building.

For DP 2, the committee needs to consider whether the travel expenses requested need to be designated one time only or if they can be added to the base. This can also be restricted by the committee so the money can only be used for the training and Regional Transmission Organization (RTO) meetings.

Under consultant funds, DP 3, the LFD pointed out that money may also be restricted to make sure it is spent strictly on consultant funds and nowhere else.

SEN. BALES asked a for a clarification; "If the money is not spent in FY06 does it carry over into the next fiscal year?"

Mr. Freebourn confirmed that in fact the money does carry over to what is then charged the regulatory entities. **Mr. Budt** interjected that the PSC is merely looking for spending authority. If they do not use this spending authority then the authority will expire and they will need to approach the next biennium legislature to ask again for the fund. It will also decrease the amount of money that needs to be collected from entities the next fiscal year.

Mr. Doig voiced concerns with overly restricting small budgets on behalf of the OBPP. It can cause problems and the OBPP has had a good working relationship in the past with the PSC. Therefore, their budget has not been restricted.

Commissioner Jergenson stated that in regards to travel to the RTO meetings, restricting travel to only these meetings would create a difficulty because there is no RTO in the west. Although they are not part of the RTO, the west is closely related to Montana issues and has collaborated in the past.

CHAIRMAN CALLAHAN commented that of the \$7,500 requested travel costs, \$4,000 would be one time only, while the \$3,500 would be an ongoing expense for the PSC.

Commissioner Jergenson answered that there will no reduction in the future to attend to regional transmission issues. Also, the PSC cannot foretell when training funds will once again be requested. It is usually once every 12 to 15 years that training funds are needed.

SEN. BALES then asked if the numbers stated in the book budget are correct. **Mr. Budt** replied that the numbers stated earlier of \$4,000 one time and \$3,500 ongoing are correct.

SEN. SCHMIDT inquired if the PSC has a glimpse if there is anything expected on the horizon, such as the Northwestern

bankruptcy. **Commissioner Jergenson** hopes for no bankruptcy, but frequently issues arise. The passage of HB 509 laid out rules for a process for Northwestern to put together a default supply portfolio. This had to be presented to the commission. Attending to Northwestern's portfolio along with regular PSC workings required hiring additional staff. The PSC cannot foretell if another bill of that magnitude will pass with this session.

REP. MCNUTT brought up a new fencing agreement, and inquired whether the PSC will need to hire outside staff to comply with this agreement. **Commissioner Jergenson** stated that coming out of the bankruptcy might in fact bring up more issues that have not yet arisen, yet none are predicted. **Kate Whitney**, acting administrator with the PSC, concurred with Commissioner Jergenson, stating that she does not foresee the need for extra staff.

SEN. SCHMIDT queried that within the public utilities and transportation which the PSC regulates, if the rail system is included. **Mr. Budt** stated that the commission regulates taxis, limos, garbage haulers, good carriers, etc. The PSC inspects the rail equipment, but the rates and closing of specific stations is under federal government jurisdiction.

SEN. BALES asked for clarification on FTE's. The PSC is requesting the return of their current 1.6 FTE reduction. At the minimum the PSC is requesting one FTE and hopefully 1.5 FTE. He asked if this is correct. **Mr. Budt** said that at one point the commission considered asking for an additional FTE, but decided to use the people that are already there and trained. The PSC is 80% personal services.

SEN. BALES then returned to the biennium difference, since there appears to be nothing on the horizon that will take the \$100,000 the first year. Concern is over the approximate 3% difference in tax to entities. **Mr. Budt** replied that the budget office told the PSC to put the appropriation into the first year of the biennium. Also, the agency is concerned that if something were to happen, the funds would not be available until FY07.

SEN. SCHMIDT asked, "How is it that the PSC has vacancy savings if the organization does not get any general fund money?" **Mr. Doig** answered that vacancy savings are across the board, except for judiciary. This applies to all agencies except those that have 20 or less FTE. **Mr. Freebourn** remarked that vacancy saving is an executive policy to manage the natural turnover of employees. It is not applied to the other two branches of government unless it is accepted. Greater than 20 FTE is applied

at 4% rate. **Mr. Doig** added that as of yet there have been no exceptions because once there are exceptions it is hard to know where to stop.

SEN. SCHMIDT observed that vacancy savings would hurt the PSC because they are a highly specialized agency, with positions that would take awhile to fill **Mr. Budt** responded that this is true, and that certain positions are hard to fill and are hired away by the industry.

CHAIRMAN CALLAHAN asked if there were any further questions. None were heard, so the hearing was closed at 9:00 A.M. The hearing on the Public Service Commission is scheduled for Monday, January 10th 8:00 A.M.

Corrections and Public Safety LFD Issues

{Tape: 2; Side: A; Approx. Time Counter: 0 - 23.0; Comments: LFD Issues}

EXHIBIT(jch05a01)

Mr. Freebourn continued the meeting by highlighting major issues seen by the LFD as it applies to this subcommittee. According to the LFD there are not any large issues of the Public Service Commission or Montana Board of Crime Control. The Department of Justice is asking for \$600,000 in supplemental appropriations, listed in Exhibit 1, Page 1. Also under the Department of Justice the Gambling Control Division is asking for \$1.5 million, of which \$1.1 million is general fund for a new automated accounting and reporting system. The Highway Patrol Lawsuit Settlement is asking for \$8.5 million from the general fund.

Team 261 is asking to pay interest on borrowed funds for an intercap loan from the Montana Board of Investments. They have received third party funding under this loan through increased fees, high interest rates and titles. The LFD has notified this agency that according to the LFD, of the \$2.4 million requested, \$1.2 million is above what is need to comply with this request.

SEN. BALES asked if this is for the computer system. **Mr. Freebourn** replied that the Motor Vehicles Division is reengineering business processes. The division is going to apply the appropriate level of information technology to these new processes.

SEN. BALES returned to the surplus of \$1.2 million that is being requested, and asked where this is going. **Mr. Freebourn** added

that the division is asking for the authority to spend. Once the appropriation is granted the excess can be moved around to different areas. **Mr. Doig** responded that the OBPP was going to recommend restricting this money to the designated purpose.

Mr. Freebourn then discussed the shortfall in funding for the Law Enforcement Academy. The shortfall is not in the appropriation, but in the funding. Currently a ten dollar surcharge is added to certain court filings. In order to meet the appropriation the legislature must increase the fee to \$16. Purposed ways to fund the academy is through charging tuition, which is difficult because the training is a state mandate, so the state, by law, should pay rather than the county. Other alternatives are through general funding or through cutting services. **Mr. Doig** added that the Law Enforcement Academy will come in with a plan.

Mr. Freebourn explained that will also see legislation from the Department of Justice concerning highway patrol pay.

SEN. SCHMIDT asked if the Team 261 project is referring to the new processes proposed by the Motor Vehicle Division. **Mr. Freebourn** answered that it was, and that an additional issue the committee will hear from Team 261 project manager is that no questions have been answered on definite project completion or what will get done with the money that they already have. The fear by the LFD is that a working system cannot be assured, and that not enough money will be spent on technology to make the process work. **Mr. Freebourn** encourages probing on what additional sources of funds are being pursued, to ensure they have the funds available to complete the project.

SEN. SCHMIDT informed the committee that from the interaction she has had with the project, she is impressed by the amount of experts that have been brought in from all over the country as well as work that it has entailed.

Mr. Doig reiterated that questions should be asked at the presentation, since concerns have been voiced with no specific money answers returned.

Mr. Freebourn referred back to Exhibit 1, Page 1 under the Department of Corrections. The department is asking for \$3.5 million supplemental appropriations for increased populations. Operational capacity for prisons are now full. A rated capacity scale is used to determine how full. The rated capacity is the number for which the prison was designed. There are several hundred more prisoners today than for which the prisons were designed. The operational capacity is the maximum capacity a

facility can hold and maintain safe operations. The emergency capacity may soon be breached if numbers continue to rise.

Authorities will be here to present a least cost study, which involves a \$13.1 million expansion.

Community Corrections is asking for 19 FTE in probation and parole, with a financial impact of \$1.4 million.

Crossroads Correctional Facility in Shelby

{Tape: 2; Side: A; Approx. Time Counter: 23 - 25; Comments: Crossroads facility}

A major issue is the payment made to Corrections Corporation of America for the purchase of the Crossroads facility in Shelby. Under the 1997 contract there is a purchase option that allows the state to purchase the facility at any time at market value. The state is currently paying \$9.14 per day per offender, which is approximately \$1.7 million per year. This amount goes towards the purchase and the accumulated total through 2004 is \$6.8 million. The LFD issue with this situation is that if the facility is not purchased, there is no contractual provision to refund the money that has been paid. Questions to be asked are: why would the state expand a facility that it does not own, or why is the state paying daily for a facility that will never be purchased.

SEN. GALLUS stated that in his opinion, the purchase is possible, but not probable.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.5; Comments: Crosroads discussion continued}

Mr. Freebourn also explained the operational maintenance contract which works with the per diem rate of \$42 per day, the rate which Crossroads needs to operate the facility at our specifications plus a profit component. The amount, \$9.14, is just for the potential pre-purchase.

CHAIRMAN CALLAHAN specified that construction costs are not included in the daily rate, just the services they provide for guards. **Mr. Freebourn** added that the Corrections Corporation of American has the market value of the building at the end of the day.

SEN. BALES asked that if the state decides in 10 or 20 years not to purchase the facility, would the daily costs be possibly

considered sunk costs. **SEN. GALLUS** interjected that he does not believe we will ever own that facility and that we will never see that money.

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 13.1; Comments: Scheduling of tours}

CHAIRMAN CALLAHAN requested moving to the tour issue before continuing.

Mr. Freebourn canceled Wednesday's tour to Montana State Prison. This Saturday a tour of the Shelby and Great Falls facilities is possible. If this does not work, executive action on the related issues can be held off until after the committee tours the facilities.

CHAIRMAN CALLAHAN asked for a voice vote on a tour of Montana State Prison on Saturday, January 15th. Only opposed is Sen. Bales, who needs to check into a prior engagement before committing.

Mr. Freebourn suggested Saturday, January 29th for the Crime Lab tour in Missoula, as well as their regional facility.

{Tape: 2; Side: B; Approx. Time Counter: 13.1 - 18; Comments: Major Issues continued}

Mr. Freebourn discussed a potential under-budget of overtime in the secure facilities, approximately \$900,000 short. **Mr. Doig** added that the facility will have a plan. They were told by OBPP that within reason, to request what they need to run a safe facility.

CHAIRMAN CALLAHAN queried whether vacancy savings makes this overtime pay more difficult. **Mr. Doig** responded that it does.

SEN. SCHMIDT inquired if overtime is an issue at Crossroads, or just state. **Mr. Doig** replied that this is occurring at the state owned.

Mr. Freebourn moved on to the Department of Military Affairs, who has had additional homeland security funding added by budget amendment instead of appropriations. Montana Board of Crime Control also has funding from that \$54 million.

CHAIRMAN CALLAHAN asked whether the \$54 million that was given was already spent, and if not, where the money is now. **Mr. Doig** responded that most of it has been expended.

{Tape: 2; Side: B; Approx. Time Counter: 18 - 29.5; Comments: Questions}

Mr. Doig revisited the question over the possibility of splitting the consultant fee as requested by the PSC to \$50,000 a year.

Mr. Doig explained that agencies ask for a lump fund because it is hard to grant a budget amendment allow the agency access to the following year's consultant funds, if anything should happen. The fee does even out tax wise.

Mr. Freebourn informed the committee that the Executive Action will be taken on Monday, January 10th, for each package. At that time the package may be approved, adjustments made, or no action taken.

CHAIRMAN CALLAHAN asked if there are any issues with vacancy savings, because it will be readdressed throughout the session.

Mr. Doig commented that the PSC is not a general fund agency; with most general fund agencies the vacancy savings will have been spent with both large and small agencies.

SEN. SCHMIDT inquired if there had been any talk about reducing vacancy saving to 3% instead of 4%. **Mr. Doig** responded that matter is under the discretion of the governor and budget director. Vacancy savings of 4% is normal for larger agencies.

CHAIRMAN CALLAHAN recommended the committee members read the recent report put out vacancy savings.

SEN. BALES voiced concerned that if the committee does away with vacancy savings here, it will be absorbed locally with increased rates. **Mr. Freebourn** remarked that the LFD is concerned about setting a precedent on vacancy savings.

SEN. MCNUTT returned back to the matter of consultant funds, saying that in the past they have ran out in the middle of the biennium because the PSC can't foretell who may need the funds. They had to go in front of councils to obtain funds, which in the end was repaid.

SEN. BALES did not disagree, but responded that bankruptcies such as Northwestern Power are abnormalities. **SEN. BALES** is concerned about a potential 3.5% increase, then a drop of 3.5%. **Mr. Freebourn** pointed out that the total percentage increase will be

spread over eight different periods, with 0.003% of the total collected quarterly.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 5.3; Comments: Questions continued}

SEN. BALES responded that in that case it does not matter where if they take it for the whole biennium. **Mr. Freebourn** commented that they do not deal with the cash collection side of the business, just the authority. **REP. MCNUTT** clarified that the calculations are annual, but collected in quarter payments. Last session the appropriation was raised \$100,000 and a rate change was not noted. **Mr. Freebourn** referenced D-60 to show that fees are levied quarterly, as calculated per year.

CHAIRMAN CALLAHAN asked for further questions. None were heard. Executive action will be taken 8:00 Monday morning, followed by testimony from the Montana Board of Crime Control.

ADJOURNMENT

Adjournment: 10:00 A.M.

REP. TIM CALLAHAN, Chairman

SHANNON SCOW, Secretary

TC/SS

Additional Exhibits:

EXHIBIT ([jch05aad0.PDF](#))