

## **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 February 2, 2005 at  
8:00 A.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Tim Callahan, Chairman (D)  
Sen. Trudi Schmidt, Vice Chairman (D)  
Sen. Keith Bales (R)  
Sen. Steven Gallus (D)  
Rep. Ray Hawk (R)  
Rep. Cynthia Hiner (D)  
Rep. John E. Witt (R)

**Members Excused:** None.

**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: HB 2; Department of Justice,  
Highway Patrol, County Attorney  
Payroll, Gambling Control Division  
Executive Action: None

**Hearing: Department of Justice**

**CHAIRMAN CALLAHAN** called the meeting to order.

**Mr. Freebourn** distributed Exhibit 1, "Information Due to the Committee," from the Department of Justice.

**EXHIBIT(jch26a01)**

**County Attorney Payroll**

***{Tape: 1; Side: A; Approx. Time Counter: 3 - 11.2; Comments: Doug Booker}***

**Doug Booker, Department of Justice**, stated that on the county attorney payroll there are 54 attorneys that are compensated through two checks, one from the county and one from the State. Exhibit 2 shows the breakdown of pay increases per fiscal year (FY) and as divided between the State and county.

**EXHIBIT(jch26a02)**

Mr. Booker then gave a brief history of county attorney payroll. He explained that a bill from the 2001 Legislative Session created the County Compensation Board, which was to set the county pay for the attorneys. It was later amended to affirm that the State appropriation drives what the attorneys are paid. Currently the State has not caught up to the county's level of pay, despite the fact that the State is to share county attorney pay 50 - 50. He proposed a modest increase to county attorney payroll to be added to the base budget. He added that in addition to the Senate and Local Government Committees, there will be a committee studying this issue as well as the prosecution and services bill in order to provide a more permanent fix to the disparity in pay.

**SEN. BALES** stated that the State sends out attorneys in cases where the county attorney is not qualified. He asked, "Is there any interaction or compensation?" **Larry Fasbender, Deputy Director of the Department of Justice**, explained that the Prosecution Services Bureau was created for the occasion that the county had a case with which they were not comfortable. The bureau currently has six lawyers, which is not enough to handle many county cases.

**CHAIRMAN CALLAHAN** informed the committee that there is a difference between county attorney duties and State duties. **Mr.**

**Fasbender** confirmed this statement, adding that state attorneys participate in cases that cross county lines, or in large cases such as multiple homicides. He will put together a list of duties of each office and distribute this list to the committee.

**{Tape: 1; Side: A; Approx. Time Counter: 14.3 - 19.8}**

**Gordon Morris, Director of Montana Association of Counties (MACo)**, distributed Exhibit 3 to inform the committee of the true 50% that the State should pay for county attorney payroll. The true 50% over the next biennium would be \$1,909,000 in FY06 and \$1,957,000 in FY07. He added that MACo is looking to find a long-term solution so the payroll is divided evenly. Until this long-term solution is reached, he is asking for the numbers stated above excluding the benefits associated with health care, which are paid by the countys.

**EXHIBIT(jch26a03)**

**{Tape: 1; Side: A; Approx. Time Counter: 19.9 - 27.4}**

**Leo Gallagher, Lewis and Clark County Attorney, Montana County Attorney's Association (MCAA)**, said that by statute, the State of Montana is liable for 50% of county attorney pay. He informed the committee that there are six attorneys within the Lewis and Clark Attorney Office, five of which are dedicated full-time to doing state work. State criminal offenses can be prosecuted within the county, such as Department of Public Health and Human Services (DPHHS) cases. In his office there are also five deputy county attorneys, four of which are involved in state cases. He added that of the 56 counties, only 31 have full-time attorneys; therefore, there are a variety of cases throughout the state to which lawyers outside county lines can be committed.

In relation to Lewis and Clark County, he commented that for Lewis and Clark County, the pay shortfall will be \$245,000 over the next biennium, over what the Department of Justice is asking. He is concerned that counties need to attract and keep quality lawyers, but some attorneys are unhappy with the pay situation. The county commissioners have been sued to cover the disparity in pay, which creates hard feelings between the county and State of Montana.

**SEN. GALLUS** inquired, "What county attorney sued the county commissioners?" **Mr. Gallagher** replied that a Valley County attorney sued.

**{Tape: 1; Side: A; Approx. Time Counter: 27.4 - 28.9}**

**Bill Kennedy, Yellowstone County Commissioner, President of MACo,** affirmed that the involved parties are looking for a long-term solution to the county attorney pay disparity in the interim. He encouraged the committee to fill in the difference in pay as seen on Exhibit 3. He stated that to create a true partnership, the State needs to fulfill their 50% payroll match.

**Discussion:**

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 29.5; Comments; Discussion}**

**REP. HAWK** asked the Department of Justice (DOJ) if they had figures available on what the county attorneys spend on child protective services cases. **Mr. Fasbender** explained that child protective services cases were formerly handled exclusively by the DOJ, but these cases were cut back and given to the county because there was expertise in this area. The DOJ has been looking into providing training in this area so these cases no longer have to be handled by county attorneys. **Mr. Gallagher** estimated for Lewis and Clark County that \$80,000 a year is spent on child protective services cases. **Mr. Kennedy** stated that for Yellowstone County, approximately one and one-half of their lawyers devote their time to child protective services.

**SEN. SCHMIDT** inquired, "Is there not a uniform process in the handling of child protective services cases?" **Mr. Fasbender** replied that there is not a uniform process. Child protective services once had their own attorney. This is no longer the case. Some counties have the capability of handling these cases within, and some do not have enough knowledge of this area to handle a child protective services case.

**SEN. SCHMIDT** inquired if something needs to be done about the lack of knowledge in this area. **Mr. Fasbender** replied that it depends on priorities in funding. He believes that the current system is working well, where training is provided throughout the state. Ultimately, the level of services is up to the legislature. This problem needs attention to achieve efficiency and smartness in these services.

**CHAIRMAN CALLAHAN** asked if there are program models out that are being considered. **Mr. Fasbender** responded that 75% of the funds for child protective services comes from the Federal Government for cases the DPHHS designate as child protective service cases. He added that after the DOJ business process review is complete,

the services can be patched together to create an overall business revamp based on the recommendations found through this study. **Mr. Gallagher** added that the federal funds will provide money for cases involving 40 kids next year, through DPHHS.

**SEN. SCHMIDT** expressed concern that cases need to progress in order to receive funds, but there are not enough county attorneys to deal with the cases. Consequently, federal funding is lost. **Mr. Gallagher** noted that cases need to be dealt with within the year in order to receive funding. There also needs to be training on appropriate language used to get federal funding. However, often a more pressing case, such as a DUI murder, takes precedence over a child protective services case. The lack of legislative funding since 2001 has forced the county commission to make priorities. As a result, public safety is an issue.

**CHAIRMAN CALLAHAN** commented that county attorney pay is an on-going problem. Last session figures were not provided to the committee. This session numbers were provided by the DOJ, but they are not sufficient. **Mr. Gallagher** explained that the last subcommittee funded the county by cutting a DOJ fire marshal service. They are trying to avoid a similar last-minute fix this year. It is becoming more apparent that the brunt of this shortfall is on the county commissioners.

**SEN. GALLUS** asked for the entire appropriation request. **Mr. Freebourn** pointed to Page D-45 of the Legislative Fiscal Division (LFD) Budget Analysis for the DOJ request, which is \$1,809,223 for FY06 and \$1,810,149 for FY07. The numbers needed for the true 50% match are as stated earlier from Exhibit 3.

**Mr. Gallagher** clarified that the DOJ was shooting for the 2.2% increase quota that is provided by the University of Montana. However, this 2.2% has not been accurate since 2001. The figures provided by MACo mean a 2.5% increase as predicted. **SEN. BALES** commented that the difference between the request and the MACo total is \$247,477 over the biennium.

**Mr. Fasbender** stated that the difference would be approximately \$245,000. The numbers can be refined to be made more accurate. He added that part of the problem is in the timeliness of information. The county attorney payroll changed after computations were provided.

**SEN. BALES** expressed concern that salaries are being driven up, and if the State puts in more money, the board will drive up salaries again to get the matching funds. **Mr. Fasbender** replied that to attract quality attorneys, pay needs to be sufficient.

However, smaller counties cannot afford this pay. He commented that pay should be a percentage of what a county judge would get. Bottom-line is that there needs to be a better way of handling how the counties can determine appropriate pay for attorneys.

**SEN. BALES** stated that there is a possibility of services within poorer counties being jeopardized. In the current system where the State is paying half, the State is compounding the situation. **Mr. Fasbender** replied that there may be a more efficient way of providing services, such as combining counties, or the State providing services that are outside the capabilities of the counties. He stated that county attorneys are not usually full-time because little time is spent on prosecution.

**SEN. GALLUS** informed the committee that there is a set pay scale within counties and the mayor is the highest-paid position. He inquired if the rising county attorney payroll could put pressure on the counties by pushing up their economic scale. **Mr. Fasbender** replied that it is true that whenever salaries are changed, there is a ripple effect that will occur. **CHAIRMAN CALLAHAN** stated that ultimately the county compensation board sets the pay, so they should be aware of the chief executive pay and plan accordingly.

**SEN. SCHMIDT** proposed an interim committee or study for the purpose of finding a resolution on county attorney payroll. **Mr. Fasbender** replied that there has been a request for the commission to do a study. He added that the DOJ is working with the legislature to establish a statewide public defender system.

### Montana Highway Patrol

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 30}*

**Colonel Paul K. Grimstad, Montana Highway Patrol (MHP)**, distributed Exhibit 4 to outline his presentation. He first pointed to the patrol mission components, outlined on Exhibit 4, Page 2. He explained that the Highway Patrol was created because of a large number of highway fatalities. There are currently 206 officers on the force; this is fewer officers than when MHP was created in 1973, even though services have increased. He emphasized throughout the presentation that the duty of a Highway Patrol officer is to provide for a safety system in traffic. Funding of the Montana Highway Patrol is through a state gas tax.

This pay system ensures that as the system continues to be used, the safety of the system continues to be funded (Exhibit 4, Page 7).

**EXHIBIT(jch26a04)**

There are three main problem areas within the Montana Highway Patrol: vacancy savings, officer pay and division staffing (Exhibit 4, Page 12). He stated that many officers are forced to work overtime in order to meet mission standards. Overtime is needed because vacancy savings forces the Patrol to keep positions open. Expensive overtime costs puts a strain on the personnel services budget. The Highway Patrol also has to maintain competitive pay in order to hire and retain staff. Montana Highway Patrol is \$3.62 below the average as stated in the Montana Law Enforcement Salary Index. He outlined potential and preferred funding source in Exhibit 4, Pages 18 and 19. The preferred funding source to support pay increases includes a vehicle registration fee, which would raise nearly \$6,500,000. The final problem, division staffing, is that staffing levels are down with significantly more services as stated earlier (Exhibit 4, Page 20). A bill is currently circulating through the legislature, HB 35, to address all the areas of concern. This is outlined in Exhibit 4, Page 22.

**Colonel Grimstad** explained that one-third of the Highway Patrol fleet is replaced every year. These cars are retired at 80,000 miles to ensure vehicle reliability when an officer is dispatched, which often involves hard driving and driving long distances to sites.

**Budget Requests**

***{Tape: 2; Side: A; Approx. Time Counter: 19 - 29.5; Comments: Proposed Budget Request}***

Proposed budget requests are to maintain the current Montana Highway Patrol force, with increases only due to inflationary costs in critical areas. One request is \$488,000 per year in overtime, needed to provide assistance all hours. There is also a per diem cost for the Highway Patrol to house potential prisoners. Another inflationary cost is in the raised cost for gasoline. The next two requests are for patrol vehicles as well as recruitment and training. He added that the Highway Patrol is now in the Law Enforcement Academy. The Motor Carrier Safety Assistance Program (MCSAP) is funded 80% federal and 20% state special gas tax. This program runs inspections on commercial motor vehicles and will have the same issues with overtime,

travel and vehicles. However, an additional grant has been obtained that will fund two FTE. He stated that the DOJ is currently looking at combining MCSAP and the DOT, which would create additional funding for the DOJ. He emphasized that these requests are needed for the Highway Patrol to fulfill their mission.

**LFD Issues**

***{Tape: 2; Side: B; Approx. Time Counter: 0 - 29.5}{Tape: 3; Side: A; Approx. Time Counter: 0 - 9}***

**Mr. Freebourn** referred to Page D-34 through Page D-39 of the LFD Budget Analysis and Exhibit 5, Page 1 for the Montana Highway Patrol budget requests and LFD issues. DP 13, 14 and 38 base adjustments are zero-based items. DP 131, exempt staff pay raise reduction, is a global issue for the DOJ, which is counteracted with a new proposal to restore exempt staff pay raises. He added that for DP 132, Prisoner Per Diem, some money is being removed from FY07, which is why there is a negative number in this year. This is because all funding is requested in FY06. The total request for the biennium is \$1,988,342.

**EXHIBIT(jch26a05)**

**SEN. BALES** asked for clarification on figures shown for FY07 on Exhibit 5, Page 1. He asked if \$141,838 is an incremental increase. **Mr. Freebourn** stated that the number seems off because the base amount is removed after the FY06 funding request. The net incremental increase is as shown for FY07, \$141,838.

**Mr. Freebourn** then noted that DP 15, MCSAP new entrant program needs to be viewed in conjunction with DP 136, the transfer of this program to the Department of Transportation (DOT). The negative amounts of this transfer are picking up the requested increases.

Through discussion, **Karen Monroe, Centralized Services Division**, informed the committee that DP 136 does not include the two new FTE, and DP 15 does stand alone. Base Adjustments from this transfer would affect DP 14.

**CHAIRMAN CALLAHAN** asked, "If legislation passed to allow this transfer, would DP 136 be needed?" **Ms. Monroe** stated that this DP would be needed for coordination of language. **Mr. Freebourn** noted that this DP is contingent on legislation passing.



**SEN. BALES** inquired if another DP would be needed for transfer if the bill passes. **Mr. Freebourn** clarified that **SEN. BALES** is referring to the two programs under MCSAP, program inspection and new entrant program. **Jesse Monroe, Department of Transportation**, informed the committee that the new bill includes both DP 15 and DP 136.

Through further discussion, the committee was informed by **Karen Monroe** that DP 136 is in conjunction with HB 35. If the committee wishes for a new entrant program, DP 15 will need approval. This can then be moved and included in the bill. **Mr. Fasbender** explained that the committee must approve DP's in order to coordinate language. He added that the MCSAP program was being used to cover part of vacancy savings. Transferring this program will create more money to cover vacancy savings. The DOT also benefits from this transfer because they are able to get a federal funding match with this money.

**SEN. SCHMIDT** summarized that all of MCSAP will be transferred to the DOT upon the passage of HB 35, and DP 14, 15 and 136 will be covered with the transfer.

**Mr. Freebourn** stated that he will make sure another DP will not be needed to ensure coordination between the committee and the bill.

**Mr. Freebourn** then described the last DP, which is to restore vacancy savings. The LFD issue is that the actual DOJ vacancy saving dollars are different from this request. Also, he inquired whether this is contingent to HB 35. **Mr. Fasbender** stated that this is contingent, but will also have to be coordinated. **Jesse Monroe** added that HB 35 will remove the vacancy savings requirement for the entire division.

**SEN. BALES** commented that the division shows 14.7 Full-Time Equivalents (FTE) are needed to comply with vacancy savings, but 4% of the total FTE would be 10 FTE. **Jesse Monroe** explained that 4% of the budget is \$566,000. The number of positions taken to comply with this amount is 14.7 FTE. The division chose to cut lower-pay entry level positions.

**Mr. Freebourn** explained that vacancy savings is an executive policy; the legislature is only approving the executive recommendations.

**Gambling Control Division**

***{Tape: 3; Side: A; Approx. Time Counter: 9.5 - 29; Comments:  
Gambling Control Division Overview}***

**Gene Huntington, Administrator of the Gambling Control Division,** gave a history of gambling in Montana since first steps towards legality in 1973. By 1987, the legislature had approved all forms of gambling currently legal in the state, and approved a 15% gambling tax. In 1989, the legislature consolidated all gambling into the DOJ. The Automated Account and Reporting System was authorized in 1999. In 2001, 100% of the video gambling tax was placed into the General Fund. He informed the committee that the bulk of activity for the Gambling Control Division is related to video gambling machines.

***{Tape: 3; Side: A; Approx. Time Counter: 9.5 - 15.2; Comments:  
Complete History of Gambling in Montana}***

**Mr. Huntington** then gave an overview of the Gambling Control Division. He informed the committee that the Division is authorized 44.5 FTE and is funded by special revenue on gambling and liquor. Total expenditures for the Division is just over \$2 million. He added that the Gambling Control Division collects tax for the general fund, which amounted to \$50.5 million in FY04. They are also responsible for issuing permits and performing investigations. The three bureaus within Gambling Control are the Operations Bureau, Investigations Bureau and Technical Services.

The requirements to be a gambling operator are to have a liquor license with only one license, to be a resident of Montana, and to have a suitable criminal history. He noted that there is a combined application process for liquor and gambling permits with the Department of Revenue. Also, permits must be purchased for all gambling machines. The Operations Bureau also collects taxes and performs audits.

The Investigations Bureau is the law enforcement unit responsible for background checks and exposing illegal operations, such as liquor violations, cheating and gambling-related crimes. The Technical Services section includes the video gambling laboratory and database responsible for testing video gambling machines. The Gambling Control Division also deals with the Tribal Gaming Compact and the Gaming Advisory Council.

**Budget Requests**

***{Tape: 3; Side: B; Approx. Time Counter: 0 - 11.2; Comments:  
DP's}***

**Mr. Huntington** distributed Exhibit 6 and 7 to explain HB 89 and HB 204, which have to do with the Gambling Control Division. HB 89 is funding to update the Automated Accounting and Reporting System. HB 204 would eliminate the testing fees appropriation by putting this amount into the Gambling Special Revenue base budget.

**EXHIBIT(jch26a06)**

**EXHIBIT(jch26a07)**

Decision package (DP 4) listed on Page D-72, is a base adjustment that amounts to \$88,000 for each fiscal year. There is a new governor's budget recommendation that requests two FTE for additional Tobacco Enforcement, as described in Exhibit 8. He explained that the DPHHS also needs to fund the prevention package. DPHHS will appropriate the money, which will then be transferred to the DOJ.

**EXHIBIT(jch26a08)**

**REP. HAWK** asked, "The money from the tobacco tax goes into what account?" **Mr. Huntington** explained that these FTE will not be funded through the tobacco tax, but through the tobacco company settlement money. The administration envisions that not only these FTE, but additional auditors and a mandated prevention program be funded through this account.

**LFD Issues**

***{Tape: 3; Side: B; Approx. Time Counter: 13.2 - 24}***

**Mr. Freebourn** explained the LFD issues and DP's on Page D-21 of the LFD Budget Analysis and Exhibit 5, Page 1. He began with DP 3, accounting and reporting system. This is biennial and one-time-only (OTO) and contingent on HB 89 as described in Exhibit 6. The LFD issue with DP 3 is that the process to create an automated system has been ongoing. He recommended the DOJ report to the Legislative Finance Committee or the Law and Justice Interim Committee on the time line and progress of the implementation of the system.

**CHAIRMAN CALLAHAN** inquired about the current reporting requirements. **Mr. Huntington** replied that when the system was

first approved in 1999, they reported to the Gaming Advisory Council. They also have reported occasionally to the Law and Justice Interim Committee.

**Mr. Freebourn** stated that for DP 4, base adjustments, rent is an issue. The Gambling Control Division would like to reduce this appropriation by \$15,540 each FY because certain offices will not be rented as predicted. Also, this DP involves pay for foreign travel to companies that would like to sell machines in Montana. The committee may want to break out, line-item, and restrict the appropriation to the specified purpose. DP 71 returns to the global issue of exempt staff pay raise. DP 5, lab machine testing, was statutory, but the Division now wants this appropriation contingent on HB 204. DP 6 is authority to pay the ID bureau for fingerprinting.

**Discussion:**

***{Tape: 3; Side: B; Approx. Time Counter: 24 - 29}***

**REP. HINER** inquired, "Why is the Montana tax rate considerably lower than other states when the Montana machine-per-population rate is the highest?" **Mr. Huntington** replied that the legislature approves the gambling tax. One reason the rates may be different between states is how gambling evolved in the state.

**CHAIRMAN CALLAHAN** asked when the tax was determined. **Mr. Huntington** responded that the tax was determined in 1987. **Rick Ask, Bureau Chief of the Operations Bureau for the Gambling Control Division**, added that prior to 1987 the local government had the authority to license machines. What resulted was a large discrepancy in rates charged. A 15% tax was decided upon consolidation because of the potential that was seen in growth of the industry. This smaller permit fee was to encourage more establishments.

**SEN. BALES** asked if a person is only allowed one liquor and gaming licence for multiple locations. **Mr. Huntington** stated that a person can own only one all-beverage liquor license, but a person can own multiple beer and wine licenses. Beer licenses issued prior to 1997 can have gambling.

**ADJOURNMENT**

Adjournment: 11:20 A.M.

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REP. TIM CALLAHAN, Chairman

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SHANNON SCOW, Secretary

TC/ss

Additional Exhibits:

**EXHIBIT ([jch26aad0.PDF](#))**