

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 9, 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
Shane Sierer, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: 2; Department of Justice
Executive Action: 2; Department of Military Affairs

CHAIRMAN CALLAHAN asked for questions on the committee for the Department of Military Affairs before beginning Executive Action.

SEN. SCHMIDT asked for clarification on what programs are eligible for the scholarship money, specifically, if distance learning or one day training programs are eligible. **Roger Hagan, Montana National Guard Officers and Enlisted Associations**, responded that the scholarship program is for traditional higher education programs. It cannot be used for day training sessions or for secular schools, such as Rocky Mountain College, University of Great Falls or Carroll College.

EXECUTIVE ACTION ON DEPARTMENT OF MILITARY AFFAIRS

Motion/Vote: **SEN. BALES** moved to APPROVE THE DEPARTMENT OF MILITARY AFFAIRS BASE BUDGET. Motion carried unanimously by voice vote.

Motion/Vote: **SEN. SCHMIDT** moved to GLOBALLY APPROVE THE STATEWIDE PRESENT LAW ADJUSTMENTS FOR THE DEPARTMENT OF MILITARY AFFAIRS. Motion carried unanimously by voice vote.

Challenge Program

Motion/Vote: **REP. HINER** moved that DECISION PACKAGE 2, MAKE CHALLENGE MODIFIED POSITIONS PERMANENT, BE ADOPTED. Motion carried unanimously by voice vote.

Army National Guard Program

Motion: **REP. HAWK** moved that DECISION PACKAGE 3, ARMY RESERVE NATIONAL GUARD AT NEW LOCATIONS, BE ADOPTED.

Discussion:

Mr. Sierer clarified that the addition is on state land, not on federal land as stated.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: **REP. WITT** moved that DECISION PACKAGE 4, JANITORIAL SERVICE AT NEW LOCATIONS, 5, ARMY RESERVE NATIONAL GUARD FACILITIES MAINTENANCE EMPLOYEES, AND 6, ARMY RESERVE NATIONAL GUARD JANITORIAL AT EXISTING LOCATIONS, BE ADOPTED. Motion carried unanimously by voice vote.

Motion: SEN. SCHMIDT moved that DECISION PACKAGE 9, DISTANCE LEARNING STATE SPECIAL SPENDING AUTHORITY, BE ADOPTED.

Discussion:

{Tape: 1; Side: A; Approx. Time Counter: 7 - 15.4; Comments: Discussion DP 9}

SEN. SCHMIDT referred to the last two paragraphs on Page D-167 of the Legislative Budget Analysis, and raised the concern that she has heard no discussion of Option A. Option A recommends requiring an update to an interim committee on project status, determination of usage rates, and potential uses of the facility.

Randy Moseley, Adjutant General of the Montana National Guard, stated information has been distributed concerning the number of distance learning sites already established, under construction and their rates. He added that further narrative on the project can be provided upon request.

General Moseley explained that this Decision Package (DP) is merely appropriation authority for federal funds. DP 9 will allow private, state and local non-military individuals to also use the distance learning sites. The appropriation authority is to collect fees from these individuals to be used on maintenance of the system.

CHAIRMAN CALLAHAN recounted that this same spending authority has been given in previous sessions without specific numbers. The system is not yet complete. Today the committee is seeing another estimate for the same purpose. The concern is in establishing these facilities so the committee will not have to once again appropriate money for these means. **General Moseley** replied that it is true that this is the same authority as approved previously and that they are still working on making the sites accessible to the public.

REP. WITT inquired if the Department anticipated that other people would want to use the distance learning sites. **General Moseley** confirmed that they did expect some outside use.

CHAIRMAN CALLAHAN asked if there was a projected date for availability. **Stan Putnam, Assistant Adjutant General of the Montana National Guard,** informed the committee that more than half of the system is already available and have been used by non-military individuals. This DP is just to finalize the rate schedule. Hours of usage are yet to be determined. **General**

Moseley added that in the past the distance learning sites were not marketed because they were not completed. These sites will now will be made aware to the public.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: SEN. BALES moved that DECISION PACKAGE 11, RANGE MAINTENANCE EMPLOYEE, BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: REP. HINER moved that DECISION PACKAGE 13, ENVIRONMENTAL PROGRAM OPERATIONS, BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: SEN. SCHMIDT moved that DECISION PACKAGE 14, COMMUNICATIONS 100% FEDERAL AUTHORITY INCREASE, AND DECISION PACKAGE 15, ARMY RESERVE NATIONAL GUARD ADDITIONAL FEDERAL SPENDING AUTHORITY, BE ADOPTED. Motion carried unanimously by voice vote.

Air National Guard Program:

Motion/Vote: SEN. SCHMIDT moved that DECISION PACKAGE 10, AIR GUARD FIREFIGHTER OVERTIME, BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: REP. HAWK moved that DECISION PACKAGE 12, AIR GUARD SECURITY, BE ADOPTED. Motion carried unanimously by voice vote.

Veterans Affairs Program:

Motion/Vote: REP. HINER moved that DECISION PACKAGE 7, FTE FOR THE VETERANS CEMETERY, BE ADOPTED. Motion carried unanimously by voice vote.

Mr. Sierer presented the committee with modifications for DP 8, shown in Exhibit 1. As discussed yesterday, the \$10,000 as originally stated will not be available. The decision package is the same, there is just a funding switch.

EXHIBIT(jch32a01)

Motion/Vote: SEN. BALES moved that MODIFIED DECISION PACKAGE 8, CONTINUE CEMETERY MAINTENANCE, BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: REP. HINER moved that DECISION PACKAGE 16, PURCHASE A MOBILE VETERANS SERVICE VAN - ONE-TIME-ONLY, BE ADOPTED. Motion carried unanimously by voice vote.

Additional DP's

Mr. Sierer presented the committee with DP 202 as listed in Exhibit 1.

Motion: REP. WITT moved that DECISION PACKAGE 202, MONTANA NATIONAL GUARD SCHOLARSHIP RESTRICTED/BIENNIAL, BE ADOPTED.

Discussion:

SEN. BALES inquired if this motion restricts the amount given to students as \$500. His concern is that the \$500 allotment is not enough for rising tuition costs. **Mr. Sierer** confirmed that this DP is limited to \$500 allotments for those enrolled in at least 12 credit hours. Funds for under 12 credit hours are awarded on a sliding scale. **General Moseley** added that he is supportive of removing the restriction of \$500 because it would give the Department of Military Affairs the flexibility it needs to recruit successfully.

SEN. SCHMIDT referred to the DP description, wondering about the phrase, "This payment may be used at the discretion of the recipient, and does not have to be used for school-related expenses." She also inquired if this is in addition to the GI Bill. **General Moseley** responded that the candidates receive that cash upon successful completion of their credits. They have already paid out of their pockets for the education, so this is more like a reimbursement. Also, this funding is in addition to the GI Bill in order for Montana National Guard to remain competitive in the recruitment process.

REP. WITT discussed amending the motion to restrict the money for education and specifying the appropriation as one-time-only. Upon further clarification he withdrew the motion because the DP is already restricted to scholarships to be used over the biennium. No more one-time-only language is included.

SEN. BALES discussed amending the motion to remove the \$500 restriction. **Mr. Doig** clarified that the governor's office did not intend to include that restriction in HB 2. **SEN. BALES** removed his amended motion.

Substitute Motion: SEN. GALLUS made a substitute motion to RESTRICT DP 202 FOR DIRECT SCHOOL-RELATED EXPENSES.

Discussion:

{Tape: 1; Side: B; Approx. Time Counter: 0 - 10; Comments: Substitute Motion Discussion}

SEN. BALES inquired if the committee should also consider giving the money to the student before the beginning of the semester, after registration. **SEN. GALLUS** said in response to **SEN. BALES**, that even if the money was still given after the semester, most students graduate with student loans. The scholarship would then go to debt payment.

SEN. SCHMIDT asserted that it has been discussed why the recipient does receive funding after the completion of the semester. **General Moseley** replied that the scholarship is given after the semester as reimbursement because they wanted to make sure the money was used for educational purposes. The recipient first pays the fees out of their pocket, then receives the money upon successful semester completion. This is done so that if a recipient drops out, they do not have the money to spend elsewhere.

SEN. BALES has stepped out of the meeting.

SEN. GALLUS insisted that he does not believe this restriction will halt the system. He is concerned that this money, which comes from taxpayers, is used specifically for educational purposes.

SEN. WITT asked Roger Hagan what impact this substitute motion would have upon the scholarship program. **Mr. Hagan** gave a brief history of the program. At first the money was given to administrators at the universities, but the administrators responded negatively because they did not want to deal with the verification. The department moved to funding the scholarships after the semester rather than upon enrollment because they were concerned that students would not complete the program. He added that at times recipients get full scholarships from other sources, and that this \$500 is still helpful for things such as books and living expenses. He is concerned that restricting this scholarship money would be difficult administratively.

Mr. Sierer asked for clarification, stating that the last three sessions this has been funded, there has been a \$500 restriction.

He asked the committee if they would like to continue to restrict these funds.

SEN. GALLUS returned to his substitute motion, expounded on the term "direct school-related expense" to include books, tuition, and even parking, but not off-campus rent or car repairs for example. **REP. HINER** indicated it is hard to specifically define school-related expenses. She gave the example of funding fuel for a recipient if they drive 40 miles a day, daily, to attend school.

Vote: Substitute motion failed 1-6 by voice vote with **REP. GALLUS** voting aye. **SEN. BALES** voted no by proxy.

CHAIRMAN CALLAHAN explained to the committee that they are back to the original DP 202. Historically this DP has been \$250,000 over the biennium. This DP reinstates the program and raises the appropriation to \$500,000 over the biennium. He stated that this appropriation has been one-time-only (OTO) in the past, but is not proposed as OTO this biennium unless language is added for this purpose.

General Moseley explained that the \$500 scholarship limit has been in the explanation but never in the language of HB 2. This amount has been offered because of practicality of what the department could afford.

SEN. SCHMIDT stated that she understands \$250,000 has not been used. Rather, the department had previously only used up to \$860,000. **General Moseley** replied that \$500 has been used because of what was available in their budget. If the committee gives the department more money, with the flexibility to offer more to recipients, the department will use the money upon their discretion. Exhibit 2 explains the historical disbursement of scholarship funds. **CHAIRMAN CALLAHAN** explained that the committee does not set the exact amount of the scholarships.

EXHIBIT(jch32a02)

Vote: The original motion carried 6-1 by voice vote with **REP. GALLUS** voting no. **SEN. BALES** voted aye by proxy.

Motion/Vote: **REP. WITT** moved **THE DEPARTMENT OF MILITARY AFFAIRS CLOSED**. Motion carried unanimously by voice vote. **SEN. BALES** voted aye by proxy.

Hearing: Department of Justice

{Tape: 1; Side: B; Approx. Time Counter: 25.5 - 29.5}{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.5; Comments: Larry Fasbender, Alternative Funding Sources}

Larry Fasbender, Deputy Director of the Department of Justice, discussed Exhibit 3, which lists all of the Department of Justice (DOJ) Decision Packages. There has been some changes in requests since the DOJ previously presented. He noted that the DOJ did not attempt to find funding for the \$1.1 million gambling fee that will only be kept in the DOJ contingent on legislation. Also, the license plate reissue has been moved to a five year reissue rather than four years. This zeroes out \$192,000 from the first year of the biennium. Also, the Patriot Act funding has been cut in half. This leaves \$2.4 million that reads alternative funding.

EXHIBIT(jch32a03)

He explained that the DOJ has created almost \$2.4 million in alternative funds for their elected official additional budget requests. One source of the alternative funds is in raising the state charge with Montana Interactive Incorporated, which insurance companies use to get driver's records. The \$1.50 increase brings the charge to \$5.50 and will create another \$1.2 million over the biennium. The second source of funding deals with legislation on simplyfing the process in which the DOJ funds the supplemental retirement program for the Highway Patrol. That program is generating money in excess of the additional requests into the state special revenue fund. This \$600,000 will be transferred to the general fund. Another \$200,000 in excess is being generated from another program, creating a total transfer of \$800,000. The third source of funding comes from HB 261 from the last legislative session. The slow start-up of this IRIS program led the DOJ to remove \$400,000 from their budget, which will be moved to the general fund. The total of these three alternative funding sources is \$2.4 million. **Mr. Fasbender** suggests the committee uses these funds to fulfill the department's additional requests.

Montana Drug Task Force Funding

{Tape: 2; Side: A; Approx. Time Counter: 5.5 - 11.8; Comments: Mike McGrath, Drug Task Force Funding}

Mike McGrath, Attorney General, urged the committee to compensate for the loss of funding into the Byrne Grant, stating that this

money has been the basis for Montana's Drug Task Force. He asked the committee to fund the personnel costs for the 17 FTE that are currently supported by this grant. As for the operational costs, a portion of these funds may be available for the next year from the Montana Board of Crime Control. The US Attorney General has informed Mr. McGrath that this money will most likely disappear the second year of the biennium. He concluded by stating that the Montana Drug Task Force is the drug enforcement for the state of Montana. The rising meth problem makes this force absolutely necessary. He distributed Exhibit 4, which outlines the budget request for the Drug Task Force.

EXHIBIT(jch32a04)

CHAIRMAN CALLAHAN opened the floor for discussion.

Discussion:

SEN. GALLUS asked whether this is a conceptual proposal for funding or if it needs to be written up in a DP. **Mr. Freebourn** explained to the committee that this funding is already listed in the LFD Budget Analysis under elected official requests.

Mr. Doig stated his concern with the alternative financing is that they are one-time infusions of cash. There is no consideration for on-going cost. **Mr. Fasbender** explained that the governor has been informed of these funding plans and has approved the fee increase with the Montana Interactive Incorporated.

Mr. Freebourn requested a list of the recommended fee increases, which will be supplied by Mr. Fasbender. He then confirmed that the committee will not have to worry about any bill work for the alternative funding, this will be the responsibility of DOJ.

Mr. Fasbender stated that bottom line is that if the money does not come through legislation, the DOJ will have to begin cutting programs.

REP. WITT spoke about the \$1.50 fee raise. He asked, "Is this in line with other states?" **Mr. Fasbender** replied this fee is in line with other states, and in fact other states charge more.

SEN. SCHMIDT inquired about the cut-off date for Byrne funding. **Mr. Fasbender** responded that some funds will be available through the first year of the biennium, but not through the second year of the biennium. Applications for this money will be made through the Montana Board of Crime Control.

Mr. Freebourn referred to DP 17, which was funding for the Tri-Drug Task Force, asking if both requests should be considered separately or if the new funding request replaces DP 17. **Mr. Fasbender** replied that it will be combined into one DP.

County Attorney Payroll

{Tape: 2; Side: A; Approx. Time Counter: 23 - 29.5; Comments: County Attorney Payroll}

Mr. Fasbender then discussed the county attorney payroll. The state, by law, is to pay for half of the funding for county attorneys. According to Montana Association of Counties (MACo), the current state level of funding is significantly lower than their 50 percent. Exhibit 5 and 6 show the current County Attorney pay as well as the MACo pay proposal. To remedy a portion of the pay disparity the DOJ is requesting \$63,000 in each fiscal year.

EXHIBIT(jch32a05)

EXHIBIT(jch32a06)

Mr. Freebourn noted that there is already a DP for the \$63,000, and asked **Mr. Fasbender** if the department would like a separate DP for an additional amount.

REP. WITT pointed out that the true 50 percent shown in the MACo proposal is different than the figure shown for the DOJ. **Mr. Booker** replied that the MACo figures includes benefits, and that the true salary can be found by taking off that percentage. He added he will supply the salary comparison without benefits tomorrow as requested by **REP. WITT**.

REP. WITT asked if this funding match was spelled out in HB 124. **Mr. Booker** responded that this was spelled out in a separate bill in the 2001 session. It stated that the various county compensation boards should set the salary and the state is to match the funds. This does not always happen if the DOJ does not have the appropriation.

REP. WITT stated the committee should discuss this issue further tomorrow when a representative from MACo is present.

Agency Legal Services Rate

***{Tape: 2; Side: B; Approx. Time Counter: 1.9 - 8.6; Comments:
Agency Legal Services}***

Mr. Fasbender explained the Agency Legal Services Rates need to be raised in order for the agency to keep running. The revenue, expenses, and proposed rates are explained in Exhibits 7, 8 and 9. The proposed rates increase the \$72 an hour currently charged to \$75 in FY06 and \$77 in FY07. The Investigator rates proposed increase is from \$39.80 an hour to \$44 in FY06 and \$46 in FY07.

[EXHIBIT\(jch32a07\)](#)

[EXHIBIT\(jch32a08\)](#)

[EXHIBIT\(jch32a09\)](#)

Mr. Fasbender stated the DOJ has researched the impacts of this increase. The fiscal impact is on Exhibit 7. If agencies were to go to outside legal services they would be charged \$100-\$150 and hour. The committee should consider that the rates would still be much lower than outside fees, but agencies will still be impacted by the rise in cost, specifically smaller agencies. However, the agency is experiencing a shortfall and needs raised rates to continue running.

Mr. Doig indicated that rate increases are usually addressed with the original budget so the agencies that are affected can build this money into their budget.

Closing Comments

Mr Freebourn distributed Exhibits 10, 11, 12, and 13 for additional requested information concerning the Department of Justice.

[EXHIBIT\(jch32a10\)](#)

[EXHIBIT\(jch32a11\)](#)

[EXHIBIT\(jch32a12\)](#)

[EXHIBIT\(jch32a13\)](#)

Mr. Fasbender commented that a County Attorney duty request has been requested, but is not yet distributed. He did explain that almost all of the County Attorney mandates are to enforce activities at the local level. However, they are often tied into state laws that need to be implemented at the local level so the county and state activities are blurred.

REP. WITT inquired, "What led to the request of the vehicle inventory given in Exhibit 12." **Mr. Fasbender** responded that the Vehicle Replacement Program was eliminated, so the DOJ has a request to replace four vehicles a year. He noted that the ability for the law enforcement to respond is contingent upon functioning vehicles. **Mr. Freebourn** added that this request is under Program 18, DP 20.

ADJOURNMENT

Adjournment: 10:05 A.M.

REP. TIM CALLAHAN, Chairman

SHANNON SCOW, Secretary

TC/ss

Additional Exhibits:

EXHIBIT ([jch32aad0.PDF](#))