

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 9, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Don Ryan (D)
Sen. Jon Tester (D)

Members Absent: None.

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

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

Committee Business Summary:

Hearing & Date Posted: SB 18, 3/2/2005; SB 110, 3/2/2005;
SB 249, 3/2/2005; SB 109, 3/2/2005;
SB 275, 3/2/2005
Executive Action: SB 27; SB 109; SB 273

HEARING ON SB 18**Opening Statement by Sponsor:**

SEN. MIKE WHEAT (D), SD 32, Bozeman, opened the hearing on **SB 18**, Provide additional judge for 18th judicial district. Currently, there are two district judges. There has been an average of 255 cases filed per month since January, 2004. This trend is expected to increase with the growth of Bozeman and Gallatin County. In 2003, Gallatin County had the third most case filings per judge in the state. In 1980, the population of Gallatin County was 42,000; in 2003, the population was over 73,000; and, by 2010, it is expected to rise to 90,000. Gallatin County is the second fastest growing county in the state.

Proponents' Testimony:

Judge Mike Salvagni, testified he appreciated the unanimous vote of the Senate Judiciary and the Senate on second reading. Before the Legislature began, they met with the delegation from Gallatin County. **SEN. BOB HAWKS** was at that meeting and expressed his support for the bill. He indicated that **Judge Holly Brown** asked him to express her regrets for not being able to attend. He referred to data supplied to the committee.

EXHIBIT (fcs52a01)

He emphasized the second judge in Gallatin County began in January of 1979. Since then, the number of cases increased by 67%. Preliminary reports showed that in 2004, there were 2736 case filings, an increase of 339 cases over 2003. In the last eight years, criminal filings have doubled. He argued that the facts demonstrate the need for the third judge in Gallatin County. SB 18 allows the judge to start on or after July 1, 2005, after appointment by the Governor, through the Judicial nomination process. The fiscal note shows a cost of \$293,050 in the first year and \$270,615 in the second. In order to complete renovations to the Law and Justice Center, to create a third courtroom, it is anticipated the new judge will not start until January of 2006. The county cannot begin the renovations until it knows the position has been approved. He did not think the costs would be as high as shown in the fiscal note because they do not anticipate the judge starting on July 1, 2005. He submitted that the issue is about the citizens. He cited the support of the Gallatin County Commissioners, the District Court Council, the Gallatin County Bar Association, and the district court judges of Montana. He maintained SB 18 is vital to maintain the effectiveness of the court.

John Vincent, Gallatin County Commission, advised the Commission prioritized improvements in their justice system as their number one priority. The bipartisan County Commission committed the space and the money for this facility. The growth rate in Gallatin County is expected to continue. They hired two consultants, and one recommended a new courthouse and planning now for a fourth district court judge. Justice delayed is justice denied; it is denied not only to those who stand accused, but to the victims of crime as well.

Marty Lambert, Gallatin County Attorney, testified he grew up in Bozeman and the changes that have occurred since the late 1980s are remarkable. He indicated he is responsible for all criminal felony cases that are filed in the 18th Judicial District. In addition, he is responsible for all involuntary commitments, petitions filed in juvenile cases, and all petitions in abuse and neglect cases. These numbers have steadily increased and will continue to increase. He stressed when he brings a case for involuntary commitment, four separate hearings potentially have to occur within approximately one week. The Court's calendar has to be made to accommodate those hearings. Abuse and neglect cases, which involve the custody of children, are statutorily a priority as are juvenile and criminal cases.

Linda White, Attorney, Gallatin County Bar Association, spoke of the growth in Gallatin County and the demands on the judicial system. Local citizens are being denied access to justice without a third judge. When families and businessmen cannot get into courts for their disputes to be resolved, they are denied justice. Without a third district judge, there are delays. Judges are overwhelmed, and lawyers are frustrated because they cannot get their cases on the docket. The citizens are equally frustrated.

Jed Fitch, Montana Trial Lawyers Association, asserted that the court has many obligations, but all of them are important. A fundamental right of living in a democracy is the chance to have a day in court. He indicated he was Judge Gunther's law clerk, and is familiar with the District Court in Bozeman and how hard the judges work. The increased caseload slows down the system. He contended that \$270,000 a year is far less than the cost to the public for having cases slowed down; this is money wisely spent.

Betsy Brandborg, State Bar of Montana, testified about the importance of the hearing or trial date. Funding is critical to allow the system to work as it was designed. The State Bar of Montana fully supports an additional judge in Gallatin County.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. KEITH BALES referred to the comment that the new judge might not be able to start on July 1, which could change the fiscal note depending on what point in time those facilities would be ready and available for use. He asked **Mr. Vincent** to comment. **Mr. Vincent** advised they already set aside the funding and began the initial work at the county level to have the space ready to go on January 1, 2006. **SEN. BALES** said it would change the fiscal note by approximately half of the \$270,000 if the date was delayed to January 1, 2006. He inquired of **SEN. WHEAT** if that was a thought he would entertain. **SEN. WHEAT** indicated if the facilities were ready on July 1, they would want the judge on July 1. If it will be on January 1, 2006, the fiscal note should be adjusted. **SEN. BALES** said the bill would have to be amended to have the judge start on January 2, 2006. **SEN. WHEAT** said that would be satisfactory.

{Tape: 1; Side: B}

SEN. BALES said **SEN. WHEAT** testified that Gallatin County has the third highest caseload in the state. **SEN. WHEAT** said that is correct; Yellowstone County and Lewis and Clark County are higher. **SEN. BALES** wondered why those counties are not here asking for the same thing. **SEN. WHEAT** indicated Yellowstone County got a new judge in 2001. In 2003, Ravalli County and Cascade County got new judges. Part of the caseload in Lewis and Clark County is related to all of the state agency matters that have to be brought in Lewis and Clark County. **SEN. BALES** quipped, he is trying to take care of that.

SEN. GREG BARKUS asked **SEN. WHEAT** what took him so long. **SEN. WHEAT** advised he was a freshman legislator last session, and cited the budget shortfall. Even though the judges felt the need, they did not think it was the right time; now there is a desperate need.

SEN. CAROL WILLIAMS wondered about the possibility of alternative, temporary space that might be available sooner than January, 2006, rather than amending the fiscal note and not starting earlier. **Mr. Vincent** indicated the space they have available is immediately across from **Judge Salvagni's** courtroom. It is currently occupied by Court Services and the Drug Treatment Court. They will be moved to other facilities in order to

accommodate the third courtroom. He thought January 1, 2006, is reasonable.

SEN. RICK LAIBLE, stated he bill calls for an election in 2006, and this will be a temporary appointment. He asked **SEN. WHEAT** about the process that takes place. **SEN. WHEAT** replied, if the bill passes, those interested in the new judgeship will submit their names to the Judicial Nominating Commission. The Commission will go through their hearing process, submit names to the Governor, and the Governor will make the appointment. The judge will stand for election in the next election cycle.

SEN. LANE LARSON questioned **Judge Salvagni** about bringing the judge on sooner. He maintained a judge does not need a courtroom every day. **Judge Salvagni** indicated they originally discussed the judge starting in 2007. **Judge Gunther** died in November of 2003, and **Judge Holly Brown** became judge in March of 2004. He anticipated a similar amount of time would be needed. He thought it would be difficult to operate under the kind of circumstances described by **SEN. LARSON**. The bill authorizes a secretary, a law clerk, and a court reporter. He had no problem with waiting until January.

SEN. BALES asked, if the bill is amended, if the judge can be appointed prior to that. **Judge Salvagni** replied they anticipate that happening, and it would be advantageous to the person appointed.

CHAIRMAN MIKE COONEY asked about the timing of staff being assembled and whether that would take place after the judge is appointed. **Judge Salvagni** responded they anticipate that happening and mentioned there is a precedent for the process of the appointment of the judge.

Closing by Sponsor:

SEN. WHEAT reiterated they are anticipating the judge will take office on January 2, 2006. The bill needs to be amended to make that clear. The staff may need to be hired before January 2. He thought there had been compelling testimony about the need for the third judge.

HEARING ON SB 110

{Tape: 1; Side: B; Approx. Time Counter: 16.1}

Opening Statement by Sponsor:

SEN. JOHN COBB (R), SD 9, Augusta, opened the hearing on **SB 110**, Medicaid redesign: HIFA and 1115 demonstration waiver authority.

SEN. COBB said the bill was heard and recommended for passage in the Public Health Committee. He was a member of the Medicaid Redesign Committee. The intention was to make the Medicaid program financially stable in the future. Medicaid includes the regular entitlement program and waivers. Montana has a waiver for the disabled, and there is always a waiting list. For the entitlement program, they can't have a waiting list; everyone in that group is automatically on. The new waiver they are asking for is a Health Insurance Flexibility Accountability (HIFA), which is a new type of waiver where states give more flexibility in the Medicaid program. The state controls the cost, the number of people they will help, and the type of services. Federal costs are capped at a certain growth rate in the future. In Montana, they found two pots of state money. The state buys drugs for about 1500-3000 mentally ill people, and this keeps them out of Warm Springs and in communities. The other pot of money is at the State Auditor's Office for the high risk pool. The two pots of money, about \$6 million, will be matched with federal funds of \$14.7 million. This will help certain groups of people in the waiver program and 4000 people who do not have insurance or expand the insurance they have. It will pick up 1800 children who don't have insurance or health care and provide insurance similar to CHIPS. Six-hundred working parents will be given \$106 for insurance. Up to 300 emotionally disturbed and seriously ill children will be helped. They are taken care of until they are eighteen-years-old, and then they are not taken care of; they show up in the prison system a few years later. This will help pay for their medications and counseling for a couple more years. Physical health insurance will be provided for some people in the mental health program. The high risk program in the Auditor's office will have a lower premium. There is no new money in the proposal; it is already in the budget, and they are just matching the dollars. This bill is needed for the insurance pool bill in order to ask for the waiver. There is a family planning waiver to help people before or after pregnancies who do not have insurance.

Proponents' Testimony:

John Chappuis, Department of Health and Human Services (DPHHS), distributed a handout on the HIFA waiver to the committee.

EXHIBIT (fcs52a02)

There is about \$14,500 in federal funds in the budget that will be leveraged through this waiver that are currently not being leveraged. That was approved by the Human Services

Subcommittee and appears in HB 2. The waiver will start in 2007. He pointed out that the mental health services program is for people who are severely mentally ill but are not on the Medicaid program. This program currently has funding from special revenue sources. This can be refinanced to be able to leverage these federal funds.

{Tape: 2; Side: A}

The first group that would be covered would be the Mental Health Services Plan people. There are about 3000 of them in a year, and most do not have health insurance. A few have Medicare, and those cannot be refinanced. For those that are uninsured, there would be a mental health package where they will either be able to pick up insurance in the private sector or a program that will allow them into Medicaid. It would be a capped entitlement on a month basis which would be carried over. In addition, a group that is currently not covered is the severely emotionally disturbed children age 18-21. These children have been in the system, but, under the current Medicaid state plan, they are dropped at age 18. This system will allow them to continue the mental health services until they are 21, allowing them to transition into adulthood. It has been found that many of those children have problems making that transition, and they can end up in the criminal justice system. This can be a help socially as well as in terms of their coverage. They will also get physical health coverage equivalent to the CHIP program. An additional 1800 CHIP children will be covered over the 3000 currently in HB 2. About 600 adult parents of Medicaid children will be provided premium assistance. This program will also help those with serious problems who can't get insurance. The caps on the new populations are at eight percent; there will be no changes in co-pays or services to existing populations.

Pat Melby, Montana Medical Association, submitted that this is a good bill and they support it.

Steve Yeakel, Montana Council for Maternal and Child Health, spoke in strong support of the bill, particularly the provisions in the HIFA waiver.

Terry Kendrick, Women's Opportunity and Resource Development Center, advised they worked with a couple of groups in the state to suggest amendments that would allow for more public comment. She thanked **SEN. COBB** for bringing the bill forward and the Department for working to come to agreement on the amendments.

Erin McGowan-Fincham, State Auditor's Office, rose in support of the bill. They support the bill because it is one more potential

avenue to decrease the number of uninsured in the state. She stated there are over 3000 people in the Comprehensive Health Association. The group that would be refinanced would be the low income program through MCHA. There are about 220 folks on that program, currently, who are below 150% of the poverty level. The waiting list could be reduced, and the premium assistance could be increased. They are trying to bring additional federal funds into this program. There are about \$550,000 state dollars per year going to that program.

Linda Gryczan, League of Women Voters of Montana, testified they are a non-partisan group, with a membership that includes both men and women. Their subcommittee on CHIP and human resources studied this bill extensively and stand behind it.

Kim Abbott, WEEL, advised Human Services is in a budget crunch. WEEL asked the Department, the Legislature, and the Governor's office to be creative in the way they approach aiding working families. This bill is a creative approach to cover the uninsured in Montana and they fully support it.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE wondered if this would leave anyone behind in the current programs that are not currently taken care of. He asked if they would be wrapped into the new program with the federal match. **SEN. COBB** replied the money stays in those programs. The same people will still be helped. The extra federal money will help these people more in some cases, and there will be extra money for insurance for the families in CHIPS. Those in the mental health program may get some physical health care insurance. **SEN. LAIBLE** noticed the bill speaks of the 1115 waiver as an experimental pilot program. He inquired if it has an end. **Mr. Chappuis** advised each waiver has a five-year time period before it has to be redone. If this waiver program becomes a problem, it can be terminated after three years.

SEN. BALES said it appears about 31% of this is operating expenses and personal services, with only 69% for benefits. He wondered if that is the case throughout the department. **Mr. Chappuis** replied they have one high-end expense in one year to update their Medicaid Management Information System. This is the system which pays all the Medicaid bills and is part of what the Department is proposing with this money, which is 90% federal. This is the biggest operating expense, and that is why it is that

high in one year. Nobody loses any services, but it allows the Department to update their system so they can pay the bills and accommodate the changes for premium assistance and those things that are new to their system. **SEN. BALES** asked for an estimate of the overhead compared to the benefits after that. **Mr. Chappuis** indicated it will be reduced by nearly \$5 million, and there will be a few hundred thousand expended after that.

SEN. TRUDY SCHMIDT asked what will happen in the Department if the legislation passes. **Mr. Chappuis** advised, once the bill is through the Legislature, the Department will have to submit a concept paper of the waiver to each of the Tribes. The Tribes will have a 60-day period to comment and for the Department to answer questions. There will also be a public hearing. Assuming there are no changes, they will submit the waiver application to the federal government. The federal government will have a 90-day period for review. They will ask questions, and the Department will have a period to respond. It will take six months to a year before the program can actually be implemented. At the end of the waiver process will be a rule-making process, which takes another ninety days. They hope to have the program up and running by July 1, 2006. **SEN. SCHMIDT** asked how many other states have been approved for this by the federal government. **Mr. Chappuis** replied over ten; more have applied. The federal government not imposing these caps across the broad Medicaid populations has made this more palatable to states.

SEN. BARKUS said Section 1115 in the Social Security Code is temporary and experimental, and there is a lot of discussion with Social Security itself. He wondered if the funding of this is contingent upon federal funding, and, if that source dries up, he wondered if the FTE's and the program are gone. **Mr. Chappuis** advised the 1115 waiver is an experimental demonstration waiver. It is not part of the President's budget cuts, and it is unlikely this program will be reduced. The federal government favors the flexibility of this program to help the uninsured without costing a lot more money. It is spending in a controlled manner. If this were not approved, or they lost the federal funds for some reason, things would go back to exactly as they are now. There would be no need for the FTE's. All the general fund and special revenue reverts to the programs that currently exist to insure that nobody would lose anything from where they are now.

Closing by Sponsor:

SEN. COBB said the reason the bill is here is for permission from the Legislature to do these expansions. The waiver allows cost control. He advised there will be amendments regarding notice requirements.

HEARING ON SB 249

{Tape: 2; Side: A; Approx. Time Counter: 22.8}

Opening Statement by Sponsor:

SEN. JOHN COBB (R), SD 9, opened the hearing on **SB 249**, Require coordination for addiction treatment between Corrections and DPHHS. **SEN. COBB** advised that the bill requires a needs assessment and to provide technical assistance and training. He provided a revised fiscal note.

EXHIBIT(fcs52a03)

There is \$200,000 in HB 2 for the coordination and \$800,000 for treatment. If the cap is exceeded the money will be taken out. This is a management issue, and it will force the agencies to work together.

Proponents' Testimony:

Anna Whiting, Family Policy Director, Governor's Office, rose in support of the bill. She said she is the liaison between DPHHS and Corrections and also Industry and Labor and is accountable to make sure this coordination occurs. She understands how important it is for these two agencies to work together. She is fully committed to work with **SEN. COBB** and this committee to insure that this coordination occurs. She urged support for the bill.

Don Hargrove, Montana Addiction Services Providers, testified in favor of the bill. The methamphetamine explosion has given a painful awareness of chemical dependency problems in the state of Montana. He advised other drugs are still out there, including heroin, cocaine, prescription drugs, marijuana, and alcohol. He described visiting with an emergency room nurse in Bozeman. He asked her how many overdoses she sees in a week. She said about a dozen, and he asked her what she does with them. She indicated they treat them, and they call the police. Citizens of Montana are probably paying for both.

{Tape: 2; Side: B}

He views the bill as a job description for **Ms. Whiting**, or the new drug czar, but also as an investment.

Joyce DeCunzo, Addictive and Mental Disorders Division, DPHHS, spoke in strong support of the bill. She has been in her current position for a year and spent a great deal of time with **Director**

Bill Slaughter, Department of Corrections and some of his staff. They talked about commonalities. If people in the correctional system had addictive behaviors when they went in, they may go right back to those. They have to work together to find a way to serve that individual so their addictive behaviors don't land them back in the correctional system. They identified disconnects between addiction treatment in the corrections world and the community. They intend to work with the Department of Corrections and with community programs to come up with ways to work with these shared clients. She urged support for the bill.

Pat Melby, Rimrock Foundation, testified coordination and cooperation among private addiction treatment providers and state programs is very important to Rimrock, and for that reason they very much support SB 249.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE noticed there is nothing in the title of the bill dealing with education. **SEN. COBB** said that will be addressed in the needs assessment. He stressed that there is no money. **Ms. DeCunzo** said prevention needs assessments are given in schools. In addition, there are prevention specialists who work with schools to educate students regarding substance use and abuse. Originally, there was \$5 million in the bill for treatment, but that was not realistic. **SEN. LAIBLE** asked about prevention programs in schools. **Ms. DeCunzo** said the Governor's office supports the drug commission bill. In addition, the Governor's Office and OPI are working on tobacco prevention. This administration is committed to prevention and understands the way to save money in the long run is to make sure people don't enter into a cycle of addiction. Various agencies are working as a group on how to best coordinate with the meth bills. She stressed the importance of good prevention, early intervention, and what happens after people leave a facility.

SEN. BALES inquired why there was no testimony from the Department of Corrections. **SEN. COBB** advised the Department did not oppose the bill when it was in Public Health.

SEN. HAWKS asked if the bill is re-inventing a model, or if there are models in other states. **SEN. COBB** advised there is a lack of services in the state, and it is unknown what is going on with treatment. They need to find out what is working and not

working. Other states utilized assessments, coordination and training.

CHAIRMAN COONEY asked **SEN. COBB** if they should request a new fiscal note. **SEN. COBB** said, yes. The committee will have to decide whether to pass the bill or make it contingent on funding. If there is no funding, he would still make them do the coordination.

SEN. SCHMIDT asked about **Ms. DeCunzo's** comment about using different treatment modalities than Corrections. She wondered how it is possible to coordinate. **Ms. DeCunzo** said the treatment provided in a correctional setting has a corrections overlay. The main difference in the correctional system is the treatment is not individualized. An individualized program includes personal responsibility and identifying areas of that person's life that got them to addiction to begin with. They believe there needs to be a systems change so that the Corrections system uses the treatment modality used in the community. They hope to have agreements with Corrections that they will adopt and implement the treatment modality used in the community so there will be a seamless system of care for individuals with addiction.

SEN. SCHMIDT thought the fiscal note seemed high. She noted that the Corrections subcommittee is forming a study bill and will probably recommend a professional to evaluate the Corrections system. She wondered whether the two departments could accomplish this in the interim without being forced to work together and be accountable to somebody. **Ms. DeCunzo** asked if she was referring to the original fiscal note for \$1 million, or the revised one for \$200,000. Addiction treatment has not been high on the radar screen in the Legislature, and one of the main reasons is that it is primarily federally funded and has practically no general fund in it. They thought they needed to bring the cost down and came up with the bottom line that is needed to get the process started, to develop some infrastructure, and to clearly understand who they are serving and the outcomes. That will be used as a baseline to come back in the next session. **SEN. SCHMIDT** thought this sounds like a parallel effort, and that can be discussed in executive action.

Closing by Sponsor:

SEN. COBB said the first fiscal note looked at what other states did and what it cost. The waiting list for meth treatment is six months to a year. By the third offense, they lock people in prison. The Department cited the need for a study, and the money is in HB 2 currently.

HEARING ON SB 109

{Tape: 2; Side: B; Approx. Time Counter: 25.7}

Opening Statement by Sponsor:

SEN. JOHN COBB (R), SD 9, Augusta, opened the hearing on **SB 109**, Require state agencies to develop strategic plans, performance measures. He wrote his own fiscal note, because he did not believe it would cost anything.

EXHIBIT(fcs52a04)

Because of the fiscal note, he wrote an amendment.

EXHIBIT(fcs52a05)

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE referred to existing language on page 4, line 8. One of the duties of department heads is to provide performance information. He thought this bill clarifies what is already in statute. **SEN. COBB** said this bill was here last session, got through the Senate, and the House killed it. Last session the administration did not want the bill, and the House didn't like it. The bill gets the Legislature to review the performance measures in a formal way. **SEN. LAIBLE** agreed with the reason **SEN. COBB** did his own fiscal note.

{Tape: 3; Side: A}

The agencies that said they need more money are already doing this anyway. **SEN. COBB** replied some agencies are worried about detail, but the bill does not require that. The Legislative Auditor's Office checked on other states; Texas and Florida require performance based budgets. In Montana, the budget process is political. The interim committee is not so partisan and would be more objective. **SEN. LAIBLE** said if this bill is passed, because they are a citizen Legislature, this will give more tools during the interim to review processes and procedures that they are requesting the agencies to perform. **SEN. COBB** said

the information is available on the websites, but a committee is more involved than an individual member. There is more input, and the committee has more power than an individual legislator. The interim committee may not want to review these. **SEN. LAIBLE** suggested that the committee read the sponsor's fiscal note.

Closing by Sponsor:

SEN. COBB closed on the bill.

HEARING ON SB 275

{Tape: 3; Side: A; Approx. Time Counter: 4.9}

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT (D), SD 11, Great Falls, opened the hearing on **SB 275**, Revising voluntary genetics program; increasing program fees. **SEN. SCHMIDT** indicated the bill was heard in Senate Public Health and on second reading on the Senate floor. The bill is before the committee because of the fiscal note. The bill increases fees for individual or group disability or health insurance policies from \$.70 to \$1.00. An insured family of three would pay an additional \$.90 a year. When the bill was heard before the Senate Public Health Committee, there was testimony about the benefits of the program, but it was decided that it was not necessary to have those folks testify at this hearing. The current genetics program began at the Boulder River School and Hospital in the 1960s, and, in 1976, the state of Montana approached Shodair Hospital and asked them to take over the program, because the doctor running the program was retiring. Without a home, the genetics program would have ceased to exist. Shodair has operated the program under a contract with DPHHS for the last twenty-nine years. From 1976 until 1985, Shodair secured funds from various sources, including the state, and from its own foundation to fund this program. In 1985, the Legislature passed HB 430, which provided for the funding of the program by a fee collected for each Montana resident insured under any individual or group disability or health insurance policy. The fee has not been increased since 1991. The program has always included clinical genetics and lab services. Lab services have increased by 175%. Patients decline services because they are unable to pay, leaving them without important health care information. Shodair never refuses services to anyone. Genetics is part of a comprehensive system of health care that can save health care dollars with an accurate diagnosis and treatment recommendations. Cancer genetics are an emerging need in Montana, and patients can make important decisions based

on genetic information. The staff of Shodair works with obstetricians, pediatricians, oncologists, family practitioners, and a variety of other specialists to provide a comprehensive, integrated approach to patient care. Genetic counseling helps health care professionals to identify risk for many types of cancer, including breast and colon cancer, which allows for early diagnosis and treatment. Shodair's genetic staff works with a network of health care professionals from around Montana to provide resources to patients. Genetic characterization of leukemia is vital to diagnosis, prognosis, and treatment of the disease. Shodair provides genetic services at locations throughout Montana. Patients can be seen through Tele-medicine sites, and health care professionals have access to Shodair's genetic staff twenty-four hours a day.

Proponents' Testimony:

Jack Casey, Administrator, Shodair Children's Hospital, advised the \$.70 fee was placed into law in 1991. With inflation applied, this is \$1; if medical inflation is applied, it would be \$1.27. They did a careful analysis of their needs to keep this program operating and enable them to expand into cancer genetics, and they can make the program work at the regular inflation rate increase. From 1986, until the present time, the Montana Children's Foundation has utilized funds of \$1.77 million for this program. Because of other needs, the foundation does not have the funds to continue donating that kind of money to program any longer. Under Shodair's present contract with the state, they receive no overhead costs at all. Under this bill, they will expand cancer genetics. The cost to the state general fund will be an additional \$9,164 for the State Group Health Insurance Plan. There have been discussions about broadening the base of the tax to include more people. The University, cities, counties, school districts, and other political subdivisions are not included in this. In 1985, when the law was first being written to address the funding for the group disability or health insurance policies, there was no count on how many self-insured groups are out there. They assured the Public Health Committee that this is the amount of money needed to operate the program and they don't want to try to raise any more money. One of the biggest beneficiaries of this program are insurance companies.

Mona Jamison, Shodair, stated strong support for the bill. Currently, the fee is \$.70 per insured, per year. She and her husband are covered on his plan, and it costs \$1.40 per year. The bill asks for an additional \$.30 per year, per insured. This is a 2.2 cent per month increase. She and her husband are paying close to \$700 a month to insure themselves and their son, and are paying \$7,200 a year. If this were to pass, her husband's policy would go to \$7,200.90 over the year. She emphasized this is a

practically non-existent increase with huge benefits to the state. She noted that the program is put out to bid by the Department. Shodair, or anybody else that would prevail, would need this increase. Cancer testing has increased 175% since 1992. Shodair provides services to those without insurance. The fee increase will make sure that Shodair, or any other facility that provides these genetic services, can operate. Shodair is the only facility in the state of Montana that provides these kinds of tests.

Ronda Carpenter Wiggers, Helena Chamber of Commerce, advised Shodair employs fifteen people in their genetics department in Helena. These are good-paying, professional positions. Shodair has been a beneficial addition to the Helena business community, but is also an important addition to the medical community, statewide. An additional \$.30 per year on an insurance policy seems like a minimal addition for a valuable program. She asked for support for the bill.

John Flynn, Montana Hospital Association, spoke in support of the bill. The program has statewide importance and impact. This is an area of medical research that has the greatest potential for benefitting the quality of life and improved health care for the citizens of the state. They have been in strong support of this program, for these reasons, since it began.

Opponents' Testimony:

Frank Cote, America's Health Insurance Plans, advised they are not opposed to Shodair and the good work they do. He understands this is a nominal increase. Their concern is that this increase is on fully insured individuals and does not include self-insureds and other people who also benefit from this program. He said they have amendments that take the fee from \$1 back to \$.70 and include the University System, and state and local government employees. He expressed the concern that anytime costs are added to an insurance policy, it makes it less affordable to purchase that insurance. There are many consumer protections for a person who buys a fully-insured insurance product. The State Auditor's office has authority over those companies and policies. The same is not true for self-insured groups. By continuing to pass additional fees on the fully-insured companies, there will be a shift into the self-insured or un-insured market where there are fewer consumer protections. He advised that **Jackie Lenmark**, and **Greg Van Thorson, State Farm Insurance**, are also opposed to this bill and support the amendments.

EXHIBIT (fcs52a06)

{Tape: 3; Side: B}

James Senterfitt, New West Health Services, expressed concern about equity. The decision to use health insurance policies to fund a very worthwhile program, when it was originally made, did not really appreciate who it was going to capture and who it was not. They believe there should be a tax on all health insurance policies. They believe it is possible to put an administrative fee on the TVA's that are licensed in Montana that provide the service to the self-insured employers. If an estimated 200,000 additional insurers are captured, the increase request and future requests will be lower and they will all be doing their part to support programs like genetics and CHIPS.

Mary Allen, Montana Association of Insurance and Financial Advisors, said the fee in SB 275 will be paid by only a limited segment--those with health insurance. The amendments offered will widen the base and make the bill more palatable to producers who have a concern about affordability.

Informational Testimony:

Joanne Dodson, State Health Department, testified she is responsible for maternal and child health services. Those services include the voluntary genetics program. She provided background information to the committee.

EXHIBIT(fcs52a07)

EXHIBIT(fcs52a08)

Tanya Ask, Blue Cross Blue Shield of Montana (BCBS), pointed out that the Montana Legislature has already taken the initiative to expand the assessment base when they decided to include the state employee benefit plan as one of the entities that is assessed under this particular genetics assessment. The Legislature has the oversight authority for other self-funded insurance plans, such as the Montana University System. There are a number of governmental entities that are paying this assessment. In addition, the Children's Health Insurance Program pays this particular assessment.

Questions from Committee Members and Responses:

SEN. WILLIAMS asked **Ms. Dodson** how this bill would affect the Department. **Ms. Dodson** said the genetics program was established in 1985 as a Department program. They contracted out much of that but have traditionally done the newborn screening follow-up in-house and the monitoring of birth defects. Shodair has done the counseling and testing that are specific to genetics. The

Department has done educational programs for physicians, the public, and new parents. At present, there are four newborn screening tests, but there are some federal recommendations to move that to thirty-seven. In 2001, the Department began to retain small amounts of money, which paid for a portion of a staff member and the system development that is used to monitor and transfer the information used for screening follow-up. By moving this to state special revenue, it will be protected more than it has been in the past. This bill requires a comprehensive program, so they will be taking all of the services they have been doing in-house and including them in the contract. This is a rapidly changing field. Their job will continue to be to design and monitor the contract. They will retain the federal reporting requirements which are part of the maternal and child health block grant and other responsibilities.

SEN. LAIBLE asked if there has been a time when the general fund monies were not earmarked through the agency for the genetics program. **Ms. Dodson** advised, in the past, they always spent the money either on the contract or on the in-house responsibilities related to the genetics program, except for this last biennium, when there was across-the-board general fund decreases and some of that funding was lost. This amount varies from year to year, depending on how many people had insurance policies. The money has been going into the general fund, and the program has been identified as a line item. It is probable that at times the money went into the general fund and was not exclusively spent on this program. That is the prerogative of the Legislature to use the money as they see fit. **SEN. LAIBLE** said, since 1985, the money has always come out of the general fund. The only time the Department was actually shorted was last session when every agency took a reduction. **Ms. Dodson** said that is correct.

SEN. GREG LIND asked **Mr. Cote** who are the members in Montana that he represents that do business in Montana. **Mr. Cote** said he would be happy to supply that information to the committee.

SEN. COREY STAPLETON asked **Ms. Dodson** to explain what "voluntary" means. **Ms. Dodson** said the voluntary genetics program recognized that the funding and the mechanism would not cover everything. It did not outline specifically what the program would do. The program was established in the Department and the Department had the responsibility to figure out how to get these things done.

SEN. STAPLETON favored changing the name to more accurately reflect what it does. **Ms. Dodson** believed part of the reason it was voluntary was that the appropriation did not actually come through until 1987; this was originally passed in 1985. It is possible that the voluntary language was there because there was no way to pay for it. **SEN. STAPLETON** asked **Mr. Casey** if it is

time to change this mandatory program. **Mr. Casey** indicated it became voluntary in 1976. The program was located at Boulder River School and Hospital. In order to get a grant that was available at the time, the state had to have a statute on the books that described the program so that funding was not obligated by the state. That funding ran out in 1985, and they retained the name. **SEN. STAPLETON** asked if it would be acceptable to have a name that makes sense now. **Mr. Casey** thought they could drop the word "voluntary" and call it the Statewide Genetics Program. He had no problem with that.

SEN. LAIBLE asked **Ms. Jamison** to comment on his last question to **Ms. Dodson**. **Ms. Jamison** referred to page 2 of exhibit 6. Monitoring, tracking, recording, and referral costs are covered by the state general and special funds for laboratory personnel and by the federal maternal and child block grant. The Department and Shodair work closely and well together. These funds, as a matter of law, that were imposed on these disability policies, were only to be used for the genetics program, regardless of who had it. There have been cuts at the federal level on this grant, and, since this was not a special revenue account, all the fees, by law, go into the general fund. When there are across-the-board cuts to agencies, or cuts in federal block grants, the Department gets less money. This fee is being used, sometimes, as backfill for the loss of the block grant funds. Keeping those fees on the disability policies going to the program is very important, and they should not be a back-stop for other budget issues. They conferred with **Mr. Petesch**, and when the bill was passed, it said the purpose of the fee was to fund the voluntary statewide genetic program that is established in law. To Shodair, it meant that the \$.70 fee would only be used, as a matter of state law, for the genetic testing, including what genetic testing the Department may do, but not to address or to backfill the loss of grants and help other general operations. Substantive language cannot be amended in a budget bill without going into the statute. The State Auditor knows how many insureds with disability policies there are every year, and that information is provided to the Department and to Shodair. It can easily be computed how many policies times the \$.70 have been assessed for the purposes of the genetic program. The chart shows that the funds raised by the fee have gone up; yet, the amount to Shodair has gone down. The bill makes sure that those paying the \$.70 know that the fee is going to the purpose of the law, which is to fund the genetics program and cannot be used for anything other than genetic counseling or testing that may be provided by a contractor or by the Department.

SEN. LAIBLE asked **Mr. Casey** how often this contract for services goes out for bid. **Mr. Casey** advised it went out for bid last

year and will be put out again this next year. They were the only bidder. **SEN. LAIBLE** asked if that was because of the language that the bidder has to be a combined comprehensive program, and Shodair is the only one in Montana that meets that criteria. **Mr. Casey** said, no. The bill clearly defines that the laboratory is an integral part of the operation. When the RFP was issued last time, there was no reference to a comprehensive, combined program. That was put in this bill to clarify that the laboratory has always been an integral part of the program. The only testing is laboratory testing for genetic services.

CHAIRMAN COONEY asked **Ms. Dodson** about the language on Line 16. **Ms. Dodson** explained, when legal staff perused this, they determined the Department has done some of the services and retained some of the funding. They will have one contract and will contract with one entity. **CHAIRMAN COONEY** asked if they will change the RFP to reflect the changes and **Ms. Dodson** confirmed that they will.

Closing by Sponsor:

SEN. SCHMIDT expressed disappointment that the insurance lobby came in with an amendment that she had not seen before. They had been opponents in the hearing in the Public Health Committee. As far as expanding into other insurance, the best way to do that is to take a look at that during the interim to see if it needs to be, or should be, expanded. This bill is a stop-gap because of the increase in genetic testing going on in the state.

EXECUTIVE ACTION ON SB 27

{Tape: 4; Side: A}

Motion: **SEN. LAIBLE** moved that SB 27 DO PASS AS AMENDED.

Discussion:

SEN. LAIBLE stated a new fiscal note was prepared, based on the amendment, eliminating any general fund. **CHAIRMAN COONEY** referred to line 30, on page 1 and 2, which gives the Governor the authority to transfer money from the budget stabilization account to the state general fund. He asked, if the Governor were to do that, if that transfer would count against the spending cap. **SEN. LAIBLE** indicated, with what he knows about the spending cap, it would. **Taryn Purdy, Legislative Fiscal Division**, said she would make sure she was not giving bad information, but her first inclination is that it would not. The reason for the transfer to the general fund would be to prevent

the Governor from having to order a reduction in expenditures because the revenues were not high enough. A transfer, so that the Governor could spend it out of the emergency fund for fires, would be part of the statutory appropriation that is already there and consequently is already being put into the expenditure cap. **CHAIRMAN COONEY** advised he asked that question of some other people, and has not been able to get a clear response. This is the issue he has with this bill. **SEN. LAIBLE** responded the cap seems to be an issue, particularly during this session. This bill goes into effect later on. It would be 2007 or 2008, before there would be any significant amount of funds within the budget stabilization account or within the emergency account if revenues continue to increase.

SEN. JOHN ESP commented that transfers in and out of funds don't affect the cap at all. **CHAIRMAN COONEY** said he is not sure anyone truly knows the answer to his question.

SEN. BARKUS inquired whether the money that is appropriated into the fund is not in the cap and the money coming out of the fund is not in the cap either. **Ms. Purdy** advised when any funds are moved to the state special revenue account, that is a transfer; it does not leave the treasury. Consequently, it is not part of the cap because it is not technically an appropriation. When the Governor, under his provision, would be able to move that money into the general fund it would be to avoid a reduction in expenditures for appropriations that have already been made. It would not impact any further appropriations. She said she will consult with the expert on the spending cap to make sure that is actually the case.

SEN. STAPLETON offered that the spending cap is about appropriations and not expenditures. It is an expenditure whose transfer does not affect the spending cap; it is an appropriation that does. The Code Commissioner would say that an appropriation is pretty broad.

SEN. ESP asked if 17-7-140 is the mechanism whereby the Governor can reduce expenditures if there is a shortfall in revenue. This would be replacing the shortfall in revenue with revenue out of this fund. **Ms. Purdy** indicated that is correct. 17-7-140 maintains expenditures at the level approved by the Legislature. The Governor would not be able to increase the appropriation level going to the agencies by putting this money into the base to replace lost revenues. This would be a revenue transfer to prevent an ordered reduction in expenditures. The other 25% is the part that allows the Governor to expend additional funds because of the emergency appropriation. For those appropriations, she needs to make sure she is correct. The

emergency appropriation is already established in statute at \$16.5 million. That already has to be taken into account when the expenditure limitation is calculated, because that is an appropriation, and it is an appropriation that can be spent without further involvement by the Legislature.

CHAIRMAN COONEY advised that **SEN. LAIBLE** has been very patient. He asked if it would be possible to allow **Ms. Purdy** to investigate this. He said if they vote on it today, he will probably vote no, and he preferred to have all the information.

SEN. LAIBLE withdrew his motion.

EXECUTIVE ACTION ON SB 109

{Tape: 4; Side: A; Approx. Time Counter: 13.0}

Motion: **SEN. COBB** moved that SB 109 DO PASS.

Vote: Motion TO AMEND SB 109 carried unanimously by voice vote.
(exhibit 5)

Motion/Vote: **SEN. COBB** moved that SB 109 DO PASS AS AMENDED.
Motion carried unanimously by voice vote.

SEN. COBB advised a new fiscal note is needed on SB 249. There are amendments for SB 110.

EXECUTIVE ACTION ON SB 273

{Tape: 4; Side: A; Approx. Time Counter: 14.3}

Motion: **SEN. STAPLETON** moved that SB 273 DO PASS.

Motion: **SEN. STAPLETON** moved that SB027301.ATP BE ADOPTED.

EXHIBIT(fcs52a09)

Discussion:

CHAIRMAN COONEY asked if the study can be accomplished with \$50,000. **SEN. STAPLETON** replied if this goes to the House, the money that is obligated is an issue. He talked with a physician from Billings Deaconess, the CEO, and asked what would happen if the Legislature only appropriated a portion of what the study would cost and about the likelihood that some of the stakeholders

could get some money; the physician said it is likely. The Deputy Commissioner of Higher Education came up with the figure of \$250,000 based on previous experience. This amendment does not limit the Legislature to the \$50,000; the \$50,000 is at minimum, and the House could appropriate the full amount.

CHAIRMAN COONEY said it has been some time since the bill was heard, and he wondered if this appropriation is ongoing. **SEN. STAPLETON** advised that the next Legislature, the Board of Regents, and the Governor have to decide, as a result of the feasibility study, whether or not to move forward. He cannot imagine something like this could move forward without interest from outside the state government. The state would never be more than a twenty-five percent payer. If the idea is unsubstantiated, it will go away.

Motion/Vote: **SEN. STAPLETON** moved to SEGREGATE #1 AND #2 of SB027301.atp. Motion carried 16-3 by roll call vote with **SEN. SCHMIDT**, **SEN. TESTER**, voting no. **SEN. WEINBERG** voted no by proxy.

Motion/Vote: **SEN. STAPLETON** moved #3 TO STRIKE \$250,000 AND INSERT \$50,000. Motion carried 11-8 by roll call vote with **SEN. COONEY**, **SEN. HAWKS**, **SEN. LIND**, **SEN. SCHMIDT**, and **SEN. WILLIAMS** voting no. **SEN. RYAN**, **SEN. TESTER** and **SEN. WEINBERG** voted no by proxy.

SEN. LIND advised that he was considering a motion to table but would wait until after some discussion.

Motion: **SEN. STAPLETON** moved that SB 273 DO PASS AS AMENDED.

Discussion:

SEN. ESP advised that one of the issues raised in the hearing involved the medical school in North Dakota. He found that 61% of their student body are from North Dakota, and that skews the retention numbers, because 39% of them came from out of state to start with. He addressed the concern of **SEN. WILLIAMS** about redirecting state resources. A medical school may be an opportunity to provide for primary care in communities by the use of interns and medical students for the Medicaid population. This would be an offsetting benefit that is used in other states. He looks at this as trying to address an opportunity. He urged support for the bill.

SEN. LIND apprised the committee of his intention for a motion to table the bill.

{Tape: 4; Side: B}

SEN. STAPLETON withdrew his motion.

Motion/Vote: **SEN. STAPLETON** moved that SB027303.ATP BE ADOPTED.
Motion carried unanimously by voice vote.

EXHIBIT(fcs52a10)

Motion: **SEN. STAPLETON** moved that SB273 DO PASS AS AMENDED.

Discussion:

SEN. STAPLETON expressed appreciation for the time spent considering the bill in two committees and on the floor of the Senate. He said this is an incredibly important issue and many people testified as proponents. The hearing in this committee was different. There was an opponent, who is partially employed in the state of Washington, who made allegations about something that is happening in North Dakota, prompted by members of this committee, and that influenced what people thought about whether a small, rural state could sustain a medical school. In the interim, they can come to their own conclusions on that. No facts were found to substantiate the position that North Dakota is in. There was a preponderance of proponents and a narrow opponent with unsubstantiated evidence about another state. He wants to ask the House for an appropriation to study this. He compromised on every single amendment to the bill and tried to make this the best bill to address a complex issue. He did not solicit the testimony from proponents. He asked that they move forward, and maintained that this has never been about the amount of money that it would cost for the study.

SEN. LAIBLE said they heard a lot of testimony on this. There was testimony about the shortage of doctors in this state. There was testimony that, with the existing system, between 47% and 52% of Montana students that were looking to be admitted to a medical school were denied. The bill creates an advisory committee, with minimal funding, to review the options and see if the idea makes economic sense; they will not know until this is done. They are continuously asking to appropriate money to do studies. He had a bill for \$8 million to study ten acres in the Flathead for the Department of Environmental Quality. This bill asks for \$50,000 to study medical and personnel needs and educational facilities for students in Montana for the future. He asked what they were afraid of learning and what is WWAMI so concerned about that they would try to kill this bill with a \$50,000 expenditure. He would like to know that and is willing to spend \$50,000 of the state's resources to see if the state can have an opportunity for more

doctors and more and better health care for Montana citizens for the future. He thinks it is worth the investment, and he fully supports the bill.

Substitute Motion/Vote: SEN. LIND made a substitute motion that SB 273 BE TABLED. Substitute motion carried 10-9 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, SEN. LARSON, and SEN. STAPLETON voting no.

ADJOURNMENT

Adjournment: 12:12 P.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT ([fcs52aad0.PDF](#))