

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

**JOINT APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT AND
TRANSPORTATION**

Call to Order: By **CHAIRMAN JOHN BRUEGGEMAN**, on January 28, 2003
at 8 A.M., in Room 317-B Capitol.

ROLL CALL

Members Present:

Rep. John Brueggeman, Chairman (R)
Sen. Rick Laible, Vice Chairman (R)
Sen. Mike Cooney (D)
Rep. Monica Lindeen (D)
Rep. John Sinrud (R)

Members Excused: Sen. Gregory D. Barkus (R)

Members Absent: None.

Staff Present: Matt Bugni, OBPP
Greg DeWitt, Legislative Branch
Amy Sassano, OBPP
Misty Shea, Committee Secretary
Lynn Zanto, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamps indicate information that is found below.

Committee Business Summary:

Hearing & Date Posted: Judiciary, 1/28/2003

Executive Action: None

{Tape: 1; Side: A; Approx. Time Counter: 0 - 29.7}

CHAIRMAN BRUEGGEMAN stated that the committee would be working on the proposed budget for the Judicial Branch.

A handout was distributed from Legislative Staff on Judiciary General Fund starting point and operations to meet unspecified reduction.

EXHIBIT (jgh18a01)

Karla Gray, Chief Justice, Montana State Supreme Court, made the initial presentation on the Judicial Branch budget. **Chief Justice Gray** explained the number of programs to be presented and indicated who would be making each presentation. **Chief Justice Gray** proceeded by making a presentation on two additional programs that she felt needed funding by the 2003 Legislature. She explained the three roving law clerks that the 2001 Legislature had provided funds for and the need to continue to keep them.

Chief Justice Gray, went on to talk about the additional 2.25 FTE they funded for the Court Administrator's Office. She explained that they had lost the FTE during the on-set of State assumption. She pointed out that they simply did not have enough administrative staff to process the incredible amount of paperwork that State assumption produced and still do the work that the District Court Reimbursement Program needed on a monthly basis. She continued that as a result of not having enough staff they were behind in making reimbursements to the counties. **Chief Justice Gray** urged the committee to fund the three roving law clerks and the additional 2.25 FTE administrative staff for a total biennial cost of approximately \$183,500.00.

Chief Justice Gray then talked to the committee about Court automation. She pointed out to the committee that this was a State Special Revenue Fund cost not a General Fund cost. She indicated that the Courts had never had sufficient funding for information technology (IT). **Chief Justice Gray** explained the need for an IT system. She informed the Committee that they were proposing an increase in the surcharge to meet their essential additional needs for IT.

Chief Justice Gray introduced Lisa Smith to present programs one through three.

Lisa Smith, Administrative Services Director, Montana Supreme Court, stated that she would be describing three of the six programs, giving a brief explanation of each of the decision packages and addressing the issues raised by the Legislative Fiscal Division. **Ms. Smith** gave further information regarding the 2.25 FTE mentioned by Chief Justice Gray and how they were lost. She continued that what the proposal did was restore the authority for the 1.25 FTE lost and added one new FTE.

Ms. Smith described and explained the various decision packages for Supreme Court Operations which are outlined on pages A-30 through A-34 of the Legislative Budget Analysis 2005 Biennium dealing with DP 1001 - Pay Plan Implementation, DP 1003 - Legal Assistance for Domestic Violence Victims, DP 1101 - Grant Manager, DP 1103 - Court Assessment Program, DP 8001 - Judicial Branch Information Technology (Requires Legislation), and DP 8003 - Computer Replacement (Requires Legislation).

{Tape: 1; Side: B; Approx. Time Counter: 0 - 10.8}

Ms. Smith discussed program two, Boards and Commissions. She explained the significant commissions and boards staffed and supported by the program. She went on to say that the majority of resources in the program were provided to the Judicial Standards Commission and the Commission on Practice, both of which were Constitutionally mandated. She explained that the Judicial Standards Commission investigated complaints involving judges and the Commission of Practices investigated complaints involving attorneys. **Ms. Smith** informed the Committee of the duties of the staff for the boards and commissions. She explained that the only changes are Statewide Present Law Adjustments with a funding switch that would reduce general funds and increase State Special Revenue Funding as illustrated on page A-37 of the Legislative Budget Analysis 2005 Biennium. **Ms. Smith** referred to page A-36, discussed the LFD issue regarding investigative costs, and gave a history of the program.

Ms. Smith described program three, funding for the State Law Library illustrated on pages A-38 through A-40. **Ms. Smith** indicated that they were not asking for any increases in funding for the State Law Library they were merely asking to keep the Law Library open and in existence.

{Tape: 1; Side: B; Approx. Time Counter: 10.8 - 21.8}

SEN. COONEY asked Ms. Smith to explain DP 1103 and how that decision package worked and how it tied in with CASA. **Ms. Smith** explained that the CASA Program was funded with \$100,000 from

federal money and provides for a State person to help all of the local programs in the State. She continued that the last legislature gave the CASA Program \$100,000 of general fund money. That \$100,000 of general fund money was distributed to all the local programs in the State over the two years, except for the \$17,500 which was offered for voluntary reductions.

REP. LINDEEN asked about the information technology strategic plan. **Ms. Smith** deferred to Dan Chelini, Information Technology Director, for an answer. **REP. LINDEEN** asked why the strategic plan had not been included in the Governor's budget. **Mr. Chelini** stated that the strategic plan had been submitted in December and had been accepted. **REP. LINDEEN** clarified her question asking if the amount of money they were asking for to implement their IT proposal was in the Governor's budget. **Ms. Smith** responded that it was but was contingent upon the passage of HB 18 which would double the surcharge and lift the sunset on the surcharge.

Chief Justice Karla Gray stated that in answer to **REP. LINDEEN'S** question the money involved was State Special Revenue Funds, it was not general fund money. She continued that what they were asking of the Committee was the authority to spend the revenues that will be produced by the surcharge.

{Tape: 1; Side: B; Approx. Time Counter: 21.8 - 29.8}

Bruce Loble, Chief Water Judge, Montana Water Courts, presented the proposed budget for the Water Courts. **Judge Loble** explained the history, function and jurisdiction of the Water Court. **Judge Loble** handed out maps of the Montana General Adjudication, Exhibit 2. **Judge Loble** explained the makeup of the Water Court System and how they operate. He then explained Exhibit 2 and what it represented. He informed the Committee that the amount of funding they received made the difference in how quickly they could process claims.

EXHIBIT (jgh18a02)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 10.2}

Ed Smith, Clerk of the Supreme Court, explained the duties and responsibilities of the Clerk's Office. He then presented their proposed budget indicating they would need approximately \$372,962 to fund the Clerk of the Supreme Court's Office.

REP. LINDEEN asked about technology systems used by the Clerk's Office. **Mr. Smith** informed **REP. LINDEEN** that they were frugal in the use of technology equipment and were quite behind the times.

Mr. Smith went on to explain what they were doing to bring his office up-to-date in the technology field.

SEN. COONEY asked Mr. Smith to explain the records issue that they were dealing with. **Mr. Smith** explained that the Supreme Court documents could not be destroyed and duplicating those records was extremely costly and had not been done in a very long time.

SEN. COONEY asked Mr. Smith how much was being spent on records management. **Mr. Smith** replied that during the last year they had spent roughly \$4,800 on records storage and retrieval.

SEN. COONEY asked Mr. Smith if the Clerk's Office collected fees. **Mr. Smith** responded that they collected two fees, a filing fee and the Attorney License Tax. He continued that the fees collected were deposited into the General Fund. **Mr. Smith** indicated that they deposited approximately \$130,000 per year into the General Fund from fees collected.

SEN LAIBLE asked Mr. Smith if the additional funding added each year for records storage was for more space and filing cabinets. **Mr. Smith** stated that the funding is to pay the assessment for storage fees and records management provided by the Secretary of State's Office.

{Tape: 2; Side: A; Approx. Time Counter: 10.2 - 20.2}

Chief Justice Gray stated that prior to State assumption the bills of the Supreme Court and the District Courts were being covered adequately. She went on to say that they needed to find a way to ensure that the courts of Montana were able to meet the needs of the people of the state, and continue to be adequately funded. **Chief Justice Gray** referred to Page A-24 and referenced several areas and commented on them. She went on to discuss pre-State assumption and the effect that State assumption had on the program. She further discussed the salary structure of the management team and the court administrator and how they relate to salaries of other administrators in the other branches of government.

{Tape: 2; Side: A; Approx. Time Counter: 20.2 - 29.8}

Lisa Smith, Administrative Services Director, Montana Supreme Court, distributed handouts depicting what was involved in the District Court Assumption program, attached as Exhibit 3. **Ms.**

Smith described the various handouts and what they illustrated. **SEN. COONEY** asked what a Judicial Assistant was. **Ms. Smith** responded that a Judicial Assistant was a Judge's Secretary. **REP. LINDEEN** asked what a Standing Master was. **Ms. Smith** replied a Standing Master served in the capacity of Judge on a mediation between parties before the case went before the Judge. **Ms. Smith** then explained the District Court fixed and variable costs and how they accounted for the costs incurred under the various categories.

EXHIBIT (jgh18a03)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 11.8}

Ms. Smith further discussed the method and categories by which they tracked expenditures for the program as a whole. She further explained how they would be able to provide comparison information between the districts and the divisions of the State. **Ms. Smith** then stated that they had not allocated the variable piece of the budget, the little over \$7,000,000, to the various districts as they wanted to be able to manage these funds at the State level. She continued that SB 176 had directed them on how to allocate the fixed portion of the budget.

SEN LINDEEN asked about the other services listed under Clerk of Court costs in the handout. **Ms. Smith** explained that these were jury expenses and possibly witness expenses.

Ms. Smith discussed where and how the information was obtained and the procedure used to compile the data from all 56 counties of the State for the proposed 2004-2005 budget.

{Tape: 2; Side: B; Approx. Time Counter: 11.8 - 16.6}

Karla Gray, Chief Justice, Montana Supreme Court, presented the Judicial Branch's new approach to their fiscal problems and explained the same. She continued that the new approach budget would come in at about \$2,400,000 over the executive budget for the Judiciary for the biennium and that it would get them as close to the executive budget as possible without crippling the courts. **Chief Justice Gray** commented on the positive effect the new approach would have on the courts, the counties and the State's budgets. She continued by stating that the new approach would require statutory changes in the current State assumption laws and a firm commitment that the Judiciary would be exempted from any vacancy savings. **Chief Justice Gray** handed out a draft proposed bill with the statutory changes that would accomplish the new approach. She commented on her hopes and feelings about

the new approach and the proposed bill. She urged the committee's consideration of the proposed method for funding the Judicial Branch.

EXHIBIT (jgh18a04)

{Tape: 2; Side: B; Approx. Time Counter: 16.6 - 29.8}

Lisa Smith, Administrative Services Director, Supreme Court of Montana, handed out to the committee a copy of the Judiciary Budget Proposal. She explained that the new approach tried to incorporate both staying as close as possible to the executive budget but at the same time taking into consideration the action of the Legislative body in rolling the base back to fiscal 2000. **Ms. Smith** explained the budget proposal line by line and how she had come up with the proposed dollar amounts.

EXHIBIT (jgh18a05)

SEN. BARKUS asked Ms. Smith if there was some way he could refer to base number off of the 2004-2005 proposal. **Ms. Smith** answered that they did not have a base. She continued that fiscal 2003 was the first year that they had a budget and had recorded expenditures. **SEN. BARKUS** then asked Ms. Smith if she had the 2003 numbers. **Ms. Smith** indicated that she would get the information for him. Lynn Zanto, Legislative Branch, distributed copies of the Legislative Fiscal Division's District Court Program data for years 1996 through 2001. **Ms. Zanto** discussed the pertinent data and pointed out the comparisons between fiscal year 2001 and fiscal years 2004-2005.

EXHIBIT (jgh18a06)

Ms. Smith continued discussing the Judicial Branch's new approach by referencing Exhibit 5. Ms. Smith explained that the reason it was impossible for the Judiciary to go back to fiscal year 2000 base was that the salaries of the elected officials were set in statute and had to be paid.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 29.9}

Ms. Smith stated that where they were asking the committee to trust them in managing their budget was in the \$1,816,621 for Court Assumption, and the \$5,349,706 in the global areas.

SEN LAIBLE asked if Public Defenders were reimbursed by the State for their services. **Chief Justice Gray** answered that they would be.

REP. LINDEEN asked if under the new proposal the costs for all public defenders would fall back on the counties. **Chief Justice Gray** answered that they were not saying that all of the costs would fall back on the counties. She continued that all variable costs would be at the 65/35 percent split as long as there was enough money at the State level. **REP. LINDEEN** asked if all variable costs that exceed \$7,500,000 would be picked up by the counties. **Chief Justice Gray** responded that they assumed that the \$7,500,000 would be the State's responsibility for the variable costs and any variable costs over that amount would fall back on the counties.

Chief Justice Gray discussed the Senate Bill that would repeal the State assumption program.

Lisa Smith explained to the Committee that some variable costs are reimbursed to the counties one hundred percent whereas other variable costs are reimbursed at sixty-five percent. She continued that what condition Number 1 on Exhibit 5 was trying to do was to make it all the same and reimburse the county at sixty-five percent, get the bills paid and get the work done.

REP. SINRUD asked Ms. Smith, "Who paid the bills prior to State assumption?" **Ms. Smith** responded that the counties paid for all operating costs of the court. She continued that the Supreme Court paid for salaries, travel, etc. for the District Court Judges. **REP. SINRUD** asked Ms. Smith under variable costs if the State paid for training, the counties paid for training or if it was split depending on who was being trained. **Ms. Smith** answered that the only training paid for by the Supreme Court was for District Court Judges. **REP. SINRUD** referred Ms. Zanto to Exhibit 6 and asked if the expenditures made in 1996-2001 were actually what the State paid for District Court Judges. **Ms. Zanto** responded that it was not for District Court Judges, it was for variable costs for indigent defense, witness fees and jury fees. She referred **REP. SINRUD** down the sheet and pointed out that what had been paid for District Court Judges was about \$4,500,000 and in the Judiciary proposed budget it would be about \$5,500,000 per year.

Ms. Smith clarified that the county paid the variable costs as they were incurred, then on a monthly basis the county would send in a request to the Supreme Court and through the old District Court Reimbursement Program they would pay a certain portions of

those costs up to the maximums that had been set which was funded from the old motor vehicle tax.

REP. SINRUD asked about the funds from the old motor vehicle tax. **Ms. Smith** answered that HB 124 and 176 from the last session took the revenue from the old motor vehicle tax and put it into the general fund.

SEN. BARKUS asked Ms. Smith to clarify for him how they were figuring that there would only be a \$2,000,000 increase as the way he figured it, there would be \$7,700,000 increase. **Ms. Smith** referred **SEN. BARKUS** to Exhibit 5 and explained that the \$2,400,000 came from adding the unfunded balance for DC assumption with the total not funded in the executive budget. She went on to explain that the \$7,700,000 found at the bottom of the page came from the roll back to fiscal 2000. **SEN. BARKUS** asked Ms. Smith if in reality it was a \$7,700,000 increase over the proposed budget. **Ms. Smith** indicated that he was correct.

SEN. LAIBLE asked about the change over as a result of SB 176, and how it was accomplished. **Ms. Smith** discussed the procedure by which the Department of Revenue came up with the figures used to establish an appropriation which the Supreme Court split between fixed and variable costs to pay for fiscal 2003. She continued that revenues the counties gave up were deposited in the general fund to offset costs. **SEN. LAIBLE** asked if it was known how much the counties gave up. It was answered that the only monies the counties gave up were the fees they collected.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.5}

Ms. Smith continued by informing the Committee that the vehicle tax revenue projections were about \$6,200,000 per year and ten percent of that amount went to criminal defense reimbursements.

SEN. LAIBLE asked Ms. Smith if the \$18,385,000 which was received from the general fund was for the Supreme Court to take over responsibility for the district courts. **Ms. Smith** informed him that he was correct.

SEN. LAIBLE asked why they were looking for additional money if the counties had given up \$18,000,000 and the district courts had received the \$18,000,000. **Matt Bugni** answered that SB 176 had a provision that allowed that anything above the appropriation for variable costs for fiscal year 2003 would carry over onto the counties. A copy of HB 124 Entitlement Share Payment State-Assumed District Court Costs and District Court Fees/Revenues Transferred to the State FY 2001 Data Revised in April 2002 was provided to the Committee for their review.

EXHIBIT(jgh18a07)

{Tape: 3; Side: B; Approx. Time Counter: 4.5 - 10}

REP. DAVE WANZENRIED, HD 68, Missoula, expressed his concerns regarding State assumption of the District Court costs. He asked the committee to take a careful look at increased salaries, newly created job positions, employee workload and the possibility of sharing the workload. He also asked them to compare salaries of employees with salaries of other State workers in similar positions. He reiterated his concern for the need to carefully look at the issue before they made their determination on the funding for State assumption.

SEN. LAIBLE asked **REP. WANZENRIED** if he had the information he had referred to. **REP. WANZENRIED** replied that he had the information and it was readily available from the Auditor's Office.

{Tape: 3; Side: B; Approx. Time Counter: 10 - 30}

KARLA GRAY, Chief Justice, Supreme Court of Montana, stated that she had addressed pay raises that had been given, salary levels for administrative staff and the staff provided to run the program. She expressed her concerns regarding **REP. WANZENRIED'S** suggestions. She continued that the suggestion that the Judicial Branch farm out its work to other branches of the government was unquestionable.

SEN. LAIBLE referred Ms. Smith to the proposed bill and asked if the people that had gone to the State were now going back to the counties. **Chief Justice Gray** responded that they were not sending employees back to the counties. She continued that the employees mentioned in the proposed bill that were lined out had never been employees of the State Judicial Branch. She went on to explain the language in the proposed bill.

SEN. LAIBLE asked how the responsibility for accumulated sick and vacation leave and years of service had been worked out. **Chief Justice Gray** explained that presently the State would be responsible for the payout for the accumulated leave and years of service. She referred to Page 15 of the proposed bill Section 57, Subsection (4) which would leave the counties on the hook for amounts accumulated while the people were county employees. The State then would pick up for the time that the people were State employees.

SEN. LAIBLE asked Chief Justice Gray for further clarification on the handling of the accumulated leave. Chief Justice Gray deferred to Beth McLaughlin for answer. **Ms. McLaughlin** stated that SB 176 required that the State assume all of the county employees as if there was no break in service. Therefore, they were required to take on all of the employees' annual and sick leave from the counties. She further explained that the proposed bill would simply put some of the financial liability back on the counties. The employees would retain all of their leave and could use it. **Ms. McLaughlin** concluded stating that leave accumulated prior to the employee's transfer to the State would be put back on the counties.

SEN. BARKUS asked if there were any numbers available to quantify the accumulated leave. **Ms. Zanto** referred to the top of Page 24 of the Budget Analysis book for the total hours of accrued leave that was transferred to the State.

SEN. BARKUS asked if there was a dollar figure for the accrued leave. **Chief Justice Gray** replied that the dollar figure for the accrued leave was \$5,000,000. **Chief Justice Gray** informed the Committee that approximately twenty-five percent of the employees that had transferred from the counties to the State were eligible for retirement.

SEN. BARKUS asked Ms. Smith about the dreary alternatives if the Judicial Branch budget were not approved. **Ms. Smith** explained that the proposed budget would keep the things the way they were and would give them another two years to obtain enough data to put together a more precise budget.

SEN. BARKUS asked Ms. Smith if they needed to cut something where it could be cut from. **Ms. Smith** replied that there was no room to cut in District Court Assumption. She continued that the budget was already at its minimum.

REP. LINDEEN asked what would happen if there was a shortfall. **Ms. Smith** replied that they would try to cover any shortfall through vacancy savings. If it could not be covered by vacancy savings she did not know where coverage of the shortfall would come from.

Chief Justice Gray stated that she felt it was unfair, unreasonable and wrong to suggest that they try to fund State assumption by taking monies out of old programs. **Chief Justice Gray** expressed her views on what would happen if the Judicial Branch were not fully funded. She explained that she would not close the doors to the people of Montana for lack of funds. She

went on that she did not believe that the Constitution would allow them to shut their doors. **Chief Justice Gray** went on to discuss Supplementals, their uses and the fact they were for emergency situations. She asked the committee to fund the Judicial Branch at a workable level.

ADJOURNMENT

Adjournment: 11:50 A.M.

REP. JOHN BRUEGGEMAN, Chairman

MISTY SHEA, Secretary

JB/MS

EXHIBIT (jgh18aad)