

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS
SUBCOMMITTEE ON SB 134**

Call to Order: By **SEN. JOHN ESP**, on February 4, 2003 at 5:00 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Edward Butcher (R)
Sen. John Esp (R)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Linda Nelson (D)
Sen. Jerry O'Neil (R)
Sen. Joseph (Joe) Tropila (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Lynn Zanto, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: SB134, 12/27/2002
Executive Action: None

Discussion:

SEN. MIKE WHEAT said he is concerned about the variable costs, what exactly those costs are, and what they can anticipate. He said he is afraid the state has agreed to assume these costs without knowing exactly what they will be. Under this proposal they have a variable pot of \$7.5 million every two years and whatever doesn't get paid out of that pot comes back to the

counties. He would like to be able to take back to his county, with some certainty, how much money that is going to be.

SEN. LINDA NELSON advised she has some of the same concerns especially when the original proposal was \$17 million over the executive budget, and now they are down to \$2 million.

SEN. JERRY O NEIL said he would be interested in some of the income the Supreme Court receives. He used the example of bar fees, membership fees for the bar, filing fees, etc. and suggested perhaps some of these can be increased to pay some of these expenses.

SEN. JOE TROPILA noted he has the same concern that they were \$18.4 million in the hole, and now they are only \$2 million in the hole. He stated the counties he has talked to do not want the courts back; however he feels the Chief Justice is also busy enough running the **Supreme Court** and he would like a different department to administer it.

SEN. EDWARD BUTCHER expressed agreement.

SEN. DAN MCGEE discussed the actual expenditures between fiscal year 1996 to 2001. He stated the variable cost between 1996-97 rose 14 percent, the same between 1997-98, 6.7 percent in 1998-99, -4.1 percent in 1999-2000 and 9 percent between 2000-01. The projected increase for 2002 to 2003 is 25 percent. Between 1996 and 2001, it rose 39.6 percent and this is a huge increase. Now they are asking for a 25 percent increase for fiscal year 2004 and 2005. There is a lot they don't know when it comes to variable costs, as they don't know the number of murders, appeals, etc. He is stunned at the 65 percent increase in 8 years. This is where the Judiciary is different from the Executive in the variable cost area.

SEN. JEFF MANGAN advised he has been dealing with the **Budget Office** and the **Department of Revenue** to try and clear up some of these issues. They are trying to get some of the costs from public defense, district court and probation broken down. If they are going to be efficient and contain costs, the state needs to be responsible across the board. He stated he would like to get rid of the reimbursement mechanism as they told local governments and counties last session that this would end in July and they need to maintain this commitment. He said they need to reimburse at 100 percent and keep the Judicial branch whole.

{Tape: 1; Side: A; Counter 13.4}

SEN. BUTCHER said the Judiciary is basically managing themselves. When the courts were with the counties, they had the county commissioners scrutinizing how much was being spent and that has now been lost. There is really no one to manage the accountability of the court system. They are putting the financial responsibility on the highest end of the courts and the courts can come to the Legislature and demand whatever they want. He felt there is a flaw in this structure and that concerns him.

SEN. MANGAN said he does not feel the Judiciary is overstepping their power. They are in a new system and have identified some issues with indigent defense, variable costs and the reimbursement program. They are trying to figure out ways for cost containment and budgeting. He has a lot more faith in the Judiciary and felt they were not overstepping their boundaries.

SEN. BUTCHER said they need to be reviewing this structural makeup to avoid the rise of power in government as the power belongs to the people. Under the old system they had some control from county commissioners and this has been lost with the Judiciary taking over. He felt it is not a crisis right now, but it could be ten years from now. If there are other ways to structure this, that should be considered.

SEN. MANGAN said he felt they were working on that.

SEN. WHEAT indicated he does not feel the judicial system is out of control. He felt part of the solution may be SB 218 because the largest amount of the variable pot is going to indigent defense. Once they get some historical data on these variable costs and create a statewide public defender system, then it could be dealt with through the **Department of Administration**. He felt it should not be up the Chief Justice of the **Supreme Court** and their administration to deal with this totally.

{Tape: 1; Side: A; Counter 22.2}

SEN. O NEIL said he has a lot of respect for the Chief Justice for taking over state assumption and the amount of time it takes. He said he does not know if anyone really has a handle on the public defender system.

CHAIRMAN JOHN ESP asked about the cost because of public defenders.

SEN. O NEIL advised those costs have risen about 8 percent since 1976. He said part of this increase has come from giving more rights to people when they come before the courts.

SEN. MCGEE referred to the fiscal note on SB 176 from the 2001 Legislative session. He said there was \$13.5M for fiscal year 2002 and \$14.3M for fiscal year 2003 for a total of \$27.8M general fund. The executive budget has all costs, fees, etc. at \$37 million and \$10 million more for Fiscal year 2004-05. He asked about the difference between the general fund on SB 176 and the Executive budget.

Chuck Swysgood, Office of Budget and Program Planning, said those differences are increased variable costs and also some personal service costs. They used the numbers from 2001 and then applied a growth factor.

SEN. MCGEE asked if the \$37.3M in the executive budget included all of the general fund plus special revenue accounts. **Director Swysgood** said no, that is just general fund.

SEN. MCGEE asked if the increase from one biennium to the next was \$10 million.

Director Swysgood said yes, and these are some of the issues that they are trying to get a handle on to see if these numbers are accurate.

SEN. MCGEE asked if they could start with SB 176 so that they had data from 2001.

Director Swysgood said they could use SB 176 as a reference point but he does not want to get too wrapped around the fiscal note of SB 176.

SEN. MANGAN said he asked the **Department of Revenue** and the Budget office to assist him in getting more specific costs. He felt they could also do something with public defense if the money was there. He would like to get rid of the current reimbursement scheme because the only way they can work on cost containment and efficiency is if the state pays.

SEN. TROPILA said the county commissioners did the district court budget, but that all goes for a loop when they have a large case come in or a murder trial and expenses begin to spiral. There are also court orders that the county must pay for. The county commissioners had a handle on the budget, but they could not overrule the court. They often had to over spend their budget because of court orders and large cases, etc.

Chief Justice Karla Gray, Supreme Court, said one of the biggest frustrations for counties and county commissioners was when they received a court order and had to try to fund it. One of the

reasons for SB 176 was to try and get the counties away from this burden. Her concern is where is the money to fund this program. If they can find the money to move indigent defense to a different department, she is in favor of that.

{Tape: 1; Side: B; Counter 7.1}

SEN. MCGEE advised if the policy decision is to take the district courts from the local governments, then do it all the way rather than partially. He felt it either needed to be handled at the state or local level entirely.

SEN. BUTCHER said basically the counties were running the court systems okay until they had a crisis, etc. He said perhaps they made a mistake when they shifted to the centralization idea rather than simply taking special appropriation routes to handle those big expenditures that the state rightfully should cover whenever there was a big case, etc.

SEN. MCGEE said the problem is each local county was focused on what they had to do and didn't worry about what was happening in other counties. By having centralization it makes more sense, especially to the taxpayer. He would also like the public defender program to go through.

SEN. BUTCHER asked if it is possible to have an elected commission, through the public service commission, that would separate it from the judiciary, and administer this program.

SEN. MANGAN said the courts did not ask for this, but the counties did. He said they did this for more efficiency, rather than having 56 reporting units, etc. A District Court Commission was created to oversee the first year before it went into effect this last July. He said there was an administrator hired, a district court council and six district court judges to oversee this process. The issue here is to get a handle on the numbers and costs.

SEN. NELSON said the important thing is to get a handle on the numbers as nothing else matters until that is accomplished.

SEN. BUTCHER said during normal times each county had specific needs that they could address and it didn't matter what Yellowstone County needed versus what Flathead County needed. The problem arose when they received a court order for extraordinary revenue demands, etc. and they wanted out from under this. This is the issue that should have been addressed at the state level, rather than unscrambling a whole system that was working. He felt

this problem was only getting bigger as they went to more centralization.

CHAIRMAN ESP said right now the feeling of the committee is to move forward with this idea.

SEN. O NEIL said he voted against assumption, but he does not want to go back. As they move forward with assumption, he looks forward to the day that the courts have uniform procedures in each district. He is concerned that 10 to 20 years down the road the court can come and ask for any amount of money they want; they would have to give it to them, and he doesn't want this power to get out of control.

SEN. MANGAN said he felt they should try to have a proposal ready the following Thursday.

CHAIRMAN ESP asked the committee if they felt comfortable with the direction they were going and the ideas **SEN. MANGAN** is working on.

The committee members indicated they were comfortable with that.

ADJOURNMENT

Adjournment: 6:30 P.M.

SEN. JOHN ESP, Chairman

PRUDENCE GILDROY, Secretary

JE/PG

EXHIBIT (fcs24aad)