

MINUTES

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

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 11, 2003 at 8:00
A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

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: HB 236, 2/26/2003; HB 359,
2/24/2003; HB 608, 2/26/2003

Executive Action:

HEARING ON HB 236

Sponsor: REP. RON ERICKSON, HD 64, Missoula

Proponents: Kurt Alme, Director, Department of Revenue

Opponents:

Opening Statement by Sponsor:

REP. RON ERICKSON, HD 64, Missoula, opened on HB 236, a bill to clarify and revise use of bond proceeds for POINTS I. The bill was recommended by the **Department of Revenue**. He chaired the interim committee on Revenue and Transportation and they were assigned the task of looking at POINTS in HB 2. The bill says bond money could have been used to stabilize POINTS but there is a need now to move on. **Director Kurt Alme** was given a tough task when he took over and the mistakes were made well before he came. He did an excellent job of putting together a team to do the analysis and work on POINTS and get it to a place where POINTS I is working at least to a "C" level.

Proponents' Testimony:

Kurt Alme, Director, Department of Revenue, gave a brief history of POINTS. In 1993 the state initiated a study of unemployment insurance and withholding tax that resulted in unemployment insurance coming over to the **Department of Revenue** for administration as part of the new system in 1997. The bill was initially going to create a system to integrate those two tax types. In 1997, POINTS was funded and development began in 1998. In the 1999 session, HB 15 provided an additional \$18 million for Phase II of POINTS--the property tax stream and the individual income and corporate tax stream. The property tax stream was terminated in February of 2001 during last session. The corporate and individual income tax stream was continued until November of this year. The CIO's office and experts from the University of Montana concluded that POINTS II was no longer cost effective to proceed with and there was not sufficient funding in the executive budget. Under SB 271, they will come with a recommendation on how to replace POINTS I. Until that time, they need to work in the POINTS environment and make sure the data is as clean as they can get it so that conversion goes as smoothly as possible with the new system. The bill will enable the department to use the remaining POINTS II bond money for POINTS I maintenance and to start planning the new system. At the time of stoppage of POINTS II in November of last year approximately \$2.5 million remained in HB 15. The department was concerned they might not have the authority to spend those dollars on POINTS I.

The bill provides that clarification. They had two options in November--to stop all maintenance effort on POINTS I and the other was to continue to try to work on Phase I and get the data in a position to convert. If the bill doesn't pass, they will run out of HB 2 funds this year for the maintenance of effort. He explained why it wasn't wise to stop maintenance of Phase I. They need to balance and reconcile accounts. They need to provide for future system replacement and take steps to allow for the conversion of data. Another concern was loss of knowledgeable staff. Since they stopped work on POINTS II, the department has incurred approximately \$700,000 of costs through the end of February and they are continuing to spend against those bonding funds as they continue to maintain that project. They are working with the **Department of Labor** and the office of the CIO on a plan to set forth cost time frames and a plan to comply with SB 217. He asked for passage of HB 236 which does not require additional funding but is a clarification of the bond issue that has already been let. They will use the money for three things: to pay for project costs incurred to date, continue with project costs relative to data software cleanup and convert POINTS into a new system, and to allow them to begin project planning including project management to move forward with replacing POINTS. Some of those costs need to be incurred in this biennium. The bonding funds will be insufficient to give them a functional system even if they were not to go forward with replacing POINTS I and additional funds would be necessary to stabilize POINTS I. They will provide estimates of those costs as soon as they can.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MIKE COONEY advised he understands the necessity for the bill. The state sold bonds to fund the projects and he wondered if this legislation had been run by the bond counsel. He asked if there was any risk.

Mr. Alme advised it has been run by the bond counsel and there is no risk as they are changing the use but not the repayment terms. They are still general obligation bonds.

SEN. COONEY felt there could be a concern in this age of litigation.

SEN. JOHN COBB asked if the amount was about \$1.8 million.

Mr. Alme replied that is correct as of the end of February.

SEN. COBB asked if there would be much left, after planning, to maintain POINTS I.

Mr. Alme advised they will take a look at the whole project and then what has to be done this biennium and next biennium.

SEN. COBB asked if they need it all together.

Mr. Alme replied the uses would be for POINTS I stabilization, cleanup and planning.

SEN. COBB commented there would not be too much left for planning.

Mr. Alme advised they are looking at the planning cost and how much POINTS I maintenance costs will fall in this biennium.

SEN. ROYAL JOHNSON asked if they had spent \$700,000 since February.

Mr. Alme advised since November.

SEN. JOHNSON said they now have \$1.8 million and how much of the \$700,000 they already spent are for the same things they will try to use the \$1.8 million for.

Mr. Alme advised its all for the POINTS I data software cleanup project.

SEN. JOHNSON noted **Mr. Alme** keeps mentioning POINTS II and asked if they are going to do a whole different system.

Mr. Alme stated they are working on a plan with the **Department of Labor** and the Chief Information Officer to replace POINTS with a new system.

SEN. JOHNSON asked about keeping POINTS I in place and having another system.

Mr. Alme explained under SB 271, they are looking to replace POINTS I. POINTS II was going to replace individual income tax, corporate income tax and property tax systems. They are still working in an old system environment for those three tax types. POINTS I will be replaced first. It is the base of all their systems and interfaces with SABHRS. A future plan would bring the older tax types, which would have been POINTS II, into the new system.

SEN. RICK LAIBLE asked how much of the \$1.8 that is left would be used to move unemployment insurance back to the **Department of Labor**.

Mr. Alme said they would get POINTS I data stable for conversion. Some of that data is unemployment insurance data. A project management office would oversee the transition of the unemployment system.

SEN. LAIBLE asked about duplicating that amount of money.

Mr. Alme replied they would not duplicate that amount of money. They will segregate that portion of the project costs which will be federally funded.

Closing by Sponsor:

REP. ERICKSON closed on the bill. He advised the department already knew they needed some stabilization work and a bill for stabilization. More was added for planning. It is a needed bill and he hoped they would pass it.

HEARING ON HB 608

Sponsor: **REP. JONATHAN WINDY BOY, HD 92, Box Elder**

Proponents:

Opponents:

Opening Statement by Sponsor:

REP. JONATHAN WINDY BOY, HD 92, Box Elder, opened on HB 608, an act relating to state-tribal government to government relationship. He advised the fiscal note no longer applies. He read the title of the bill and noted the words "and field experience on a reservation" had been deleted. That was what the fiscal note pertained to. When he was chairman of the Montana/Wyoming Tribal Leader's Council, he presented a few items in front of the 2001 legislature. He worked with tribal leaders and the governor's office and put together a government to government consultation. He wanted to take it a step farther and the reason to use this approach was the federal government recognizes separate tribal governments. A good portion of the budgets in the state of Montana affect tribes. The tribes are seeing a 10% budget decrease and it is having a local impact. In his tribe, they have a \$30 million dollar budget and 10% of that is \$3 million. He felt the issue is long overdue because of the benefits the state has received on behalf of the tribes. 48% to

51% of the welfare caseloads in the state of Montana are tribal. The tribes have not been receiving very much of it. There is \$44 million that comes in and the tribes receive \$290,000. He thought support of the bill would help with that situation. He discussed training and consultation in New Section Five. At least once a year, the **Department of Justice** and a trainer selected by the tribal governments shall provide training to state agency managers and key employees who have regular communication with tribes on the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes. There will be a working meeting with the governor, state agencies and tribal officials quarterly. There will be a review of the proposed policies that directly impact tribal government and tribal populations. Each tribal government operates like any government. This will strengthen the relationship and it is something that hasn't been done or accomplished before. He noted it has the full support of the governor. **EXHIBIT (fcs51a01)**

{Tape: 1; Side: B}

Proponents' Testimony:

Jeff Weldon, Office of Public Instruction, testified **Superintendent Linda McCullough** supports the bill because it is the kind of work they do now. Both tribal governments and the state superintendent have an interest in children on the reservation. They communicate regularly with tribal education leaders, meet with tribal leaders and have field visits as often as possible. They have an Indian education specialist who attempts to work on Indian education issues who tries to breath life into the constitutional provision that there ought to be Indian education for all. The superintendent supports the principles in Section 1 and Section 3. They liked the bill as originally written because it allowed for meetings to be held on the reservations. OPI is not included in the fiscal note because they concluded there would be no fiscal impact of their agency.

Ali Bovingdon, Department of Justice, testified the department recognizes the importance of fostering good communications between the state and tribal governments. Over the last two years, they invited tribal representatives to attend training on issues relating to jurisdiction and other issues. The department did not attach a fiscal note because they have already done this type of training and can absorb it in their current budget.

Toni Plummer, advised she has been a technical assistance provider over the last fifteen years and has worked with tribal governments in the policy arena of state/tribal relations. The

bill was written by tribal leaders. They recognized there has been painstaking efforts for a number of years to continue to build strong state/tribal relations but there was a need to strengthen the relationship. There was no formal process or protocol for engaging department folks and bringing them to the table to resolve particular areas of difficulty. Through the bill there is a mechanism put in place for protocol and there is a strong commitment from the state and the tribes. It will take time and effort on everybody's part in the next two years.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. COBB asked about page 1, line 30 and if the language should be amended to say tribe or nation in Montana.

Ms. Plummer agreed.

SEN. JOHN ESP asked if tribes are 48-51% of the welfare roles in the state of Montana.

REP. WINDY BOY replied yes.

SEN. ESP asked about the tribes share of the \$44 million.

Ms. Plummer advised in the state of Montana when welfare reform was first implemented in **Governor Marc Racicot's** administration, because block grants were new and allowed for county control, there was a lack of consultation between state government and tribes on how the impact of welfare reform would affect them. There should have been some method of consultation. In the first two years of welfare reform from 1994 to 1996, there was no money given to the tribes in terms of support service programs. Those are additional programs outside of the scope of public assistance cash benefits. In 1996, **John Meredith, tribal liaison**, put forth legislation so tribes could begin to operate their own welfare system under the new federal law. They did not have the information management systems or expertise to undertake that effort, there was some money from the legislature. The total block grant the state received at that time was \$44 million and that was matched by the federal government for a total of \$74 million. The tribes only received \$290,000 based on caseload. In the distribution process whoever had the highest caseload got the highest number of dollars. Tribes received from \$80,000 down to \$30,000. If there would have been a consultation process in place, it could have been distributed differently and could have been addressed in a more positive manner. That lasted for two sessions.

SEN. ESP asked how much of the \$44 million went to benefits.

Ms. Plummer advised at least 50% went for cash benefits.

SEN. ESP asked how many tribal members or Native Americans there are in Montana.

Ms. Plummer estimated out of the 7% of Native Americans in Montana about 40-48% reside on a reservation.

SEN. ESP asked how many people.

REP. WINDY BOY advised approximately 65,000.

SEN. ESP asked **Mr. Weldon** about his testimony that OPI doesn't need the bill.

Mr. Weldon clarified they do the sort of work contemplated by the bill. That is the directive of the current elected superintendent. With someone with a different philosophy or priority the work might not get done. If the bill passes it will be directed to all executive agencies regardless of the leader.

SEN. ESP asked **Ms. Bovington** about her testimony about inviting the tribes in for training. He wondered about the response.

Ms. Bovington advised they've had good attendance to the training they invited the tribes to attend. She thought it was probably 80%. Her impression was the tribes were appreciative.

SEN. ESP asked her to track down the numbers and she agreed to do that.

SEN. BARKUS stated there were responsibilities for the state in the bill and wondered about the responsibilities for the tribes.

REP. WINDY BOY advised there had been some minor amendments to the bill. Since 1896, when they became American citizens they have been coming to the table and begging on their hands and knees.

SEN. BARKUS said in recognition of the right of the tribes to self government, to what extent do they have the right to tax.

REP. WINDY BOY advised those would be some of the things that would have to be (inaudible).

SEN. BARKUS asked what effect the bill would have on non-tribal Indians in the state.

REP. WINDY BOY replied none.

SEN. RICK LAIBLE asked about New Section 5 and the quarterly meeting. He thought that was too often and it might become diluted with too few participating. He agreed with the concept.

REP. WINDY BOY contended it was quarterly because there is currently nothing in place. He thought of bringing it forward as a demonstration project in the biennium. Quarterly meetings would contribute to a clearer understanding within the departments.

SEN. LAIBLE noted for the **Department of Justice**, once a year is enough.

REP. WINDY BOY advised at least once a year the **Department of Justice** will hold an annual meeting with all the parties.

SEN. LAIBLE asked about the "process of accountability of addressing issues". He asked if it was accountability of the state, the tribes or both.

REP. WINDY BOY stated the accountability is for both. He advised this has never been tried before.

SEN. LAIBLE asked about the tribal office within the office of the governor and if this will replace the tribal liaison office.

REP. WINDY BOY did not see this replacing it but enhancing it.

SEN. LAIBLE asked if he would consider this a duplication of what that office is trying to do.

REP. WINDY BOY reasoned there is one person in that office dealing with seven different tribal governments. He felt there would be collaboration.

SEN. LAIBLE commented there is a couple hundred thousand dollars in that office in the governor's office. He thought that could be used as revenue for the field.

SEN. BALES said the state is being asked to pass legislation and he wondered if any of the tribes enacted similar legislation putting similar requirements on them.

REP. WINDY BOY answered there is nothing specific to each tribe. Rocky Boy does business with the state through a contract. He described an process of evolution.

SEN. BALES thought if tribes were worried about this relationship, it would be better for each one of them to institute something like this in their policies and then come to the state to ask for participation.

REP. WINDY BOY advised the bill does not prohibit that. There will be a clearer collaboration. Over 100 bills affect tribes as well as the Governor's budget.

SEN. BALES asked about tribal sovereignty.

REP. WINDY BOY said in 1972, under **President Richard Nixon**, the Indian Self Determination Act was passed. In 1935, the Indian Reorganization Act came into place and set guidelines and parameters for each tribe to put a constitution together. The Self Determination Act gave the opportunity for tribes to take on their own responsibilities for direct services. The federal government can contract with the tribes. He addressed self governance by the tribes in Montana.

SEN. BALES said it is not defined within state government. The bill makes a policy statement and he needed to know how that is defined.

Ms. Bovington advised when they looked at self-determination and sovereignty issues they looked at the proclamation and the constitution. They are comfortable with the definition of self-determination in the constitution itself. The bill allows a mechanism for government to government consultation. It would allow full choice at the table in policy decisions equal to that of the state government.

SEN. BALES asked about how much jurisdiction the **Department of Justice** has on the reservations.

Ms. Bovington advised the department doesn't have jurisdiction on the reservations. She could provide a memo on state/tribal relationships and how the jurisdiction works in terms on non-tribal members living on the reservation and when the state has jurisdiction and when it does not.

{Tape: 2; Side: A}

SEN. ESP asked if the **Department of Administration** was present in the hearings in the House.

Ms. Plummer advised they were.

SEN. ESP asked how many people from state government would have to show up for quarterly meetings.

Ms. Plummer advised Oregon is the only other state in the whole United States of America that currently has government to government constitution legislation. The **Legislative Fiscal Division** passed out a fiscal note and asked all the departments to respond how many would be impacted as a result of this legislation. Every single department responded. The fiscal note was almost \$200,000. The bill was amended to include the bureau chiefs, lead policy people, key legal staff and the tribes would bring in their key cabinet members, key legal staff and their tribal leaders. The quarterly meetings will be eight full hours to look at issues and meet with the governor. **Tom Beck, Governor's Office**, was supportive and there was a commitment by the administration to sit down and work this out in partnership with tribal leaders.

SEN. ESP asked how many people would attend the quarterly meetings.

Ms. Plummer said they did not give an exact number, but each department was listed.

SEN. ESP asked if she was willing to take this concept back to the tribes and have a resolution brought back requesting something like this for the next session and evidence of some commitment from the tribes for a concept similar to this.

SEN. WINDY BOY advised he could have it before the session is over.

SEN. BALES asked about the fiscal note. Even though the departments are not having to go to the field, he wondered the cost of bringing branch people from the field to Helena.

Ms. Plummer thought those funds are already being spent. There are communication breakdowns with how regional people are reporting back to the state and how policies are adhered to by bureau chiefs, the executive office and the chairmen of the tribes. It would be cost effective for the state and for the tribes. The bill calls for 32 hours of on-site full consultation over a two year period. In the last two years, they did not get 32 hours of consultation with the governor, the executive branch or the policy people.

CHAIRMAN TOM ZOOK advised a new fiscal note would be requested.

SEN. BALES advised the bill asks for further segregation rather than integration and was asking for even more separation of the Tribes from the state. He asked **REP. WINDY BOY** to comment.

REP. WINDY BOY declared it may seem like that but the tribes have not been part of the process. The bill speaks of parity. Segregation is built upon race and will always be there. They are trying to open up better communication.

SEN. COREY STAPLETON thanked **REP. WINDY BOY** for bringing the idea forward. He acknowledged growing up with friends that were Chippewa in Great Falls. He asked if there was any attempt to use that concept.

REP. WINDY BOY advised there was an attempt but there had not been a response. The governor had visited each reservation.

SEN. STAPLETON thought the training was one way. He wondered about training for the tribes.

REP. WINDY BOY advised the trainer is more of a facilitator.

SEN. STAPLETON asked about changing the word to facilitator. He asked who would be the trainer.

REP. WINDY BOY advised there are a number of people who do training such as **Ms. Plummer** and he was sure the state did as well. The trainer would be mutually agreed upon.

SEN. STAPLETON asked if the trainer could be paid for out of the **OPI** budget.

Mr. Werner advised not out of their current budget. They asked the legislature for funding to implement an Indian education program which is another part of statute passed in 1997. There had never been sufficient funding to staff that program.

Closing by Sponsor:

REP. WINDY BOY closed on the bill. He said this is a new concept and is breaking new ground in Montana. The tribes average about \$20,000 to \$40,000 in each department for travel and training for departments to come to the state. He felt there has to be some give and take. The intent is not to step on anybody's jurisdiction. He felt there had been improvements regarding jurisdiction. The Blackfeet Nation recently put together a cross-jurisdiction agreement with the Montana Highway Patrol as well as the Fort Peck Tribes and the Salish-Kootenai to some extent. This will give confidence for each tribe to move forward

with this concept. He advised he is willing to accept amendments. The concept is still in its infancy. It will simplify the process and get more accomplished and that could benefit everybody.

CHAIRMAN ZOOK advised communication never hurts any of us especially if its honest communication. The letters of support will be helpful and there will be a new fiscal note.

Recess - 9:25 -

Reconvene - 9:40 -

HEARING ON HB 359

Sponsor: REP. KATHLEEN GALVIN-HALCRO, HD 48, Great Falls

Proponents: REP. SYLVIA BOOKOUT-REINICKE, HD 71, Alberton
Darrell Holzer, AFL-CIO
Gene Fenderson, Montana Progressive Labor Caucus
Jim Kembel, Montana Chiefs of Police

Opponents: Webb Brown, Montana Chamber of Commerce
Ronna Christman, Montana Petroleum Marketers and
Convenience Store Association
Don Hargrove, Gallatin County

Opening Statement by Sponsor:

REP. KATHLEEN GALVIN-HALCRO, HD 48, Great Falls, a bill for employee break time. She advised there is no mischief in the bill and the bill was brought because of the need for basic human decency in some workplaces. She sees this as a wellness policy and a health care provision. She explained a list of phone inquiries made to the **Department of Labor** which included people who are not allowed a rest period and people that work for an employer who does provide for break times.

EXHIBIT (fcs51a02) Employers want to know if it is required they provide a break. Families of employees call that are concerned with family members. The calls total more than 1000 each year and come from all over the state. She provided information from other states regarding break laws and information on how rest periods keep workers healthy. **EXHIBIT (fcs51a03)** She asked the committee to imagine not getting a break all morning and stated there are employees being required to work without respite. The bill states an employer will provide for a rest period of at least ten minutes during four hours of work whenever feasible given the reasonable demands of the employer's operation. There are several exemptions in the bill. She offered amendment HB035901.aem. **EXHIBIT (fcs51a04)** Montana is one of only 13

jurisdictions that does not have some type of legislation concerning breaks or rest periods for employees.

Proponents' Testimony:

REP. SYLVIA BOOKOUT-REINICKE, HD 71, Alberton, asserted the guilty employers are telemarketing firms, including Qwest. Most of the employees are single moms. They get a good hourly wage at Qwest of about \$12 an hour so it is crucial they keep their jobs. She described the health issue involved in not being given a bathroom break. **{Tape: 2; Side: B}** She described the differences for men and women in this regard.

SEN. BOB KEENAN advised some of her allegations had to be addressed. He described a conversation with the sponsor of the bill where he asked the target for the bill and she mentioned Qwest of Helena. He indicated he got in touch with Qwest and went to their office. **EXHIBIT (fcs51a05)** He thought her testimony was unconscionable considering the Qwest employees are represented by the International Brotherhood of Electrical Workers and they have a mandatory break for 15 minutes every two hours. He asked if **REP. REINICKE** had ever been to Qwest in Helena.

REP. REINICKE asked that he go to the Family Health Clinic and ask the doctors how many patients they have from Qwest with urinary and bladder infections. This involves the telemarketing portion of Qwest. The machines start automatically dialing and those ladies are not allowed to leave the machine.

Darrell Holzer, AFL-CIO, offered support for the bill and commended the sponsor. The most frequent inquiry he dealt with from non members is for a copy of state and federal law that employers have to give a break. He tells them there is no such policy. Most employers do the right thing and the only ones who have anything to fear from the legislation are those who don't do the right thing. Even beasts of burden need to have a rest.

Gene Fenderson, Montana Progressive Labor Caucus, stood in strong support of the bill. He pointed to the list of jurisdictions who already have this law as evidence this type of legislation is also needed in Montana. He advised his wife, former **SEN. SUE BARTLETT** brought similar legislation a number of years ago which was killed in the House. The employer at that time was USF&G and they testified they would straighten out that situation. Every year there are employers who do not have the intelligence to allow their employees to take a rest break. Surveys have proved employee rests breaks are a positive thing as far as production. He pointed out amendments in the House that were requested by

retail trade representatives and stated they improve the bill. He added in all the years he had worked on this kind of legislation, this is one of the milder laws. He advised pressure is always put on to kill these bills and he hoped the committee would address the problem.

Jim Kembel, Montana Chiefs of Police, stated support for the amendment for public safety personnel.

Opponents' Testimony:

Webb Brown, Montana Chamber of Commerce, opposed the bill. He contended good employers will provide breaks whenever possible. Employers who don't do that won't be around much longer. He thought there is potential for mischief within the bill. Exempt employees are paid for the work they do, not the hours they work. If exempt employees are not included it furthers the differences between exempt and non-exempt employees within the same company. Other issues may arise when some employees are more restricted. Some employers may have more than 15 employees but they are in several stores. Different duties within the same location may require different authorization. Smaller employers will need written policies and monitoring, adding to cost of administration. He cited accumulated non-productive time as a cost issue and felt it is not right to mandate additional break time under Montana law.

Ronna Christman, Montana Petroleum Marketers and Convenience Store Association, opposed the concept of the bill. Most members of the association own more than one convenience store and fit into the category of 15 or more employees. Their stores only have two people on site at one time. Most of them already have policies in place to handle breaks. If the committee passes the bill, she urged they advise the department to look at policies that are currently in place that work for those companies.

Don Hargrove, Gallatin County, opposed the bill from the standpoint of micro-management and tinkering. He didn't think the issue should be handled at the state level by statute. Those employers who have collective bargaining agreements generally have policies. County governments have policies in place. He appreciated the amendment dealing with public safety groups who have policies of their own. He wondered about the means of enforcement.

Informational Testimony:

John Andrew, Department of Labor and Industry, advised neither state nor federal law have requirements for an employer to

provide meal periods or rest periods. Both laws say if an employer does choose to provide a break or rest period, it is considered as compensable time. One of the changes in the House was a person cannot file a wage claim alleging they are owed for two or three minutes of break time they didn't receive, but the provision does preserve their rights in the event an employer did deduct for a break period. He said they would appreciate clarification for rule-making purposes.

Questions from Committee Members and Responses:

SEN. BUTCHER asked about page 1, lines 20-21.

REP. GALVIN-HALCRO advised the language comes from Oregon state law and addresses lunch periods.

SEN. BUTCHER asked how there could be a break at the end of four hours, and it is twelve noon, and it can't be added on.

REP. GALVIN-HALCRO stated it is any time within the four hour period and not at the end of the four hours. The most opportune time would be in the middle but breaks would be staggered. The time would not be added on to the lunch break.

SEN. BUTCHER asked if she had worked where she was not allowed to take a break.

REP. GALVIN-HALCRO answered no.

SEN. BUTCHER asked if she is a school teacher.

REP. GALVIN-HALCRO advised she worked for US West for 22 years and never had a problem and she is currently a teacher.

SEN. BUTCHER advised he worked in education and bathroom breaks were never a problem. He had never witnessed this problem in the school system.

REP. GALVIN-HALCRO stated the list was provided by the department of labor and those calls come into the department. They did not contact her.

SEN. BUTCHER thought it probably involved a cigarette break rather than a bathroom break.

REP. GALVIN-HALCRO advised she doesn't smoke and hadn't had anyone contact her about not being allowed to smoke. The ones who contacted her were being denied human decency--not being

allowed to use the restroom or being allowed to call their children at home. That is the only intent in the bill.

SEN. SCHMIDT asked **Mr. Brown** about his testimony regarding mischief in the bill.

Mr. Brown answered there is the possibility of different treatment of employees including the issue of exempt and non-exempt status and the issue of employees within one line of work duty as opposed to another. The employees could use it as an opportunity to take an extra break throughout the day if they are not being monitored.

SEN. SCHMIDT asked if the bill is written for fifteen or more employees.

Mr. Brown advised yes but some employers have more than one location around the state.

{Tape: 3; Side: A}

SEN. BARKUS commented it was too bad there were no proponents that had been maligned.

REP. GALVIN-HALCRO replied she had some people who contacted her who asked to remain anonymous. They are in fear of losing their jobs. Most of them are low-level employees making minimum wage and often are people who need to work more than one job to provide for their families. She noted she was on the interim committee who looked at this situation and she asked **Mr. Andrew** from the **Department of Labor** to track some of the calls and provide a list.

SEN. BARKUS asked about her comments on the question raised by **SEN. KEENAN**.

REP. GALVIN-HALCRO declared from the time she was 17 years old, for twenty-two years, she worked for Mountain Bell, then US West which today is Qwest. She never had a problem. She worked under the bargaining agreement with CWA Local #8 and IBEW Local #26. She was a union representative as well as a management employee. She never experienced those problems but there are people she knows that still work for Qwest that are experiencing these problems and have to see a physician to take care of infections they have encountered because they have not been allowed to get up from their workstations.

SEN. BARKUS advised the unintended consequences of the bill scared him. His concern was about passing a law that requires ten minutes every four hours.

REP. GALVIN-HALCRO replied she thought about it a long time before bringing the bill forward. There are good employers but the bill will get the attention of not-so-good employers. It is an inexpensive health policy provision for employees throughout the state.

SEN. SHEA found some of the rhetoric disturbing and she expressed great respect for the workers of the state. She asked **Mr. Brown** if those who might abuse a ruling like this are the exception rather than the rule.

Mr. Brown agreed they are the exception--both employees and employers.

SEN. BALES asked about the interim committee study of the issue.

REP. GALVIN-HALCRO advised she asked **SEN. MAHLUM** and the **Business and Labor Committee** to look at it and **Mr. Andrew** reported to them several times.

SEN. BALES asked about a committee report.

REP. GALVIN-HALCRO replied she had a similar bill in the House in the last session and it is her legislation.

SEN. NELSON asked **Ms. Crissman** about page two under (5) and an amendment that said something like "consideration of current individual business policies that provide reasonable restroom breaks" and wondered if the bill would then be more palatable.

Ms. Crissman believed so because companies spend a lot of time working on policies that fit their specific businesses.

SEN. ESP asked about names of Montana workers who work seven or eight hours without a break.

REP. GALVIN-HALCRO advised she has a letter from a woman whose daughter works at 1st Interstate Bank that did not designate which community the daughter works in. Her daughter works for 1st Interstate Bank in Great Falls and has no problem. Mostly people want to remain anonymous.

SEN. ESP asked if that is the employee who worked seven or eight hours without a break.

REP. GALVIN-HALCRO replied the letter says the daughter spends eight hours on her feet without a break. She hadn't designated by time which companies on the list are the ones. She just has the written testimony of the mother.

SEN. TROPILA asked about the four hour period and changing the title line 5 to "periods of 10 minutes or less during a four hour period."

REP. GALVIN-HALCRO advised it would be fine.

SEN. BUTCHER wanted to know what question was asked of the employees on the list.

REP. GALVIN-HALCRO advised it was not a solicitation or a survey. **John Andrew's** department logged incoming calls to the **Department of Labor**.

Mr. Andrew advised similar bills had been offered in the past. He attended one of the meetings of the interim committee and they asked the department to track the nature of incoming calls and who they came from. The department did not ask any questions, the calls were inquiries. They often receive calls from employers and employees asking about whether break periods are required and the conditions under which they are required.

SEN. BUTCHER noted the information is not verified and could be from a disgruntled employee.

CHAIRMAN ZOOK commented the department was asked to furnish information they received and weren't asked to conduct an inquiry.

SEN. BUTCHER wanted it to be on the record that the information was presented to the committee as factual. He wondered about the substantiation and if the information could be considered heresay.

Mr. Andrew advised **CHAIRMAN ZOOK** is correct. The department was asked to gather information on the nature of the calls. They made no judgement as to validity. They attempted to identify the businesses and the individual when possible. Some chose not to identify themselves.

SEN. BUTCHER advised the bill is based upon heresay and unsubstantiated information.

Mr. Andrew advised he was not an attorney and didn't know if it was heresay.

SEN. BARKUS noted Plum Creek was on the list and he knows Plum Creek offers breaks.

Mr. Andrew advised they weren't requested to verify.

SEN. BARKUS asked if some of the employers only have one employee.

Mr. Andrew advised he had no knowledge of that.

Closing by Sponsor:

REP. GALVIN-HALCRO closed on the bill. She noted there are good employers and good employees who are not allowed to take a break. The department asked for direction on what rules should be written and what situations they should be written for. She thought they could work with the convenience store operators so there is no problem for them. Many folks suffer from bladder infections and kidney problems. With the bill there would be fewer cases of eyestrain, muscular-skeletal discomforts, and reduced risk of blood clots. She sees the bill as a wellness health care policy within the workplace and a simple policy and procedure created by employers for employees. She asked they adopt the amendment.

recess - 10:30 a.m. -

reconvene - 11:07 a.m. -

EXECUTIVE ACTION ON HB 619

CHAIRMAN ZOOK advised **REP. RICK MAEDJE** asked that his bill be indefinitely postponed.

Motion/Vote: **SEN. STONINGTON** moved that **HB 619 BE INDEFINITELY POSTPONED**. Motion carried unanimously.

EXECUTIVE ACTION ON SB 439

CHAIRMAN ZOOK advised the bill has a \$12.5 impact on the general fund.

Motion: **SEN. ESP** moved that **SB 439 BE INDEFINITELY POSTPONED**.

Discussion:

SEN. MCCARTHY asked about the position of the attorney general on the need for clarification.

CHAIRMAN ZOOK didn't think that was mentioned on the floor when the bill was heard.

SEN. COBB asked about the fiscal note. He thought the language that was struck on page 2, lines 4-6 took care of most of the fiscal note.

CHAIRMAN ZOOK advised the fiscal note is dated February 24th.

SEN. COBB asserted that under the assumptions the length of incarceration was struck from the bill and that took away most of the fiscal note.

SEN. BALES agreed. The bill would clarify that ingesting is possession.

SEN. MCCARTHY asked if when they finished with the bill it was nothing but a definition.

SEN. BALES said that was his impression.

SEN. MCCARTHY commented the fiscal note then goes away.

SEN. COBB claimed a new fiscal note would be needed because the old one stays in effect.

CHAIRMAN ZOOK advised not dealing with the bill today.

SEN. ESP withdrew his motion.

EXECUTIVE ACTION ON SB 210

Motion: **SEN. TROPILA** moved that SB 210 DO PASS.

Discussion:

SEN. LAIBLE thought the bill was well meaning but he felt nervous about the fiscal note about an unknown that could be significant.

SEN. COBB advised page three supposes there would be twenty applicants. There was no criteria.

SEN. ZOOK recalled the fiscal note they had in the **Education Committee** was for \$3000 a year for twenty applicants and the program continuing.

SEN. TASH advised he will present a joint resolution in **House Education** to refund tuition for National Guard members who are

called up to active duty. The university system agreed to refund tuition.

Substitute Motion: SEN. TASH moved that SB 210 BE INDEFINITELY POSTPONED.

Discussion:

SEN. STAPLETON advised he would support the motion to indefinitely postpone. He said it is not just about the money but problematic issues raised on the floor.

SEN. NELSON said when young people enlist, they get a promise for money for education.

CHAIRMAN ZOOK agreed.

Vote: Motion carried 17-2 with COONEY and TROPILA voting no.

{Tape: 3; Side: B}

EXECUTIVE ACTION ON SB 391

CHAIRMAN ZOOK advised the bill was for licensure requirements for drop-in child care. It would cost over \$100,000 for the biennium.

Motion: SEN. TROPILA moved that SB 391 DO PASS.

Discussion:

CHAIRMAN ZOOK commented it is general fund money.

SEN. BARKUS advised her daughter uses a daycare center in Missoula. She says the current drop-in day care center, although unlicensed, are very well managed and he felt the legislation is not needed.

SEN. COBB advised the bill would be for 13 more children on a regular basis and making that legal.

SEN. ESP said the issue is enforced license. Before they could voluntarily apply for a license.

SEN. MCCARTHY asked if the cost is the cost of the licensing.

SEN. ESP advised it is the cost of enforcement.

Substitute Motion/Vote: SEN. ESP moved that SB 391 BE INDEFINITELY POSTPONED. Motion carried 10-7 with COONEY, MCCARTHY, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting no.

EXECUTIVE ACTION ON SB 300

SEN. TASH advised the fiscal note is the result of an amendment in the **Natural Resources Committee**. SEN. MCCARTHY amended it down to 20 acres.

SEN. MCCARTHY advised on page 2, line 4 the disturbance is down to 20 acres instead of 100. The cost is \$120,000 per year of the biennium.

Substitute Motion/Vote: SEN. BUTCHER made a substitute motion that SB 300 BE INDEFINITELY POSTPONED. Substitute motion carried 17-2 with COBB and SHEA voting no.

EXECUTIVE ACTION ON SB 89

Motion: SEN. TASH moved that SB 89 DO PASS.

SEN. TASH advised his bill was brought forth early in the session and had to do with unclaimed properties. The old fiscal note shows an impact of \$139,000 on the general fund but the more accurate explanation would be \$139,000 over a ten year period.

Lee Behrloft, Department of Revenue, advised the department is in the process of amending the fiscal note and it would be around \$40,000 less impact on the general fund for each year of the biennium. Previously there was an error.

CHAIRMAN ZOOK asked about the \$139,000 being over ten years. He didn't think that would be worth the paperwork. He asked if it would now be \$100,000 and Mr. Behrloft indicated that was correct.

Substitute Motion: SEN. COBB made a substitute motion that SB 89 BE INDEFINITELY POSTPONED.

Discussion:

SEN. BARKUS advised he spoke to the Sanders County Clerk and Recorder. They plan on doing this every year and he thought the \$100,000 figure is accurate. He spoke in favor of the Cobb motion. He didn't think the counties ought to be treated any differently than businesses.

SEN. BUTCHER advised the idea started with inactive bank accounts. He expressed concern about uncashed checks from the counties.

Vote: Motion carried 11-8 with BUTCHER, LAIBLE, MCCARTHY, NELSON, SHEA, TASH, TESTER, and TROPILA voting no.

SEN. BOB KEENAN advised he wants to request a committee bill. He had discussions with **Terry Johnson, Taryn Purdy, and Clayton Schenck, Legislative Fiscal Division**, about the 0/0 based budget that was done at the beginning of the session. They wondered how he wanted to handle future sessions and how to look at the budget. There would need to be statutory changes. In discussions with **REP. LEWIS**, himself and three fiscal analysts, they talked about four different parts to a committee bill. One would be to take the base level of spending in the first year of the biennium as they are currently doing and begin with a base that is ten percent below that for general fund and state special revenue. The second part is to have a phase down of 17-7-140 which is the trigger at which the governor has to reduce the budget. There would be a proportional phase-down of that number through the biennium so that number basically zeroes out at the end of the biennium. The trigger would then not be automatically caused so the budget office would have to do the reductions. According to **Greg Petesch, Legislative Services**, the legislature is obligated to have a balanced budget but there is no obligation for a positive ending fund balance at year end. This would allow the governor's budget office to run into a negative at the end of the fiscal year. The bill would require a positive ending fund balance at year end. The bill would establish a state revenue account for voluntary contributions from the citizens of Montana to whatever program they feel needs the money. A number of other states have that mechanism.

Discussion:

SEN. BUTCHER asked about the voluntary donation and if it would be tax deductible.

SEN. KEENAN advised the IRS Section 170 considers it to be federal deductibility and it would be up to the legislature if they want to do that as well.

SEN. ESP asked about the year end balance.

Taryn Purdy, Legislative Services, advised the primary concern is with the second year of the biennium, after the biennium, and revenue projections and expenditures for the biennium.

SEN. ESP asked about the current budget and the year end in 2005.

Ms. Purdy advised in this fiscal year there is a danger that the general fund is going broke and the state will have to borrow the funds in order to meet these obligations. This change in statute would have required that the budget be balanced and that would not take place. This began with a rule by **Mr. Petesch** that dealt with FY 2002 where the fund balance got to the point where the ruling was required to determine whether or not the state could borrow money in order to pay its obligations as opposed to having a positive fund balance to meet this obligation. This would address that issue.

SEN. ESP asked how it would address that issue.

Ms. Purdy said the legislature and the state would be required to have a positive fund balance rather than being allowed to work with a negative fund balance.

SEN. BARKUS asked about the donations and if they would be subject to the Office of Political Practices.

CHAIRMAN ZOOK asked if the dollars would go to the general fund.

SEN. KEENAN advised there are various mechanisms in other states. In Oregon, checks are sent to the agency. His vision is general fund with earmarks to the program or agency of the donor's choice.

CHAIRMAN ZOOK asked if this would accommodate those who claim they don't mind paying more taxes.

SEN. BUTCHER asked if it would throw a lot of money into **FWP**.

SEN. KEENAN thought **FWP** could manage that very well.

SEN. TESTER said each agency has certain budget and spending authority. He wondered if they could spend the money without spending authority.

SEN. KEENAN advised they could come before the **Legislative Finance Committee** for a budget amendment for the spending authority.

Ms. Purdy said there might need to be some adjustment or a mechanism to allow spending.

SEN. KEENAN asked if they could put that in the bill and **Ms. Purdy** advised yes.

Motion/Vote: SEN. COBB moved TO DRAFT A COMMITTEE BILL WITH THE FOUR POINTS. Motion carried unanimously.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs51aad)