

MINUTES

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

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 12, 2003 at 8:00 A.M., in Room 102 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 359, 2/24/2003
Executive Action: HB 152; HB 42; HB 158; HB 679; HB
272; HB 597; HB 359

CHAIRMAN TOM ZOOK advised there had been a problem with notice posting the previous day. There was some confusion and people who wanted to testify would be given an opportunity. The hearing on **HB 359** would be re-opened.

HEARING ON HB 359

Sponsor: **REP. KATHLEEN GALVIN-HALCRO**

Proponents: **Dr. Richard Sargent**

Opponents: **None**

Opening Statement by Sponsor:

REP. KATHLEEN GALVIN-HALCRO, stated the bill would provide employee rest periods. There is a need for human decency in the workplace and this is a health care issue. In the previous hearing there was concern about the list of calls from the **Department of Labor**. She hoped the committee members had contacted workplaces in their districts to see what policies and procedures they had in place.

Proponents' Testimony:

Dr. Richard Sargent stated laws are passed so people without manners will treat others with respect. This bill is aimed at a few who don't respect the needs and dignity of their staff. When the health center where he works opened, it took about three weeks before they started seeing an influx of people who were absolutely at the end of their ropes. They could identify the employer before they went to see the patient and just about predict the dose of Prozac they would need. Notes from the doctor were necessary to prove patients were sick. If employee's children were sick, parent's were expected to be on the job. The doctors tried writing letters, making phone calls, and working with health insurance carriers. With the company he is most familiar with, employees attempt to hang on to keep benefits but they end up leaving or getting fired because every keystroke on their computer is monitored. If they're not busy for over 30 seconds, they get another call shifted their way. If they don't answer that call in fifteen seconds, a supervisor arrives at their desk to find out why they didn't answer that call rapidly. If they aren't at their desk, they have to explain where they were. These people work in a customer service department and have a sales quota to make. If they don't make the sales quota, they get fired. When a customer calls with a problem with a bill or service, their job is to sell more services. The bill is not about the average employer. A waitress might be expected to

delay her break until after a rush comes through. This is not about a reasonable employer who would allow a parent to go home to a sick child. It is not about a responsible employer who expects and gets a days work for a day's pay. He has three good employees and he takes care of those employees and their families. One of his employees has a spouse that works at this call center. Every time their child is sick, his office will work short handed. He finds that an affront to himself and to decency because they are taking advantage of someone who will be decent so they don't have to make accommodations. They run their business at 100% capacity. Human beings work better if they are allowed to take breaks.

Opponents' Testimony:

Questions from Committee Members and Responses:

CHAIRMAN ZOOK asked if **Dr. Sargent** is an MD.

Dr. Sargent replied yes.

SEN. JOHN ESP asked about the letter from the president of Qwest, Rick Hays. He asked if the testimony was referring to the Qwest call center.

Dr. Sargent advised he was told not to name names, but that is who he was talking about.

SEN. ESP quoted from the letter and asked if it was his testimony those folks aren't getting those breaks.

Dr. Sargent replied yes. Those breaks are rigidly scheduled and if the call of nature arrives early, you are expected to sit.

SEN. ESP noted the bill would require a ten minute break in the middle of a four-hour period. He asked how that is any better than a fifteen minute break after two hours.

REP. GALVIN-HALCRO answered she worked for this same company for 22 years. It is bargained for by more than one IBEW local and more than one PWA local. She had not seen the letter. There is more than one union contract that is supposed to protect those workers. There could be a supervisor in place or more than one, that doesn't adhere to the policy that's in place. If there is something in statute, the **Department of Labor** can step in. Those folks opposed to the bill initially wanted to put some teeth in it. The amendments on the bill came from the restaurant, retail

and NFIB lobbyists, not from her. They wanted to make sure there would be something to adhere to.

SEN. ESP thought filing a grievance process within the collective bargaining process would address the break issue.

REP. GALVIN-HALCRO said that should be true. In her experience, if someone were to have a problem, they would file a grievance and the situation would be taken care of for a time, but often things would regress. Complaints about an employee are put into their file and an employee knows suspension and firing are possible. People are afraid to complain for fear of losing their jobs.

SEN. BILL TASH asked about prescribing Prozac and wondered if that is an antidepressant.

Dr. Sargent indicated it is.

SEN. TASH asked if his practice is in a specialty.

Dr. Sargent said he is a practitioner.

SEN. COREY STAPLETON advised they often see these types of bills that are talking about one company or event. The reason they discard those types of legislation is those issues are best handled at the local level. He never heard this issue come up during campaigning, and this is the first he heard of this as a problem. The company being talked about is a unionized company in Helena. He asked **REP. GALVIN-HALCRO** if she tried to deal with this at the city level.

REP. GALVIN-HALCRO advised she currently teaches school in Great Falls and has not worked for this company in more than ten years. She had no problem when she worked for this company for 22 years. It was only after this bill was brought forward that they heard from people who work for this company. This wasn't an issue brought to her by folks from this company initially. This bill came forward in the 2001 session from some concerns from people in Great Falls. The bill passed the House and came to the **Business and Labor Committee** in the Senate. It was tabled without discussion. Over the interim, because she was on the **Business and Labor Economic Development Committee**, she asked **SEN. DALE MAHLUM** if they could have the **Department of Labor** look at the situation. She had received emails from a number of folks throughout the state. The **Department of Labor** said they receive over a thousand calls a year from folks throughout the state who are experiencing these problems. She didn't ask the department to do a survey, these were calls that have always been coming to

the department. **Gene Fenderson** testified his wife, former **SEN. SUE BARTLETT**, carried a similar bill in a previous session. She had been unaware of that until his testimony. She thought it would be wonderful if they could take care of everything at the local level. The bill has no mischief. There are folks who are not being treated right. There are 37 other states who provide this type of legislation.

SEN. STAPLETON asked if the answer is no.

REP. GALVIN-HALCRO said that is correct.

SEN. RICK LAIBLE asked about previous testimony regarding not being able to take a bathroom break and the amount of urinary tract infections that resulted. He asked about prescribing Prozac, and if the doctor is seeing mostly stress problems.

Dr. Sargent replied in the torrent of urinary tract infections, he can't pick out the ones that are due to not being able to use the bathroom on time. They probably treat three to four urinary tract infections a day. The reason for the use of Prozac is for stress.

SEN. LAIBLE asked if most clients that work at this company are worker's comp claims, or just medical claims.

Dr. Sargent said none are worker's comp claims. They are coming in because they are angry, short tempered, having difficulty with sleep, anxious, irritable, and part of that comes from the work environment. He sees good and decent people he has taken care of for years get a job at that company and change.

SEN. LAIBLE asked who is invoiced.

Dr. Sargent indicated private insurance is billed and they are not worker's comp claims.

SEN. ED BUTCHER asked if the sponsor would be amenable to an amendment that there would be a thousand dollar fine for an unsubstantiated claim.

REP. GALVIN-HALCRO said she would have no problem with that as long as the fine was equal to the \$500 fine to the employer.

SEN. BUTCHER advised he called some major employers on the list and some of their employees, and not one instance was factual.

REP. GALVIN-HALCRO advised this is not information she personally collected. These were calls directed to the **Department of Labor**.

SEN. EMILY STONINGTON noted calls had come in from a broad spectrum of businesses. She will call some of those employers herself. According to the Qwest letter provided by **SEN. BOB KEENAN**, the International Brotherhood of Electrical Workers bargained with occupational employees. She asked what an occupational employee is.

REP. GALVIN-HALCRO said she can't define the term. The legislation did not come from the problems with Qwest. It came from folks in Great Falls who were having problems with employers there. It was only after the legislation came forward in 2001 and again in 2003 that those folks from Qwest let their concerns be known.

SEN. STONINGTON asked the same question of **Tom Ebzery, Qwest**.

Mr. Ebzery testified occupational employees are those in the call centers. They are affected by the agreement and are given these breaks as spelled out in the union handbook.

SEN. STONINGTON asked if she called customer care from her Qwest phone book, if she would be routed to that call center.

Mr. Ebzery believed so.

SEN. STONINGTON advised they are hearing a message that employees at the call center are not receiving breaks and another message that they are. She noted she ran a call center for mail order and is aware of what it takes to run a call center. She asked if occupational employees are those people taking the calls that are routed electronically and the ones that are reprimanded by a supervisor if they don't take the call in time.

{Tape: 1; Side: B}

Mr. Ebzery advised those employees are required to take a fifteen minute break and the definition will be provided.

SEN. TRUDY SCHMIDT asked **Dr. Sargent** if his patients talked about breaks.

Dr. Sargent stated he has a diabetic patient who is on an insulin pump. Now and then she has an unscheduled insulin reaction. They attempt to get her blood sugar down enough so she has no complications from her diabetes and try to balance her food intake. Every now and then she has to take a break to check her

blood sugar and it takes about a minute. It is a nightmare to work this out with the company. There is no way to accommodate that person with her problems. These people fear for their jobs and the push is on them to make sales when they thought they were working for customer service.

SEN. KEENAN advised he went to the Qwest call center after he heard about the sponsor's concerns. He could hardly get to the door because there were ten or twelve people outside smoking cigarettes. Given the addictive nature of tobacco, he wondered how some people could get to the bathroom in a fifteen minute break if they're out smoking.

Dr. Sargent stated of the people he works with, he can't say the percentage that smoke. He knows the percentage that have been told not to smoke.

CHAIRMAN ZOOK remarked there were no opponents present that had objected about the time problem and he found it disappointing.

Closing by Sponsor:

REP. GALVIN-HALCRO closed on the bill. She clarified that customer service calls can be routed to Seattle, Phoenix or Salt Lake City and rarely Helena. This is not a bill to do something to Qwest. She used to work there, but it was her choice to leave. They paid her for a year, her benefits for a year, and they paid for her to go back to school to get her teaching endorsement. She has no bone to pick with Qwest. The bill is just about people having a time for decency. A simple policy and procedure is all she ever asked for.

EXECUTIVE ACTION ON HB 152

Motion: **SEN. STAPLETON** moved HB015201.atp.

SEN. STAPLETON thought the 100% increase to \$25 million from \$10 million in the emergency statutory appropriation was excessive. The amendment would be for a 50% increase from \$12 million to \$18 million.

SEN. JON TESTER asked if the \$12 million has been reached in the past.

CHAIRMAN ZOOK thought it could have been in certain years. It has to be a declared emergency; not all fires are an emergency.

SEN. STAPLETON advised it was at \$10 million for several years and then at \$12 million for the last eight years. It must meet a

high standard to count as an emergency. He thought it would be more prudent to call a special session if that number is exceeded. He thought a hundred percent increase was too much discretion.

CHAIRMAN ZOOK declared it can't be used for a budget shortfall.

SEN. TESTER agreed with the amendment. He wondered if the increase was necessary and if the \$12 million is insufficient.

SEN. STAPLETON advised it has been reached. He had thought it could be left where it was.

SEN. STONINGTON recalled from the testimony there is still \$4.5 million left.

SEN. STAPLETON advised they did a lot of transfers. He thinks that's good and is what taxpayer's like to see.

SEN. STONINGTON wondered about going to \$15 million instead of \$18 million. She agreed \$25 million is too high. She asked how this is reflected in the ending fund balance.

CHAIRMAN ZOOK advised it is not reflected in the ending fund balance. It is spending authority for the Governor.

SEN. STONINGTON asked if there is an emergency and the money is spent, does it come out of the ending fund balance.

CHAIRMAN ZOOK said that is correct, and it's all general fund dollars.

Substitute Motion: **SEN. STONINGTON made a substitute motion to REDUCE THE AMOUNT TO \$16,000.**

Discussion:

SEN. BEA MCCARTHY said in 2000, the year of the big fires, they had to get some federal transfers of money. She asked if they had enough to take care of that and how long it took to get that money repaid.

Taryn Purdy, Legislative Services, recalled it was somewhere around \$65 million that the state received for payment. Some was received in 2001 and some in 2002. That was reflected in the supplemental appropriation, which was in excess of \$30 million.

CHAIRMAN ZOOK advised the historic average is \$7.5 million.

SEN. BILL TASH stated this was in the **Appropriations Subcommittee** and backfilling from FEMA is sometimes an issue; it wasn't an issue last fire season as FEMA was quicker to respond. The spending authority is necessary due to the possibility of fires due to fuel buildup.

SEN. ESP commented **SEN. STAPLETON** is a little extravagant in this case and he supports the amendment.

Vote: Motion carried unanimously.

Motion: SEN. COONEY moved HB 152 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. STONINGTON recalled testimony about the creation of a special revenue account so the federal reimbursements don't go into the general fund.

Ms. Purdy advised the federal government reimburses the states for any costs to the states and the account would allow the state to spend money received from the federal government.

CHAIRMAN ZOOK clarified in the past the money has gone to the general fund and the **Department of Natural Resources** has no way to recover it.

SEN. STONINGTON contended that is a good part of the bill.

SEN. ROYAL JOHNSON asked about line 1 of the fiscal note and striking the **Department of Military Affairs**. He thought it should be changed before it gets to the floor.

SEN. JOE TROPILA indicated it is there because of emergency situations due to 9/11. **GENERAL JOHN PRENDERGAST, Department of Military Affairs**, was asked to run the emergency operation in the Governor's office.

SEN. JOHNSON contended they are not designating who runs the operation, they are sending it to the department that normally handles emergency funds and they can hire anybody they want.

SEN. LINDA NELSON asked if they would ask for an amended fiscal note.

SEN. JOHNSON indicated **Jane Hamman, Office of Budget and Program Planning**, suggested she would do that. He wanted to make sure its done.

CHAIRMAN ZOOK said there needs to be a change in the bill to do that. The fiscal note can't do something that isn't in the bill.

SEN. STONINGTON recalled that **Ms. Hamman** said #1 was in error and she would extract that from the fiscal note. It wasn't in the bill.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 42

Motion: **SEN. STONINGTON** moved HB004201.ak1.

SEN. STONINGTON advised she wanted to segregate #3. The bill was brought by **REP. DEBBY BARRETT** and requires the **Department of Fish, Wildlife and Parks** to manage game populations at sustainable levels. There is a date by which the department has to comply. She supported the goal of managing wildlife populations. **SEN. TASH's** bill passed, which allowed issuing tags to handle increased game populations. This bill is a more mandatory management directive. The bill takes the caps off non-resident license issuance for B-10 combination licenses for elk and B-11 deer licenses. The bill allows the commission to issue as many licenses as they want. The combination licenses for bull elk and buck deer are the most prized of the licenses the department issues. She asked **REP. JOE BALLYEAT, REP. LARRY JENT,** and **REP. EDITH CLARK,** all of whom are in **House Fish and Game,** whether the issue of taking off the caps of non-resident licenses was debated on the House side and they said they didn't even know it was in the bill. The debate in the House focused on the amendments that were placed on the bill on page 2 for the department to aim for stable populations on all lands, not just public land. It is a huge issue in the state and for it to have passed out of the House with no debate is not what they should be doing legislatively. The first set of amendments would take out the ability of the commission to authorize additional B-10 and B-11 licenses.

CHAIRMAN ZOOK asked why she thought it was just for non-residents. He thought it talks about the license numbers that can be allocated.

SEN. STONINGTON contended in the title it includes resident and non-resident, but in the bill on page 7 it says "subject to the management provisions provided in Section 1-5" and "these are non-resident B-10 and B-11 licenses that are sold at a variable price to reflect market." On lines 10 and 11 it says "or more if additional licenses are authorized" pursuant to these management goals. She felt that takes the cap off.

CHAIRMAN ZOOK thought line 11 says re-allocated.

SEN. STONINGTON advised the variable price is a fluctuating number based on market price but they can't allocate more than their goal of 5500.

SEN. ESP thought it read that if licenses are unsold, they can re-allocate more than this.

{Tape: 2; Side: A}

SEN. STONINGTON explained line 9 on page 11 authorizes the commission and the department to give more than one B-10 and B-11 licenses to one person. That in itself may not be an issue but on page 15, lines 20-21, the drafter felt the clause "subject to the management provisions provided in Section 1 through 5" implied the ability to authorize more licenses. When she discussed it with the drafters, they felt the wording on line 20, page 14, the B-10 combination license, also implied the authority to issue additional licenses. **Crystal Lee, Legislative Services**, said her instructions from **REP. BARRETT** were to take the lid off and authorize the commission to issue all the licenses they needed to fulfill this mandate.

CHAIRMAN ZOOK advised if you take the lid off, that would be for both residents and non-residents.

SEN. STONINGTON stated her only concern was with non-resident licenses because it is such a contentious issue for hunters in the state.

CHAIRMAN ZOOK thought if the commission has the authority to manage the game in the state, he wondered why the legislature was managing it for them.

SEN. KEITH BALES reasoned that every one of those licenses were subject to the rules and the authority given in Sections 1-5. He couldn't picture the commission issuing a bunch of non-resident licenses unless they could not find sufficient residents to take care of the necessary management. He thought that was probably why that was put in. The commission is being required to manage the wildlife to keep the numbers within their parameters. If there are not sufficient residents applying for those licenses, how would they do that if they did not have the ability to authorize more non-resident licenses. He thought there should be a priority system.

SEN. NELSON advised a couple of years ago there was an ice storm in her area, the ground was crusted over, there was an abundance

of deer and they were getting into all the haystacks. She appealed to the commission for a special hunt and it was authorized. There was no way in-state people would harvest all of those deer. Non-resident hunters from North Dakota were given a special price to hunt.

SEN. TESTER advised he could see both points. He thought there should be a priority list. The legislative intent should be the people of the state of Montana should be given first opportunity. In special circumstances like **SEN. NELSON** had, they should be given latitude for that also.

SEN. STONINGTON said she is very sympathetic with what **SEN. NELSON** was saying. The department has the authority, currently, to handle a special hunt and give those licenses to non-residents and for the most part she guessed those were probably for does, not bucks. The B-10 license is the big game combination elk license for non-residents who want to hunt a trophy bull. Non-resident hunters are paying the big prices for the B-10 license and the B-11 license and are hunting trophy bulls and trophy bucks. **SEN. TASH'S** bill expands the authority that **SEN. NELSON** talked about and the authority to hunt cow elk in areas like the Beaverhead where more management is necessary to handle overpopulation. The issue is giving authority to the commission to grant more non-resident trophy bull and trophy deer licenses, an issue that was not debated in the House and is highly contentious in the state. Resident hunters do not have to compete with non-resident hunters for the big trophy elk. To do this in a bill with no discussion on this issue is inappropriate and the reason for the amendment. She agreed with trying to manage for sustainable populations, game damage hunts, and more latitude to manage for those things but this is not the way to do it.

SEN. TROPILA advised he spoke to **Jeff Hagener, Department of Fish, Wildlife and Parks**, who supports the amendments.

SEN. BALES commented the B-10 and B-11 can be an either sex license. That is controlled by rules adopted by the department. On elk permits, much of the area is antlered bull only. Last season, the elk season in the area by Custer National Forest was opened up for either sex hunting. It allowed people with a general license to take either a cow or a bull. Through rules, the department has the authority to do that. He supported placing some kind of priority in Sections 1-5 that gives first priority to residents.

SEN. TASH advised all of these are necessary because of prevailing conditions and what the habitat can support. The

department needs every tool available. The department opposed this bill in the House, and they testified as informational witnesses in the Senate, because amendments had mitigated their concerns, particularly the amendment that specified "all lands". There needs to be a mix of hunters in order to have a successful harvest. He questioned the need for the amendment.

SEN. BUTCHER advised he is concerned with the amendment because it tends to move away from the direction to manage. It needs to be open for the department to use whatever means they need to. He was not too concerned about the out-of-state hunters being given all the permits because the **Fish and Game Commission** is under pretty heavy influence from sportsmen's groups in the state. In-state hunters will get first shot at the licenses. He saw no reason not to leave it at the discretion of the department.

SEN. LAIBLE said the bill, as its drafted, is to give the agency some authority to manage the game. **Director Hagener** stated in a letter that they are already doing much of what **HB 42** as amended calls on them to do. The planning process called for would require additional effort and expense for deer and antelope. For elk they are already updating their management plan with extensive involvement of landowners and the public at large. The major change from existing law or practice reflected in **HB 42** as amended, is this bill will statutorily appropriate funding for elk, deer, and antelope management and game damage. This will give them greater flexibility to implement these programs. As director he would still have to balance these expenditures against the need to manage the department's general license account balance. They do not believe there are significant new requirements in **HB 42** as amended, but the bill will give the agency great flexibility with reduced legislative oversight. If the amendment passes, they are being told how to do their job and the agency thinks their job is pretty clear. He didn't know if the legislature should micro-manage what they do with their animals.

SEN. TESTER advised he is not a hunter but he lives with a lot of hunters and there are a lot of hunters in Big Sandy, Montana, who try to get elk permits, but can't. He thought those people should be entitled before someone from out of state and that's what the amendment does. He contended there are bills all the time to micro-manage **FWP**.

SEN. JOHNSON supported the amendment to take care of the people in the state before the people outside of the state. This offers some people who want an opportunity to hunt a chance to do that.

SEN. BARKUS advised he is a former Fish and Game Commissioner and can attest to the sensitivity to the caps on non-resident big game licenses, especially the B-10 combination licenses. The sportsmen of Montana are extremely sensitive to that issue and he said he would support the amendment. He asked if **SEN. STONINGTON** had talked to the sponsor of the bill.

SEN. STONINGTON said she had not and apologized for that.

SEN. ESP said he would resist the amendment. He thought they should think about it for a few days. It deserves a lot of thought as the amendments would take a lot of sections out of the bill.

SEN. STONINGTON said she would be happy to withdraw her amendment and defer the discussion. She urged everyone to talk to their constituents about the issue of the cap. She was not talking about a cap on antler-less tags; she approved of what **SEN. TASH** did in opening up management for antler-less tags for game management purposes. The B-10 and B-11 combos are the most prized non-resident tags. She appreciated the comments of **SEN. BARKUS** and said she would talk to the sponsor.

SEN. STONINGTON withdrew her amendment. She said hunting is the great heritage of the state and they want to be careful about what they do. She thought the House deserves a chance to discuss this. The bill provides for the department to do all of this and never talk to the legislature about it. It provides for them to funnel money through a statutory appropriation without legislative discussion through the budgeting process. By the year 2009, the department will have set sustainable numbers and accomplished them. She thought regardless if there is an easy winter or a harsh winter or if a new landowner comes in and shuts off his land to hunting, they must meet their goal and she thought a drop dead date is unmanageable.

EXECUTIVE ACTION ON HB 158

Motion: **SEN. LAIBLE** moved that HB 158 BE CONCURRED IN.

Discussion:

Ms. Purdy explained this gives \$100,000 to **DPHHS** so that if a tribe becomes eligible for its own TANF program they will be able to provide \$100,000 as the law currently allows.

{Tape: 2; Side: B}

SEN. BARKUS advised the bill is unnecessary. If a tribe comes in there would be time to appropriate the dollars, but in theory

they could have a \$500,000 appropriation if all five tribes came in.

Substitute Motion: SEN. STAPLETON made a substitute motion that HB 158 BE INDEFINITELY POSTPONED.

SEN. STONINGTON opposed the motion. In the past the \$100,000 served as an incentive because the state benefits. It is a huge part of the TANF population and that is why the incentive was originally put into place. In these hard economic times, they don't need the \$200,000 showing up against the ending fund balance. If a tribe comes in, it could be dealt with in the next session, but she was going to vote against the amendment.

SEN. MCCARTHY said there is the possibility of coming into the next session with \$200,000 per tribe if they decided to take advantage of this. They would draw it directly from the general fund and there could be a \$1 million impact.

Ms. Purdy stated the incentive exists in the way the current law is currently written. If the tribe takes advantage of that incentive, the department would have to find \$100,000 a year to pay that tribe. The bill would provide a specific appropriation and the department would not have to find it.

CHAIRMAN ZOOK asked if it could be done in **HB 2** with just authority.

Ms. Purdy advised it could be in **HB 2** or in this bill.

SEN. MCCARTHY asked if they need another amendment to put the spending authority in **HB 2**.

CHAIRMAN ZOOK advised usually it says in the fiscal note that it has to be included in **HB 2**. The appropriation is in the bill.

Vote: Motion carried 16-3 with COONEY, STONINGTON, and TROPILA voting no.

EXECUTIVE ACTION ON HB 679

Motion: SEN. STONINGTON moved that HB 679 BE CONCURRED IN.

SEN. STAPLETON advised working in this field, he finds the bill troubling. If the bill becomes law, lobbyists and their associations would have a better mechanism and a safer territory for health insurance. The consequence is small group health plans may be hurt when freedom of information is disallowed. The bill increases a competitive advantage by disallowing information

to be given which is currently able to be given. He disliked that the bill wrongly assumes small business owners would make irrational or bad decisions if they had information. He thought small business owners should have the information and make those choices.

Vote: Motion failed 1-17 with SEN. COONEY voting aye.

Motion/Vote: SEN. STAPLETON moved that HB 679 BE INDEFINITELY POSTPONED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 272

Motion: SEN. ESP moved that HB 272 BE CONCURRED IN.

Discussion:

SEN. JOHNSON said he had some problems with this situation and had for a long time. This is the one where they had the discussion about the \$96,000 check. He thought it is incorrect to do what they are trying to do and the state would not be able to take money the counties owe out of the entitlement share. He didn't understand why one governmental entity would say if they owe money it can't be taken out of money they will be paid.

CHAIRMAN ZOOK advised the federal government doesn't even wait. If you have an FHA loan and get a government payment for some purpose, they have it first.

SEN. JOHNSON understood how the government might do that in the particular instance just talked about, but didn't think it is the same situation.

CHAIRMAN ZOOK thought it removes the state leverage.

SEN. STONINGTON recalled there are other avenues for the state to recoup its receivables. This bill deals with the entitlement share which has the counties giving up control over their own taxes in order for the state to collect those taxes and reimburse the counties their share, and already the state is intruding on that agreement. She felt they made an agreement with the counties about the entitlement share and are already starting to break it.

SEN. JOHNSON remembered the \$200,000 that Bozeman was shorted in **HB 124**. The \$200,000 was paid immediately upon request. The department had been as attentive as they can and he thought it ought to be the same the other way. The situation here was a \$96,000 check that has been in one of the commissioner's

briefcase for about three months. The commissioner wanted the bill to go through and then he might give up the \$96,000.

Substitute Motion/Vote: SEN. JOHNSON made a substitute motion that HB 272 BE INDEFINITELY POSTPONED. Substitute motion carried 16-3 with COONEY, SCHMIDT, and STONINGTON voting no.

EXECUTIVE ACTION ON HB 597

Discussion:

SEN. DEBBIE SHEA recalled the discussion when the bill was heard about a concern with a crisis or emergency and who would make that determination. Her amendments say the bill does not apply in cases of emergency and if the owner, agent or appointee of the owner say it is an emergency, no one has the authority to say any different.

SEN. MCCARTHY advised it was the issue about flying a repairman to Northeastern Montana from Billings if someone was stuck in an elevator. This way, it could be handled locally.

SEN. SHEA noted it would not just be somebody stuck in an elevator, but could be a problem with a freight elevator.

SEN. ESP questioned the need for regulation; the need was unclear. The proponents talked about nationwide statistics over eight or nine years and most deaths were in construction accidents. He noted they don't regulate carpenters or hog carriers. An apprenticeship program is in place and he saw that as adequate.

CHAIRMAN ZOOK recalled there would be a grandfather clause.

Jerry Driscoll advised that anyone in business today gets an endorsement. The bill is for new people. He advised this is not really a union bill, it is for insurance companies. Insurance companies don't want lawsuits. Elevators are supposed to automatically go to the basement if there's a fire. There is a mechanism that does it automatically when the fire alarm goes off. If it doesn't go to the basement automatically and falls all the way to the bottom, there is a lot of insurance costs. From the concerns he heard, the amendments of **SEN. SHEA** would alleviate most of them. In an emergency, a custodian can get an elevator unstuck until a mechanic can figure out why it happened and fix that part.

CHAIRMAN ZOOK suggested **SEN. SHEA** have her amendments drafted and the committee would deal with it another day.

SEN. MIKE COONEY asked about a potential amendment on grand fathering.

CHAIRMAN ZOOK thought three years was mentioned. If you worked for three years, you would be eligible to take the test.

SEN. LAIBLE expressed concern about grand-fathering anybody in that isn't licensed. He thought most work done on elevators is electrical repair--either the power or a fuse has gone out. Those people will be excluded from working on elevators.

EXECUTIVE ACTION ON HB 359

Motion: **SEN. TROPILA** moved **HB 359 BE CONCURRED IN.**

SEN. TROPILA distributed amendment **HB035903.atp** and explained it would amend the bill for a rest period of ten minutes or less in a four hour period. The rest are technical amendments

Motion: **SEN. TROPILA** moved **HB035902.atp.**

SEN. BUTCHER asked if the amendment says they can give a one minute break.

SEN. TROPILA advised whatever they need to go to the bathroom and relieve themselves.

SEN. BARKUS stated the unintended consequences were brought up vividly by the good doctor who testified earlier. If this is mandated in the workplace, breaks will be mandatory at a certain time. He felt this sort of thing is ridiculous in the state of Montana. There is a good workforce and they don't need this kind of a solution.

SEN. TROPILA advised they need the amendment.

SEN. STAPLETON stated one of the unintended consequences is ten minutes or less can be zero. Then it is just back to current law, so they might as well kill the bill.

SEN. BALES advised the major company causing the problem had a bona fide union contract that specified a 15 minute break. In essence that contract took away the flexibility that maybe could have been afforded those employees if they had not had that contract. He feared putting this law in place would take away employers being able to give their employees flexibility. He suggested their contract should have had flexibility rather than a fifteen minute break at a specific time. He thought that more

of a problem than being silent. He thought the bill would create more problems. He didn't think the amendments help a bad bill.

Vote: Motion carried 16-2 with BALES and ESP voting no.

{Tape: 3; Side: A}

Motion/Vote: SEN. COONEY moved HB035901.AEN . Motion carried unanimously.

Motion: SEN. NELSON moved HB 03502.atp.

SEN. NELSON explained it adds consideration of individual business policies that provide reasonable restroom breaks.

Vote: Motion carried unanimously.

Motion: SEN. BUTCHER moved that HB 359 BE INDEFINITELY POSTPONED.

SEN. BUTCHER commented he received a callback from a businessman in Billings. An anonymous call came into the department saying there were no breaks and no lunch. The true story is these guys break between every truck wash. When the boss discussed a rigid fifteen minute break with the employees, they thought it was a joke. The disgruntled employee who filed the complaint is now in Deer Lodge. The employer hires employees out of pre-release, and this individual violated his probation. He was not able to find an employer on the list that actually did not allow breaks. With a bill like this in place, anonymous reports will trigger an investigation by the department. That is an expense to the state and harassment of the businessman. He thought it was a bad bill.

SEN. STAPLETON remarked about trying to work with collective bargaining and stated support for the motion.

CHAIRMAN ZOOK acknowledged there were some abusive employers but didn't think it is a good thing to put in statute.

SEN. SHEA commented when anyone comes in with a bill they are entitled to respect and courtesy even if we are not in favor of the bill.

Vote: Motion carried 12-7 with COONEY, MCCARTHY, NELSON, SHEA, STONINGTON, TESTER, and TROPILA voting no.

ADJOURNMENT

Adjournment: 10:30 A.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs52aad)