

MINUTES

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

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 14, 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. 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. Joseph (Joe) Tropila (D)

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

Members Absent: None.

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

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

Committee Business Summary:

Hearing & Date Posted: HB 60, 3/7/2003; HB 660, 3/7/2003;
HB 624, 3/10/2003; HB 659, 3/7/2003

Executive Action:

HEARING ON HB 60

Sponsor: REP. JOE MCKENNEY, HD 49, Great Falls

Proponents: Steve Gettell, Superintendent, School for the Deaf and Blind
Eric Burke, MEA-MFT
Ronda Carpenter, Great Falls Area Chamber of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. JOE MCKENNEY, HD 49, Great Falls, opened on HB 60, a bill to exempt the deaf and blind school from spending reductions. The bill is at the request of the **Board of Public Education**. On page 2, line 19, the **School for the Deaf and Blind** is added to the list of exemptions like the public school system which is on line 17. The school serves a very special need and is funded almost entirely by general fund dollars.

Proponents' Testimony:

Steve Gettell, Superintendent, School for the Deaf and Blind, handed out information **EXHIBIT(fcs54a01)**. The school is asking for the same protection as public schools when there is a financial crisis in the state. In the summer of 2002, the school was looking at a reduction of about 4.5%. When the legislature convened in special session and looked at all of the funding, they ended up with about the same reduction in their budget as K-12 public education. They are part of the statewide public education system and are not a separate entity. They serve the 75 or so kids on their campus and equally important, 275 kids through outreach across the state in the 93 school districts they are working with this year. The concern in so much of their funding comes from general fund dollars. It sits right in the target of 17-7-140. If base aid to K-12 public education isn't affected and local revenue isn't affected, he wondered why should the money that funds the programs for the kids they serve be affected if there is a financial crisis that fits under the criteria of 17-7-140. He pointed out the kids that come to the school are referred by parents and the public school districts. The school serves those school districts at their request. He didn't see where there should be any difference.

Eric Burke, MEA-MFT, advised they represent the employees who work at the **School for the Deaf and Blind**. **HB 60** is a unique request, but they believe it is a unique agency that is

requesting the exemption because the school is its own entity. It is not a part of a larger agency that has a larger budget they can go into to find cuts. He felt that reason alone was worthy of consideration.

Ronda Carpenter, Great Falls Area Chamber of Commerce, described the school and its importance. She noted it is unfair that other schools are exempt from cuts and the special needs kids are not.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. MCKENNEY closed on the bill.

HEARING ON HB 660

Sponsor: REP. ROSIE BUZZAS, HD 65, Missoula

Proponents: George Corn, Ravalli County Attorney
Ali Bovingdon, Department of Justice
Julie Ippolito, Mothers Against Drunk Drivers
Kristi Blazer, Montana Beer and Wine Wholesalers
Association

Opponents:

Opening Statement by Sponsor:

REP. ROSIE BUZZAS, HD 65, Missoula, opened on HB 660 which would revise youth access to alcohol laws and provide for keg registration. It increases the penalties for unlawful transactions with children. Keg registration would identify and penalize the adults who purchase beer kegs and allow underage youth to consume alcohol from kegs. New Section 1 requires a retailer to affix a tag or label on a keg at the time of sale, which includes the licensed retailer's name, the address and telephone number, and a unique keg number assigned by the retailer and a prominent warning that intentional removal or defacement of the label is a criminal offense. New Section 2 regards record keeping and requires a retailer at the time of sale of a keg to record the purchaser identification information, the date and time of the purchase, the name of the clerk making the sale, the keg ID number, and the purchaser's signature and date of purchase. The retailer shall maintain the record for not less than 90 days after the date of purchase. Records will be made available during regular business hours for inspection by

law enforcement. When an officer raids a keg party, the officer can go to the retailer to find out who the purchaser was of that keg. Section 4 deals with unlawful transactions with children and amends current law to increase the penalties and fines to adults who sell and provide alcoholic beverages to persons under 21 years of age. These penalties also refer to other illegal transactions with children which are currently under statute. Fines and penalties double for the first and second offense under the new provisions of this law; currently first offense is \$500 and second offense is currently \$1000. New Section 3 defines the violations and fines. They added an amendment on the House floor out of concern by the retailers, who did not want to be held liable if a keg came back to them without a tag or label. They are required to get information from persons that return the keg. Frequently, a keg is discarded in the woods, and this allows someone who finds the keg to return it to the retailer. This is important to the retailers because they recycle the kegs.

Proponents' Testimony:

George Corn, Ravalli County Attorney, advised he is president of the **Montana County Attorney's Association**. He testified it is a reasonable bill and part of the solution to address underage drinking. County attorneys think the bill is necessary.

Ali Bovington, Department of Justice, advised the department supports the bill for the reasons stated and asked for favorable consideration.

Julie Ippolito, Mothers Against Drunk Drivers, testified that **Joseph Califano, National Center on Addiction and Substance Abuse**, stated there is, by any public health standard, an underage drinking epidemic in America. Teens are drinking 10-12% of the alcohol sold in the nation, and over five million high school students binge drink at least monthly. Drinking is teen America's fatal attraction, and alcohol is implicated as one of three top causes of teen deaths, traffic fatalities, homicide and suicide. Alcohol kills 6.5 times as many youths as all other drugs combined. Kids start drinking earlier; 36% by the eighth grade or earlier--both boys and girls. The average age for that first drink is 13.1 year old. Experts say the brain is not even fully developed until the age of 21. Alcohol is not only the gateway drug, but also the drug of choice for today's youth. Montana rates far worse than the national average when it comes to underage drinking. Montana kids drink more and drive drunk more by a significant percentage. In 2001, 51% of youth highway fatalities were alcohol. In one large western Montana school district, a recent survey showed that about 19% of eighth graders, 35% of tenth graders, and 43% of twelfth graders

considered themselves heavy users of alcohol and binge drinkers. National numbers are 6% for eighth graders and 18.7 percent for youth, ages 12-20. Most youth do not drink at home but drive somewhere else to drink. Keg beer is the alcohol of choice for teen parties because it is the cheapest form of alcohol and only requires one purchase, typically by an adult. Kegs are a cheap and easy way to get a lot of people drunk at one time. When police break up a keg party involving underage drinking, people scatter and they usually have no way of knowing who's responsible for providing the alcohol to these minors. **HB 660** will give police the tools to track down the purchaser and impose the appropriate sanctions. The retailer is relieved of liability under this system. Twenty states have passed keg registration laws. Keg registration was a consensus recommendation of the Governor's task force on tobacco, alcohol, and other drugs.

Kristi Blazer, Montana Beer and Wine Wholesalers Association, testified her clients are 27 small businesses around the state that sell beer and wine to retailers, not to consumers. They were instituted about 1933 at the end of prohibition to put some distance between the manufacturer and the ultimate consumer. As a result, they have always encouraged the responsible consumption of their product and discouraged any underage consumption. She noted her clients would not be those responsible for assuring the keg is signed for. They deliver the kegs to the retailers who then have that responsibility. Because the bill will discourage underage consumption of beer and wine, they are in full support.

Opponents' Testimony: None.

Informational Witnesses:

Neil Peterson, Department of Revenue, stated he would answer any questions.

Elaine Sliter, Miller Brewing Company, advised they have one concern, which she discussed with the sponsor. On line 14, on page 1 where it says "labels and non-permanent adhesive material", they would like to see what is affixed to the keg is actually just a removable tag. Any type of sticky material directly attached to the keg can cause problems in their cleaning processes and damage to machinery.

Questions from Committee Members and Responses:

SEN. LINDA NELSON noticed the bill has no effective date and thought it was something that could go into effect fairly soon as spring is a major time for keggers.

REP. BUZZAS said she missed that and would be happy to have that done.

SEN. NELSON advised it be on passage and approval.

SEN. JOHN COBB asked if deposits are required on kegs.

REP. BUZZAS answered yes.

SEN. COBB asked if the cops go back and see who signed for the deposit.

REP. BUZZAS said there is a deposit, but it is not required. Not all retailers require a deposit. If a keg is found, there is no way to track where it was purchased. In some of the smaller areas, it probably isn't much of a problem. Billings has had an ordinance for keg registration, and they are the only place in the state. One of the problems they ran into, is a keg being disposed of in another county. There is no way to always track back where a keg is purchased. When kegs are sold to underage drinkers, the deposit is not a big deal. It is easier to discard the keg and not worry about the deposit.

SEN. COREY STAPLETON asked **Ms. Ippolito** if her organization had tried to get this as a consistent law on a national level. He felt it would be easier if the kegs were stamped with some sequential number.

Ms. Ippolito advised they talked about doing a hard stamped impression into the keg rather than an affixed tag, similar to the patent that is on the bottom of the keg already. That is being proposed in Colorado. Something would need to happen in the transition, as there would be a lot of old recycled kegs out there.

SEN. STAPLETON asked **Ms. Sliter** about the use of sequential numbers stamped on kegs and if that would be problematic at a state level as opposed to nationally.

Ms. Sliter said it would be extremely expensive to pull all those kegs out of the cycle and they would basically have to have new kegs done.

SEN. STAPLETON acknowledged that existing inventory would not be practical, but wondered about moving forward. He wasn't aware Billings was doing that. The unintended consequences are probably that they also have the highest meth use. If you make it so hard to get alcohol, they use meth instead. He asked if the companies would oppose that type of legislation.

Ms. Sliter replied the production of the kegs would take years. They had no objection to a tag being affixed to the kegs.

{Tape: 1; Side: B}

SEN. JOHN ESP commented on the ineffectiveness of deposits because of kegs being left, and said kids would probably just cut the tag off and leave the keg.

REP. BUZZAS admitted they could. She thought deposits are effective for most people, but when there is a danger of an underage user buying a keg or getting one from an adult, sometimes its easier for them to ignore the deposit.

SEN. ESP observed he wasn't sure if he was buying for an underage person, that he wouldn't just cut the tag off before he gave it to them. He wondered about the rationale for the bill.

REP. BUZZAS replied they had been surveying kids around the state through the **Addictive and Mental Disorders Division** with an instrument called the Montana Needs Assessment Survey over the past six years. In 1998 and 2000, Montana youth reported using alcohol within the past 30 days at a higher rate than the national average. It is the number one addictive substance problem with the under-aged. They also reported it is easily accessible to them. The purpose of leveling the fines and keg registration is to send a clear message to adults that there will be consequences for purchasing this illegal substance for youth. The current fines are pretty weak, and she didn't think \$1000 was an unreasonable fine for first offense and \$2000 for a second offense.

SEN. TRUDY SCHMIDT asked about research on the question of **SEN. STAPLETON**.

REP. BUZZAS said she looked into having a permanent label affixed to kegs with an identification number. It got to be overwhelming and would have to be done with the wholesalers. **MADD** is working on that, and she thought there would be legislation eventually. In terms of the concern about the adhesive, the language in the bill says a tag or a label. She understood the concern about cleaning. She talked to the **Department of Revenue**, who would be issuing the licenses, and they have been in contact with the state of Washington, where they have this plan. At the time a licensing fee is paid, a package of labels or tags is sent out. They would be willing to work with retailers, and if they want a tag, that would be fine. She noted **SEN. STAPLETON'S** solution would work better, but in the meantime there is a serious problem going on. She thought it could be solved with the bill. There

is a penalty for removing or defacing a tag or label. She felt there would be a lot more accountability in the system.

SEN. KEITH BALES asked if all the different brewers have their own set of kegs.

Ms. Sliter advised each brewery buys their own kegs.

SEN. BALES asked about recycling and how often those kegs rotate through the system.

Ms. Sliter said kegs are recycled until they are damaged and that can vary.

SEN. BALES thought having a tag attached would be ineffective. It would be better to have the different brewers apply serial numbers on each keg and try to figure out what the time line would be.

Ms. Sliter thought each brewery would probably be different. As far as requiring a permanent stamp on the keg, their concern is in pulling the current kegs out of production.

SEN. BALES asked what would be the effect of requiring new kegs.

Ms. Sliter indicated it would be a great deal of expense to the company. If every state doesn't have the same requirement, then kegs would have to be sorted by where they are shipped. It would be another step in the distribution process.

SEN. ED BUTCHER asked if the kegs are aluminum and felt it would be simple to put a serial number on a keg with an imprint stamp. He didn't see a lot of expense, because he uses those metal stamps when building trailers to register with the state of Montana. He felt the bill is worthless without a permanent identification on kegs.

Ms. Sliter stated with a brewery that has hundreds of thousands of kegs, it's not as simple as hiring one person to put a stamp on a keg. A great number of workers would need to be hired, or it would require new kegs to be built.

SEN. STAPLETON asked if it is problematic to number pony kegs sold at the retail level.

Ms. Sliter said the problem is with hundreds of thousands of pony kegs; at what point do the numbers start over again? Would there be seven or ten digit numbers on each keg, or does each keg have

to have a different number? What if there were two kegs in the same state with the same number?

SEN. STAPLETON advised pony kegs are sold with no registration or deposit, and he wondered how to deal with that.

Ms. Sliter said she was open to suggestions and didn't know how to address pony kegs.

SEN. STAPLETON suggested pony kegs couldn't be addressed.

SEN. MIKE COONEY asked about the process being used in Yellowstone County.

REP. BUZZAS said the Billings police and one of the sponsors of the ordinance testified in the hearing in the House. It has been in effect for about a year and they are seeing a lot more accountability. The retailers like it because they are getting more of the kegs back and it doesn't seem to be a big imposition on them. They feel there is a decrease, but they don't have numbers yet.

SEN. COONEY asked what sort of tagging process they are using and how local distributors are dealing with that.

REP. BUZZAS replied the Billings ordinance says that any retail liquor establishment selling alcoholic beverages by the keg shall be required to affix to the keg at the time of sale a permanent identification stamp or mark approved by the Billings Police Department.

SEN. COONEY asked if there was anyone from Billings that could tell them exactly what they do.

SEN. BEA MCCARTHY noted some refrigerators are built to take the small kegs. She wondered if the bill was limited to 16 gallon kegs or would it include the 8 gallon ponies.

REP. BUZZAS thought maybe they need to define it as all kegs, but they were thinking regular.

SEN. MCCARTHY advised there are also 32 gallon kegs. In Butte on Saint Patrick's Day, they bring in 32 gallon kegs from breweries in Seattle. She wondered about a special tag just for Butte, Montana on Saint Patrick's Day. She thought the bill is way open and **REP. BUZZAS** had not bothered to look at all the side effects.

REP. BUZZAS believed the way the bill is written, it says kegs. In her mind, that would say all kegs.

SEN. MCCARTHY referred to the pony kegs.

REP. BUZZAS believed anything that is a keg is covered in the bill.

SENATOR BUTCHER thought if a bill is to be enacted, it should have teeth to enforce it and not just be a feel good bill. He felt for any keg sold in Montana, it is not a big deal to stamp a keg with a metal imprint stamp. Kegs could have their own unique identification number. He wondered about changing the bill to "unique keg number assigned by the wholesaler" and imprinting the keg with a number that could be tracked.

REP. BUZZAS thought if the committee chooses to amend the bill in that fashion, she would be amenable. The tags can be removed, but just the fact they are getting information and holding the retailer and the buyer accountable is going to go a long ways. She didn't want to see the bill go down if that provision was opposed by wholesalers. She thought the bill is a deterrent. She thought the permanent label would be done nationally. The problems are at the point of transaction and the bill requires information at the time of the sale. She didn't think the bill is ineffective without an amendment.

SEN. BUTCHER asked if it could get through the House.

REP. BUZZAS thought it could become an issue, and didn't know for sure what would get through.

SEN. GREG BARKUS asked if there is any damage done to kegs by using the metal stamp **SEN. BUTCHER** is suggesting for these kegs.

Ms. Sliter advised because it is not coming from where they purchase their kegs, they could lose the warranty of the keg.

CHAIRMAN TOM ZOOK asked how many wholesalers of kegs are in Montana.

Ms. Sliter thought there are 27.

Closing by Sponsor:

REP. BUZZAS stated Montana has the fourth highest rate of alcohol use by youth in all fifty states. Excessive alcohol consumption by youth contributes to the drop-out rate, academic failure, legal offenses, motor vehicle and other accidents. She referenced the Montana Needs Assessment Survey that showed Montana youth reported using alcohol in the past thirty days at a higher rate than the national average. Binge drinking was

reported by 30% of kids. That is 26,269 young people between the ages of 12 and 17. Montana students reported alcohol is easily available to them. Alcohol, tobacco, and marihuana are considered the gateway drugs. Research shows that the earlier the age of onset, the more likely that addiction will occur. Montanans spent \$256 million in 1998 on programs related to the negative effects of substance abuse. The Governor's task force recommended keg registration legislation to reduce underage consumption. Currently youth are getting the message its okay to drink, because it is readily available.

{Tape: 2; Side: A}

HEARING ON HB 624

Sponsor: REP. ROSIE BUZZAS, HD 65, Missoula

Proponents: Pat Callbeck Harper, AARP
Betty Beverly, Montana Senior Citizen's
Association
Mary Caferro, WEEL

Opponents: None

Opening Statement by Sponsor:

REP. ROSIE BUZZAS, HD 65, Missoula, opened on HB 624, which would establish a budget stabilization account. **House Appropriations** heard five different bills for a budget stabilization account. After hearing all five bills, **CHAIRMAN DAVE LEWIS** established a bipartisan subcommittee charged with combining these bills and coming up with one bill for the body to consider. She distributed the subcommittee recommendations for a rainy day fund. **EXHIBIT (fcs54a02)** They wanted the fund to have a cap and wanted it to not be easily accessible. It would require a 2/3 vote of both houses to spend the money. They wanted it to be somewhat available to the Executive in emergencies. There is a provision for \$12 million to be spent by the Executive for emergency situations that might occur in the biennium. They wanted to provide a cushion for future budget shortfalls. The source of the money is 1% of the previously completed year's revenue would be put into the fund once per biennium. Interest from the stabilization fund would go back into the fund, and gifts and donations could also go into the fund. A state special revenue account would be created for the fund. The bill amends the statute for emergency appropriations. The fund is capped at 10% and could not get bigger than \$130 million. The bill is effective on July 1, 2003. The bill would have no impact in the current biennium and the transfer of funds would occur July 1, 2005. The money would not be available for use until the 2005

session. She felt the plan makes good sense for Montana and sets up a savings account. The law also provides that fifty percent of any unanticipated revenue that might come to the state that isn't already obligated will also go into the fund, and the rest would go into the general fund.

Proponents' Testimony:

Pat Callbeck Harper, AARP, testified in favor of the bill. In just a few years after the effective date of this bill, in 2005, baby boomers will be reaching the age of 65. Their impact on state supported programs is yet unknown.

Betty Beverly, Montana Senior Citizen's Association, liked the idea of a rainy day fund. Seniors are concerned about what is happening in this session. Many seniors lived through the depression years and they all knew a little bit should be put away for the future. She is also a certified CHIP counselor etc., and hears peoples concerns. She thinks this is a great bill and a great idea.

Mary Caferro, WEEL, asked for support for the bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. COONEY asked about the technical concerns in the technical notes.

REP. BUZZAS said she received the technical notes fairly late and did not sign it. The fiscal note mentions some technical concerns, and she has no problem with that.

SEN. ESP asked about Section 4 and amending the amount.

REP. BUZZAS thought he was referring to **REP. STAN FISHER'S** bill and that was amended from \$25 million to \$16 million. She would see it was codified so this amount would match that amount.

SEN. ESP referenced the \$12 million in other parts of the bill, and wondered if it was a conscious effort to match up with existing law.

REP. BUZZAS advised \$12 million is the same \$12 million in existing law, and would give the authority to the Governor to spend on emergencies. If they wanted the two laws to match up, they could simply insert language from the other bill if it passes.

SEN. ESP asked if it would change the function of the emergency powers in any way.

REP. BUZZAS didn't believe it would, and the language for how the Governor can declare an emergency will not change. It would allow the Governor to use some of this particular fund for those emergency situations. This gives the Governor another source instead of taking it out of the general fund.

SEN. ESP asked if she had thought about a simple majority to spend the fund and what her thinking was on 66%.

REP. BUZZAS indicated they discussed that issue extensively in committee. They wanted money to be there in the future in the event of a shortfall like this session. They didn't want it so easily accessible that it could be spent easily. They thought 3/4 was too much and a simple majority wasn't quite enough; the 2/3 was a compromise.

SEN. ESP asked if there was a discussion of 60%.

REP. BUZZAS said no, and that is another option.

SEN. RICK LAIBLE asked what happens when the fund reaches its cap and to the interest the fund generates.

REP. BUZZAS replied the fund can't grow larger than \$130 million. Anything over the cap would go to the general fund.

SEN. LAIBLE asked if that would apply if settlement money came in and if the cap is the cap.

REP. BUZZAS said that is correct. The cap seemed like a reasonable amount, and they didn't want it to look like the state was just pigeonholing money and trying to earn money from public dollars. They wanted it to be used for the purpose intended, which would be to pad any shortfall.

SEN. LAIBLE stated they targeted it to two-year biennium numbers, and, as that increases, so will the fund increase within that same range.

REP. BUZZAS said that would be correct, but once \$130 million is reached, any additional money would automatically go into the general fund.

SEN. EMILY STONINGTON understood the bill came in fairly quickly just before transmittal and there are some drafting errors. She asked if the white sheet is truly their intent.

REP. BUZZAS said that is true.

SEN. STONINGTON asked if the intent was to transfer 1%, at the beginning of the biennium, of one year's revenue from the previous biennium.

REP. BUZZAS believed that is correct but the transfer would not take place until the second year of the biennium.

SEN. STONINGTON advised the wording in the bill is somewhat unclear about the 1% being transferred just once per biennium. It does indicate it's the transfer of money from that previous fiscal year.

Terry Johnson, Legislative Fiscal Division, said that is correct, and that is one of the areas where an amendment could be made to make it clear. The intent was to take 1% of the previous fiscal year's revenue, probably in the range of \$13 million, but only once at the beginning of the subsequent biennium.

SEN. STONINGTON asked about settlement monies and didn't see that in the bill.

Mr. Johnson advised that was removed from the bill, and the way that additional revenue gets captured is the second item on the list. If the state receives a large settlement payment, and it was not built into the revenue estimates, then it is excess revenue. 100% of that would go into the fund.

SEN. STONINGTON asked if the 50% description was inaccurate.

Mr. Johnson said exactly.

SEN. STONINGTON asked about the discussion in the House about why they put the disaster and emergency fund into this rainy day fund.

Mr. Johnson said that was probably some influence from their office. The logic behind that is, in the past, the legislature has on the books the \$12 million appropriation that is for emergencies. The legislature has chosen not to include that in their budgeting process. When the legislature adjourns there is the potential of \$12 million that could be expended that has never been factored into the budget. They thought if the legislature wanted to continue to do that, a more appropriate source of funding for those emergencies would be out of the rainy day fund. The bill has a built-in safety mechanism so that if there is inadequate money in the rainy day fund, the general fund has to pick up the difference.

SEN. STONINGTON asked if his intent was not to have the disaster and emergency money coming out of the ending fund balance.

Mr. Johnson answered yes.

SEN. STONINGTON asked about the purpose of the ending fund balance and if it was just unexpected drops in revenue.

Mr. Johnson said definitely. He advised the legislature had chosen over the years not to build in anticipated supplementals into the next biennium. Outside of fires, that seems to be getting to be a smaller and smaller number. An ending fund balance is to cover the anticipated shortage in revenue that may occur.

SEN. ESP asked what if the expenditures in the previous biennium are in excess of what they thought they would be, and should that situation be addressed.

REP. BUZZAS thought it didn't need to be addressed in the bill.
{Tape: 2; Side: B}

REP. BUZZAS said they can't spend more than they budget. It doesn't have to be addressed in the bill, because there are laws in place.

SEN. BALES questioned the appropriation for the Governor's emergency situation and no money going into the account yet except for additions over the present estimate.

Mr. Johnson indicated there are two effective dates in the legislation. One is July 1, 2003 and the purpose is if by some chance between when the legislature adjourns, having established revenue estimates in **HJR 2**, if revenues happen to come in higher than anticipated, that would be one source of funds that would go into this rainy day fund. If the revenue estimates are good, there should be funds available this coming biennium. The second effective date is what **REP. BUZZAS** alluded to in terms of taking 1% of the previously completed fiscal year. That would not happen until 2006. Regarding the \$12 million the Governor has authority to spend for emergencies, if there is no funding in this account, the bill is designed so that \$12 million will come out of the general fund. It makes sure the Governor is held harmless in tapping into her emergency authority.

SEN. LAIBLE expressed confusion about where the money actually comes from. He wondered if each agency is reduced by 1%. The bill says "the department shall transfer" and he wondered which department.

Mr. Johnson clarified the administration of this would be done by the **Department of Administration**; they are the overseer of the state general fund account. At the end of a given fiscal year, or in this case a biennium, they would go through the mechanics in the bill, assess what 1% of the previous year's general fund revenue is, and transfer that out of the general fund account into this rainy day fund. It takes the money right out of the general fund balance and doesn't affect individual departments.

SEN. STONINGTON asked if the way the bill is written, in the 07 biennium, would this be included in the budget process or just show up as a decrease in the revenue estimate.

Mr. Johnson advised from the standpoint of the budgeting process, sometime in July of 2005, the **Department of Administration** would assess what the 1% of the previous year's revenue was and transfer that amount out of the general fund and put it into the stabilization fund. That would mean the amount would be immediately removed from the general fund balance. From a budgeting standpoint, that would be built into the Executive budget.

SEN. STONINGTON said in the 2005 budget presentation, they would have to build that in for the 2007 biennium.

Mr. Johnson said that is correct.

SEN. STONINGTON asked how supplementals would be dealt with. If the 2005 legislature meets and considers supplementals for that biennium, how would that be reflected in the fund balance at the end of the 2005 biennium in consideration for that excess money.

Mr. Johnson advised to the extent that supplementals are driven because of fire costs, some of that may be funded out of the stabilization fund because it is an emergency, provided funds are available. From the standpoint of the fund balance, item 2 looks at excess revenue, not excess fund balance. There is a statute on the books currently that, technically, they cannot have supplementals. Agencies are required by statute to reduce their appropriations in the second year if they have a supplemental. To that extent it would be an issue.

SEN. STONINGTON restated it's based on the revenue estimate, not on expenditures.

Mr. Johnson indicated that is correct and part of it is they are establishing a general fund budget. There will be reversions. Agencies typically cannot expend every dollar they've been appropriated. The committee did not want to get into a situation

where they penalize an agency for conserving. That's why it is structured on the revenue side.

SEN. ESP surmised about a revenue increase and expenditures that required supplementals. If a supplemental was passed on a majority vote of the legislature knowing they had revenues over the estimates, he wondered if this bill would not allow the legislature to do a supplemental because the revenues were supposed to be transferred.

Mr. Johnson thought in the scenario **SEN. ESP** outlined, there is the potential for a problem. There would be X number of dollars of an unusual supplemental where they are counting on some excess revenue. One of the potential solutions is to craft this in such a way that language might take in some of those supplementals.

CHAIRMAN TOM ZOOK explained the reason for that is because the money is pulled out on July 1st, and the big fire season could easily be from then on. That very scenario could happen and it would require a major vote.

SEN. ESP stated that is his concern. They had a supplemental for mental health of \$14 to \$15 million. He was concerned it would take a 66% vote to fund that.

CHAIRMAN ZOOK advised going back to what their revenue estimate was; it appeared they were going to have a lot of money at the at the end of the first fiscal year.

Mr. Johnson agreed. He added they might want to put in some language that would take care of an unusual supplemental type situation.

CHAIRMAN ZOOK referred to the emergency potential not figured into the budget. They never had done that and the only way to do that was historical average.

Mr. Johnson said that was exactly right.

CHAIRMAN ZOOK asked about excess revenue and what makes up the biggest part of that revenue.

Mr. Johnson said in the late 1990s, a lot of the excess revenue was due to unanticipated capital gains income. That excess revenue was because the revenue estimates were not anticipating capital gains were going to grow to the level they were. In the case of the Montana Power asset sales, there was an estimate developed of how much that would be, but those revenues came in over and above that level. Just a few years ago, the **Department**

of Revenue settled with Shell Oil over an oil issue, which produced about \$25 million of additional revenue and that was not built into the revenue estimates. It is one-time events or some unusual growth pattern that is taking place that is not picked up in the revenue estimates.

CHAIRMAN ZOOK asked if this bill had been in effect already, how much money would have been extracted last July.

Mr. Johnson said to be fair, he would have to go back and calculate that. In 2000 or 2001 there was about \$176 and \$172 million actual ending fund balance. The legislature budgeted about \$50 million. The excess would have gone into this account. There is a good possibility that the account would have gotten very close to the cap.

CHAIRMAN ZOOK said approximately \$120 million. He asked what makes up the majority of their revenue estimate today, and if it was individual income tax, etc.

Mr. Johnson said basically there are five components that drive general fund revenue: individual income tax, corporate taxes, property taxes, and investment earnings. Those account for somewhere between 70% and 75% of the total general fund revenue base.

CHAIRMAN ZOOK asked if it would be fair to call this a tax increase.

Mr. Johnson said he was struggling to see how it could be called a tax increase.

CHAIRMAN ZOOK asserted it was money the state is taking and setting aside, and it doesn't provide any tax relief in the form of providing for government services. It is taken out of taxpayer's pockets and stuck in the state pocket.

Mr. Johnson said that is true to a certain extent. A provision in the bill still allows the legislature to use these funds for whatever purpose. The only criteria is it requires a 2/3 vote.

CHAIRMAN ZOOK indicated tax relief only requires a majority vote.

Mr. Johnson said he was correct in that respect. If they had the excess revenue sitting in the general fund account, to use that excess balance for tax relief or whatever would take a simple majority vote.

CHAIRMAN ZOOK asked when they go back to the 1st of July and take that revenue out, how do they know they're protecting the projected ending fund balance.

Mr. Johnson said the way they would protect the ending fund balance is that on the appropriations side, they have the constraint that is what they budgeted. Agencies can't expend over and above that unless they come in a subsequent session and ask for a supplemental. The other constraint is what happens to the revenue.

CHAIRMAN ZOOK described a scenario where the legislature leaves and intends to have a \$50 million ending fund balance and then uses what the projected revenue was in July of \$170 million. They take \$50 million out of that and have \$120 million to put in the fund. Things happen after that and they could easily deplete the ending fund balance just in the time remaining in the biennium.

Mr. Johnson stated if the revenues deteriorated in the subsequent biennium, and the money was moved into a stabilization account, revenues deteriorate from that point and that fund balance starts to slip away.

CHAIRMAN ZOOK said in this biennium, last July, \$120 million was taken out of the ending fund balance and look where we are today. The legislature has no access to the fund except through a major vote. He didn't really think that is good for the legislature.

Mr. Johnson said the one argument that can be made is that in 2000 and 2001, there was an excess balance. This provision would take that excess and stick it into the rainy day fund. The revenues deteriorated from that point, but the key is that when the legislature comes to town and solves the budget shortfall, they have that money sitting in the stabilization fund to smooth out the impact of the reduced revenues. That's what the stabilization or rainy day fund actually does.

CHAIRMAN ZOOK maintained that is correct, but it would take a 2/3 vote to do that.

SEN. ROYAL JOHNSON advised he didn't read Section 1 to allow that. Section 1 says a budget stabilization fund will be established in the special revenue fund. It says except for the statutory appropriation in Subsection 2, the budget stabilization account may be appropriated only by a two-thirds vote of each House. Once they establish that, and have gotten a 2/3 vote of each house and put the stabilization fund in, the next sentence says up to \$12 million in the budget stabilization account is

statutorily appropriated to the office of the Governor. The legislature would actually have to be here, or the Governor could appropriate \$12 million.

CHAIRMAN ZOOK advised the Governor already can.

SEN. JOHNSON said yes, but not in the stabilization account. It's out of the emergency fund or ending fund balance.

SEN. STAPLETON said this becomes that.

CHAIRMAN ZOOK explained the \$12 million becomes part of this, which the Governor would have access to, but the remaining balance would require the legislature and a 2/3 vote.

SEN. BALES said if this is truly a stabilization account, why wasn't the provision made that if the revenue coming in falls below the revenue estimates, they can pull money out. It would be the same as when the money that comes in over the revenue estimate goes in there. In his way of thinking, that would truly make it a stabilization account rather than just a savings account. They've had a lot of trouble getting money out of any accounts they've got in the state.

Mr. Johnson replied one of the discussions the subcommittee had was does the legislature want to give the Governor, under Title 17-7-140, the authority to tap into that account for this purpose. It was a consensus not to do that.

SEN. BALES asked if this is a stabilization account and money is being put into it if the money comes in over the revenue estimate. They came back into a special session in 2002, because money was not coming in up to the revenue estimate. He thought if they truly wanted a stabilization account, as money does not come in up to the revenue estimate, the money could be taken out of this account up to what the revenue estimate was. Therefore, they would not have had to come in for a special session because the budget would have remained intact. That would truly stabilize things, but that is not the way this is set up.

REP. BUZZAS said this is actual revenue, not revenue estimates. Whatever the revenue estimates are, the account takes a percentage of the actual revenues that are coming in.

CHAIRMAN ZOOK said the sheet says 100%, but the previous biennium revenue over-adjusted **HJR 2** revenue estimates.

REP. BUZZAS indicated the money that is actually going to this account would be revenue that comes in.

SEN. STONINGTON stated there are two ways it comes.

SEN. BALES asked if the actual revenue was coming in below the revenue estimate, and that is what they base their budget on, why wouldn't a stabilization account be able to draw out of this account to satisfy the budget.

CHAIRMAN ZOOK said they would have to have a session and have a 2/3 vote.

SEN. BALES said that is his question; rather than having to have a session and a 2/3 vote, if they truly want to stabilize revenue, it should automatically come out of there to satisfy any revenue shortfalls below the revenue estimate.

REP. BUZZAS said she was having trouble recalling discussions the subcommittee had around that issue and she deferred to **Mr. Johnson**.

{Tape: 3; Side: A}

Mr. Johnson advised it is the policy question the committee has to look at. If they were to allow the Governor access to this account, under 17-7-140, the Governor has the authority to reduce budgets up to 10% with some exclusions. That particular statute sets a policy in itself that says the Governor will be allowed to reduce budgets only so much. If this is wide open, then the issue is relinquishing the legislative oversight of how those funds would be used. If the Governor has total access to this in times of revenue shortfall, and it can be used totally, does the legislature want to give up that authority or do they want to come in from a policy perspective, and make that determination themselves?

SEN. BALES said as they leave her with a budget that is balanced, they are giving spending authority. They have given the Governor or the departments the ability to spend that money and they allow the Governor to cut by 10% if the revenue fails to come in. It failed to come in a whole lot worse than that this time around. It could kick in after anything below 10%.

Mr. Johnson thought it could be crafted in such a way that the Governor could be given authority to basically take a certain amount out of this rainy day fund and put it back into the general fund to stabilize the general fund. As long as that's the legislative direction, it would work just fine. It would be an easy amendment to do.

CHAIRMAN ZOOK noted it would protect the Governor from all sorts of things.

SEN. BUTCHER thought it appears to make more sense that the legislature, as the board of directors, has laid out a policy and appropriated money for two years. They expect that budget they have appropriated would be taken care of. In 2000, the legislature was called back for a special session because there was \$140 million excess and the legislature dreamed up new programs to get rid of it. In January, that had all disappeared. With **SEN. BALES** thinking, in 2000, that extra \$140 million would have been dumped into this fund and sat there untouched through that session. In the next biennium they were scrambling for money. He thought the fund should be wide open for the Governor to utilize up to the point of the budgets mandates by the legislature. It couldn't be grabbed for a bunch of new programs. That would be the only value he could see. The 2/3 vote could be dropped so they wouldn't have to meet in special session to micro-manage.

Mr. Johnson replied the way the bill is drafted, it is not designed to allow the Governor access to this. It is strictly up to the legislature to come in and utilize these funds. That was a policy decision the subcommittee made.

SEN. BUTCHER asked the sponsor if she would be amenable to what **SEN. BALES** outlined or does she want the legislature to come back to micro-manage the budget they already set up.

REP. BUZZAS indicated there was a difference of opinion in the subcommittee. The compromise was the budgeting process is the authority of the legislature and the legislature should have that authority. The consensus was they not give the Governor that much latitude on the budget. They looked at combining five bills; some gave wide authority to the Governor and some gave very narrow. They expected when this came to the Senate side, it would be massaged further. They set up a stabilization account similar to other states for the purpose of meeting budget shortfalls and it is the responsibility of the legislature to set the budget. The intent of the fund was to have a rainy day fund. The account would be available to the legislature, so if they did end up in the future with a budget shortfall, they would have a source of money to go to. The more latitude a Governor is allowed in spending that between sessions, the lower that amount would be.

SEN. BUTCHER said the legislature has already appropriated the money and has set the budget. Suddenly, the legislature comes back in and is re-tweaking the budget they'd already established

for all the agencies. He asked if that was more her intention than simply allowing the funding to flow to meet the original intention of the legislature in the budget.

REP. BUZZAS stated her intent would be for the programs to be funded at the budget that was set.

CHAIRMAN ZOOK noted annual sessions could make a difference.

SEN. RICK LAIBLE asked if the funding will be that every biennium, a 1% appropriation will come out of the general fund or a half a percent every year as an average.

Mr. Johnson said that is correct.

SEN. LAIBLE said the Governor has a \$12 million emergency appropriation which would no longer come out of the general fund, but out of the stabilization fund.

Mr. Johnson said that would be true.

SEN. LAIBLE asked when the fund gets beyond \$50 million, if an ending fund balance would not be needed.

Mr. Johnson advised the huge unknown is always the revenues. It doesn't take much of a fluctuation in revenues to have a considerable change in the projected ending fund balance. The ending fund balance is to provide some type of buffer between anticipated revenues and what actually happens. A stabilization or rainy day fund is designed specifically to have funds available as a buffer between the peaks and the valleys so the legislature doesn't have to come in an August special session to try to find little pots of money. There would be a pot of money to go to and it can be used to get to the next regular session.

SEN. LAIBLE thought the bill is written so the legislature would still have to come back to tap that fund.

Mr. Johnson said that is correct.

SEN. NELSON commented if they didn't want to call the legislature back in, the **Legislative Finance Committee** could be the release mechanism. That way the control would be kept with the legislature rather than giving this to the Governor.

CHAIRMAN ZOOK advised there might be a legal issue with that.

Taryn Purdy, Legislative Fiscal Division, advised the legislature cannot provide appropriation authority to a committee of itself. There may be some other mechanism for review.

Clayton Schenck, Legislative Fiscal Analyst, noted there may be some confusion over what this is intended to do and ultimately what to do with the bill. He didn't see a rainy day fund as a partisan issue, as forty-six states have this and another state has a required 7.5% ending fund balance, which he thought more stringent than any rainy day fund. If Montana had 7.5%, there would be over \$100 million that could never be touched. A lot of states used their rainy day funds this time. The ending fund balance is to handle the normal things that happen and the rainy day fund is to pay for the unusual times. The issue is the government provides services: education, a safety net for the disadvantaged, and protection of the people in terms of Corrections. The idea would be to protect from not having to disrupt those services in a downturn. He argued it protects the taxpayers because without a rainy day fund, one of the things that comes up is raising taxes. In the current session, there is a shortfall and no rainy day fund. They either have to disrupt or reduce services or raise taxes. The states that have rainy day funds that dealt with this in special sessions, avoided having to deal with either side of it. This is a very severe downturn nationwide, so a lot of states, now a majority, are raising taxes and cutting services. The way the bill is crafted is a strong commitment to a rainy day fund because its taking the money up front. A number of states take just the excess. There are ways to amend the bill to deal with the supplemental situation and ways to make the bill amenable to policy that best fits the state of Montana. The concept of a rainy day fund is something the vast majority of states have gone to. He thought it is sound fiscal policy. As an example, they might have had \$120 million to \$130 million sitting in this fund now. They would have been dealing with a situation of a 2/3 vote to get at that. The cuts are so deep now, the Governor felt it was necessary to plug that by taking funds from another fund that requires a 3/4 vote. The fund would be clearly for the purpose of dealing with shortfalls.

CHAIRMAN ZOOK advised some of them think they do have a rainy day fund that requires a 3/4 vote and that's the only difference. The money can be replaced in the same manner being talked about here. He assumed the sponsor does not agree with that.

Closing by Sponsor:

REP. BUZZAS advised it is clear how difficult it is to access those funds. She believed the coal tax trust fund was not

intended to be rainy day fund in the sense that rainy day funds are defined and set up across the nation in forty-seven other states. The coal tax trust fund had a very distinct purpose, and they can agree to disagree on that. This sets up a true rainy day fund and it is not too easy to access. As it's written, it leaves the authority of the budgeting to the legislature and restricts the Executive's access. Some of the bills didn't have any access by the Executive and some had a wide latitude. In the process of negotiation, that provision was put in, and she thought it is reasonable. She felt it was owed to the people of Montana that a true rainy day fund be set up so they can quit having the coal tax trust fund discussion, not that they ever will. They will have a true rainy day fund they can access in difficult times and budget shortfalls. She apologized for misstating the 50%. According the Center of Budget and Policy Priorities, in the 1990s many states set aside rainy day funds or reserve accounts during the recent economic expansion. It was set up to be the first line of defense against the pressures that declining revenues and rising needs for public services in a recession might place on state budgets. As a result states that have a rainy day account are somewhat better prepared now to deal with economic hardships than they were ten years ago at the start of the last recession. She said it is not too late to plan for the future. She didn't believe the people of Montana would see this as a tax increase, but as responsible fiscal management by the state. The bill passed 96-4 in the House because it was a bipartisan effort.

HEARING ON HB 659

Sponsor: CHRISTINE KAUFMANN, HD 53, Helena

Proponents: Mary Caferro, WEEL
Darrell Holzer, AFL-CIO
Rhonda Carpenter

Opponents: None

Opening Statement by Sponsor:

CHRISTINE KAUFMANN, HD 53, Helena, opened on HB 659 which would exempt public assistance recipients from repayment for case worker errors. The law currently says if due to an error, either by the recipient or the department, a recipient receives more public assistance than they're entitled to, the department can collect that back from people. The bill would change that to say if the department makes an error in the calculation, that the department may not ask for that money back. She described cases where a recipient receives \$420 in cash assistance instead of

\$400 because of some small error. Over the course of six months or so, that \$20 is now \$120 and the department says they have to pay it back. For many of these families that \$120 is a very significant amount of money. They have been working and budgeting based on the amount. They now not only are going to get less money, but will be required to pay back a significant amount of money. Changes were made in the House committee where they were concerned about a computer generated error where instead of getting \$400, someone gets \$4000. That person would reasonably know they were not entitled to the \$4000, and the committee limited it to only 150% of what the error was initially. These are low income families with children and they should not have to pay for the department's errors. Unfortunately, when errors are made, families are paying for those. She read language from the Social Security Administration which says in any case in which more than the correct amount of payment has been paid, there shall be no adjustment to payments or recovery by the United States from any person who is without fault, if such adjustment or recovery would defeat the purpose of the sub-chapter. Other government entities at least recognize in situations where people are really in dire straits, when the government makes the error, people should not be required to pay.

Proponents' Testimony:

Mary Caferro, WEEL, asked for support for the bill. The bill is not about fraud, it is about a payment. If she was overpaid on her paycheck or her income tax refund or was given too much change at the gas station, she would do the right thing and return it. These families would too. This situation is very different; the system is extremely complex and ever-changing. The rules change and recipients oftentimes don't know that.

{Tape: 3; Side: B} The bill is about supporting children and about families that are playing by the rules. She noted the subcommittee had heard hours of testimony from these families.

Darrell Holzer, AFL-CIO supported the intent of HB 659. There is a similar precedent established in existing law as it relates to unemployment insurance under 39-51-3206. In addition, there are some stringent administrative rules that are applicable to that statute. There is a whole criteria to determine a severe financial hardship, and he assumed if this bill were to move forward the same type of administrative rule requirements would be applicable to the bill. If there is no intentional or unintentional error on the part of the claimant it doesn't seem unreasonable that they should not be required to make the payment.

Rhonda Carpenter, representing herself, advised she has rental property in Great Falls and these are people who are making a living on nothing. They are making ends meet on sometimes as little as \$165 a week. They are struggling and the program baffles them. They often come to her in tears with piles of paperwork. They get through the paperwork and send it back, and often come back with paperwork again. Sometimes on the third time, she calls the department. When the department makes a mistake, the recipients aren't cheating. They don't know they were overpaid. In the case of tenants she worked with, when the department finds a mistake, they take it all out the next month. There are some contracts that will take it out over a period of time, but even over a long period of time, they are making ends meet on \$165 a week. These recipients didn't make these mistakes and regardless of the arguments over the choices they made in life, the bill is about children who need to be fed and have somewhere to live. People are not capable of knowing what all these regulations are, and how much they are supposed to get, and now a year later the department pulls two months worth of their money and they have to figure out how to go to their landlord and say they can't pay rent this month. The fiscal note is not that high, and this is the right thing to do.

Opponents' Testimony: None.

Informational Witnesses:

Hank Hudson, DPHHS, testified they worked hard with the sponsor and made changes to the bill that made the department comfortable with where it is now. It has a relatively small fiscal note and he pointed out the fiscal note doesn't require an appropriation of additional money, it just reflects the fact that if the department doesn't collect these overpayments they'll have less of a block grant to spend on other things. The department hates to make mistakes and they pride themselves on their accuracy. They issue over \$633 million of benefits through their eligibility system. Most of the errors are in the food stamp program. They can't do anything about the recovery of department errors in food stamps, because federal law directs that. In the two programs covered in the bill, childcare and TANF, they process around 30,000 applications. They don't like making mistakes or collecting money when they make the mistake. These are people who can scarcely afford to have their checks reduced. The bill has been changed to address the issue where someone received two checks.

Questions from Committee Members and Responses:

SEN. BUTCHER asked about the fiscal note where \$154,000 is reflected back onto the intentional program violation and that is where the recipient has deceived. He wondered if that is still collectible.

Mr. Hudson advised any intentional violation on behalf of a client isn't affected by this bill.

SEN. BUTCHER asked why it is reflected in the fiscal note.

Mr. Hudson explained the only area they have really good data is food stamps. They broke out all the errors in food stamps, and a certain percentage of the errors are intentional program violations, a certain number are non-intentional errors by the client, and 25% of the errors are department errors. It is only in there to demonstrate the methodology they use to calculate department errors.

SEN. BUTCHER asked if the fiscal note is irrelevant to the bill.

Mr. Hudson indicated the fiscal note just shows how they calculate department errors.

SEN. BUTCHER asked about his best guess.

Mr. Hudson replied about \$22,000 a year.

CHAIRMAN ZOOK noted that is quite a bit different than the fiscal note.

REP. KAUFMAN advised there is a new fiscal note that has been developed and she signed it. She didn't know why the committee didn't have it.

SEN. BUTCHER asked if it reflects the \$22,000.

REP. KAUFMAN replied it is \$21,500 each year.

SEN. JOE TROPILA asked how much money is spent pursuing these departmental errors.

Mr. Hudson advised in the TANF and childcare programs, not too much time is spent. It would be one less burden to not have fair hearings, etc. Food stamps is the giant of all the overpayment.

SEN. DEBBIE SHEA asked about errors in the Post Employment Training and Education program.

Mr. Hudson explained PETE was a program that used TANF money to assist people to pursue training and education so they could make a decent living and get off welfare. They made payments to people, and initially they felt those payments wouldn't count as income under the food stamp block. When they discovered they were going to have to count that as income, they called all their supervisors and thought they had trained them thoroughly on making sure when they make this payment to someone, it is counted as income and their food stamps are reduced. Somewhere between the supervisor and the line worker, that was not communicated accurately, or it was too late. A number of people had food stamps issued as if this PETE payment was not income, and the food stamps had to be recovered. The food stamps program allows the recovery of over-payments at 10% or \$10 a month, whichever is more. It was a breakdown in training and communication.

SEN. SHEA said it could be established it wasn't on the part of the recipient. Of the \$21,455, she wondered if that is where federal responsibility and accountability comes in.

Mr. Hudson advised the \$21,455 is TANF money that they would have paid, but based on department error they would no longer bring back. That is the cost to them, but it's out of their block grant. It isn't something the legislature needs to pay for over and above appropriating the federal block grant.

SEN. SHEA said the impetus for her getting involved in it was one of her constituents.

Mr. Hudson thought \$200 to **DPHHS** isn't a lot of money, but \$200 to the families they serve is the difference between being in their home and an eviction.

SEN. MCCARTHY asked if the errors were basically due to lack of communication and training of his own staff.

Mr. Hudson explained in that case, at the last legislative session, they had to put together sixteen new programs between the end of April and July 1 for TANF 2-R, and they didn't communicate clearly on how to count this money for food stamps. That was an exceptional situation. The mistakes that are made routinely are due to workload. They don't make very many, and if this bill passes, they will be encouraged to make even fewer mistakes.

SEN. MCCARTHY said she didn't understand why the checks aren't the same size each month, because their application should have the same information. Once it is submitted and approved, the check would be expected to be the same amount all twelve months.

Mr. Hudson advised sometimes a mistake is made on the very first calculation. That is one of the reasons the House wanted to limit it to three months. People are responsible to report any changes they have in income. Many of the child and TANF people served work different hours each week, and they have to report it.

SEN. MCCARTHY asked if work conditions or a change in jobs would change the amount of help they get from the department on a weekly basis.

Mr. Hudson indicated that was correct.

SEN. LAIBLE asked about the benchmark of 150%, and how long it takes to discover making double payments.

Mr. Hudson replied about six hours and the horror spread through the department.

SEN. LAIBLE asked how long it would take to find a normal error.

Mr. Hudson advised the two programs require monthly visits from participants, and payments are recalculated.

SEN. LAIBLE asked if that is part of the monthly procedure.

Mr. Hudson said most of the monthly visit is about how they are doing getting a job or education. They also look at the benefit, but will probably do a more thorough look at this point.

SEN. SCHMIDT asked about unemployment insurance and the mechanism for payback.

Jerry Driscoll, AFL-CIO said it is in the law. It says if they overpay, it's the department's fault and they get the money back. But it is never more than 50% of any week which the department may waive if hardship is claimed. There are administrative rules that prove hardship. There is a six month wait and then a recipient produces income tax or wage records. If there is a hardship, the re-payment is forgiven. If you work part time, there is a card to fill out and send back to the department about how much money is made in any given week. Yearly, they check the national social security records against what was reported. If an overpayment is the department's fault, they make arrangements for a payment schedule, but if there is hardship, you have six months to prove it.

SEN. SCHMIDT asked about the procedure for hardship cases.

Mr. Hudson advised if it is an overpayment because of an inadvertent error by the participant, they are notified in writing their benefit will be reduced and they have a right to a hearing. Prior to the hearing, they have the right to an administrative review. Generally, in the administrative review, if they request a payment plan, the department will take a small amount out of the check over an extended period of time.

SEN. SCHMIDT asked about the procedure for department error.

Mr. Hudson indicated he meant if it's the department's fault.

Closing by Sponsor:

REP. KAUFMAN closed on the bill. She recognized this department is under a lot of stress. They don't make a lot of errors given all the circumstances and the huge amounts of money they deal with. This is not a bill to punish the department for making errors, it is to recognize there are families under even more stress. If small amounts of money can be forgiven when the department is at fault, it should be done. She described an example of caseworker error and the effect on the recipient.

{Tape: 4; Side: A}

ADJOURNMENT

Adjournment: 11:05 A.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs54aad)