

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

**JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC
SAFETY**

Call to Order: By **CHAIRMAN TIM CALLAHAN**, on January 24, 2005 at
8:00 A.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Rep. Tim Callahan, Chairman (D)
Sen. Trudi Schmidt, Vice Chairman (D)
Sen. Keith Bales (R)
Sen. Steven Gallus (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. John E. Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Brent Doig, OBPP
Shannon Scow, Committee Secretary
Shane Sierer, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: HB 2; Department of Labor and
Industry
Executive Action: None

Hearing: Department of Labor and Industry

{Tape: 1; Side: A; Approx. Time Counter: 2.9 - 12.9}

Keith Kelly, Commissioner of the Department of Labor and Industry, gave an overview of the Department of Labor and Industry, explaining that the purpose of the department "is to promote the well being of Montana's workers, employers, and citizens, and uphold their rights and responsibilities." This mission is supported through the Workforce Services Division, the Unemployment Services Division, the Business Standards Division, Employment Relations Division and Centralized Services. **Mr. Kelly** emphasized through his testimony the success the department has had with increasing the time in processing claims and licenses. He also explained that the committee will hear about the Employment Security Account (ESA) throughout the hearing; the department is asking that the committee transfer programs within this account to the general fund. His testimony is given in Exhibit 1.

EXHIBIT (jch18a01)

Montana Worker's Compensation Court

{Tape: 1; Side: A; Approx. Time Counter: 12.9 - 29.1}

Mike McCarter, Montana Worker's Compensation Court, explained that the Worker's Compensation Court travels statewide to handle cases on worker's compensation, occupational disease, independent contractor and employment preference disputes. In most cases constitutional issues are the basis for the dispute. The court is funded by a state special revenue account supported by worker's compensation. Exhibit 2, Page 1 gives a comparative workload snapshot from 1993 and 2004. **Mr. McCarter** highlighted the large number of cases ending in settlement conferences. Statistics relating to decisions handled by the court are on Exhibit 2, Page 2.

EXHIBIT (jch18a02)

The result of the increasing number of settlement cases means a shift of responsibility within the staff of the court. The significant rise in combined workload has been handled by current staff but they are maxed out. He added that current staff are also taxed by "current fund" cases, in which a plaintiff becomes eligible for additional compensation. These cases involve summoning multiple claimants to benefit all parties that are owed compensation.

He then referred to D-154 of the Legislative Fiscal Division (LFD) Budget Analysis for an explanation of decision packages (DP's). The DP's are for an additional experienced staff attorney and additional funds for travel and court reporters due to the increased number of trials.

Discussion:

SEN. SCHMIDT asked, "What other medical issues are increasing in court cases besides asbestosis?" **Mr. McCartney** replied that the court deals with a number of cases that determine if there was additional injury that has been aggravated from the original injury suffered at work.

SEN. BALES asked Mr. McCartney to elaborate on the end result of petition cases. **Mr. McCartney** responded that these cases are withdrawn, dismissed or settled; many do settle.

SEN. BALES inquired, "Why are there an increased percentage of cases going to trial when there are an increased amount of settlement conferences?" **Mr. McCartney** noted that there are approximately 12,000 mediations every year, in which the easy cases are settled. The cases that need litigation are simply increasing.

REP. HAWK asked for clarification on the common fund cases. **Mr. McCartney** stated that these are class-action suits in which, for example, a plaintiff injured by pesticide asks for benefits from the manufacturer. The plaintiff brings these claims not only for himself or herself, but also for other injured parties. The supreme court has ruled that 100% of the claimants must be paid, so the court must identify all old claimants related to the case.

Workforce Services Division

{Tape: 1; Side: B; Approx. Time Counter: 6.9 - 17.1}

Ingrid Childress, Administrator of the Workforce Services Division, stated that the Workforce Services Division supports Montana's businesses, employers, and individuals seeking employment opportunities. Her testimony is given in Exhibit 3. She also distributed Exhibit 4, which shows bureaus within the Workforce Services Division and the services they provide. Employment seekers can look for work at employment agencies distributed throughout the state or on the web.

EXHIBIT (jch18a03)

EXHIBIT (jch18a04)

Funding for the Division comes from federal, state special and the general fund; federal funding accounts for over 70 percent of funding. **Ms. Childress** then gave a history of the ESA, beginning on Exhibit 3, Page 7. This was established to address federal funding shortfalls in employment services. The ESA is funded by an employer tax on employees' unemployment insurance taxable wages. The ESA keeps local workforce services available during funding shortfalls, including apprenticeship and training programs. The Displaced Homemaker's Program and Jobs for Montana's Graduates are historically general fund programs, but were placed in the ESA during the budget crisis. The Department of Labor and Industry is asking for a funding switch for these two programs. This switch is requested in DP 1, and is the Division's most critical issue. She distributed Exhibits 5 and 6 for more information on the Workforce Services Division.

[EXHIBIT \(jch18a05\)](#)

[EXHIBIT \(jch18a06\)](#)

Discussion:

REP. HAWK asked for specifics on the Displaced Homemaker's Program. **Ms. Childress** replied that this program provides counseling, training, jobs and health care for people who have lost the income upon which they have been dependent. She added that a description for Displaced Homemakers as well as Jobs for Montana Graduates begins on Page 8 of Exhibit 3.

Unemployment Insurance Division

{Tape: 1; Side: B; Approx. Time Counter: 19 - 29.5}{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.4}

Joanne Loughney-Finstad, Program Support Bureau Chief of the Unemployment Services Division, informed the committee that the Unemployment Services Division helps citizens make the transition when they have experienced a job loss through no fault of their own and are unable to find other work. She referenced Exhibit 7, Page 3 for an organizational chart showing the Claims Processing Bureau, Contributions Bureau, Benefits Bureau and Program Support Bureau. She stated that the Division paid out almost \$97,000,000 in 2004, which is then spent in local communities on living costs such as medications and groceries. The claims workload, benefits paid, average length on unemployment insurance (UI), active employers, contributions collected and the UI trust fund balance

are outlined in Exhibit 7. She commended the Division for an internet claims project that will be made available on February 7, 2005. This will provide more access to claims after 5 P.M.

EXHIBIT (jch18a07)

The Unemployment Services Division DP's begin on D-130 of the LFD Budget Analysis. DP 5 completes the transfer of the Contributions Bureaus from the Department of Revenue. The DP includes appropriation for vehicles, FTE, rent and operating costs needed to run the bureau. She requested that an amendment is added to this DP for a funding source switch from federal funds to state special revenue. The switch is needed because federal funds cannot be used to collect a state tax. DP 7 includes three FTE, two customer service representatives to handle increased workload and to reduce wait time for customers, and a collection technician to follow-up unemployment insurance fraud.

REP. WITT asked if any employees are contracted. **Ms. Loughney-Finstad** replied that information technology services are contracted, as well as temporary seasonal workers.

Centralized Services Division

{Tape: 2; Side: A; Approx. Time Counter: 8.3 - 10.4}

Tammy Peterson, Administrator of the Centralized Services Division, directed the committee to D-136 of the LFD Budget Analysis for the Division's DP descriptions. She explained that the Division includes the Office of Legal Services and the Hearing Bureau. The Office of Legal Services handles all aspects of legal services for all divisions within the Department of Labor and Industry. The Hearings Bureau provides administrative hearing and dispute resolution services. The Division is 66 percent proprietary. Centralized Services is asking for approval of an eight percent rate increase for each year of the biennium.

Discussion:

SEN. BALES commented that the rate increase seems high and asked for an explanation of the increase. **Ms. Peterson** explained that the charge is for centralized services costs for providing services over the Department's personnel services. This rate is lower than the 10 percent increase requested last biennium. She stated that this biennium's request is lower because of more staff within Centralized Services to deal with requests. She can supply comparative rates upon request.

Employment Relations Division

{Tape: 2; Side: A; Approx. Time Counter: 12.2 - 26.1}

Jerry Keck, Administrator of the Employment Relations Division, stated that the Division's ultimate goal is to create a healthy working environment between employer and employee. The Division's organization and department duties are explained in Exhibit 8, beginning on Page 2. The Division handles human rights and worker's compensation disputes, with over 80 percent settled with mediation. The Worker's Compensation Bureau also assists customers with filing complaints and obtaining benefits. The Occupational Safety and Health Bureau provides safety inspections and training for employers. The Human Rights Bureau investigates complaints and trains employers. He noted that most complaints end in informal processes. The Labor Standards Bureau handles wage and hour complaints.

EXHIBIT (jch18a08)

REP. WITT inquired about what is inspected for gravel pit and crusher operations (Exhibit 8, Page 11). **Mr. Keck** replied that inspections are mostly for noise and dust. **REP. WITT** asked if there was an overlap on inspections with Mine Safety and Health Administration (MSHA). **Mr. Keck** said that there is no overlap because his agency only inspects sand and gravel, not mines. He added that the Department of Environmental Quality orders these investigations when an operation moves from site to site. **REP. WITT** requested a budget from Mr. Keck.

Mr. Keck then explained DP's for the Employment Relations Division, which begin on Exhibit 8, Page 20 and D-140 of the LFD Budget Analysis. He added that DP 9 includes operating costs for the Board of Personnel Appeals and Human Rights Commission, which are zero-based items. DP 10 pays for the contracted medical fee schedule, based on American Medical Association standards. This appropriation is to convert to the Resource Based Relative Value System (RBRVS) as used by other states; this is also used by both Medicaid and Blue Cross Blue Shield. The Division hopes to streamline fees for services with like entities.

Business Standards Division

{Tape: 2; Side: B; Approx. Time Counter: 5.3 - 16.2}

Jim Brown, Administrator of the Business Standards Division, encompasses the Building Codes Bureau, Business and Occupational Licensing Bureau, Health Care Licensing Bureau, and Weights and Measures Bureau. These bureaus provide health, safety and

welfare to the public by regulating construction and business practices. Exhibit 9 details of the bureau's duties and descriptions. Business licenses can be viewed and renewed online through this Division.

EXHIBIT(jch18a09)

Mr. Brown added that all programs with the Business Standards Division are funded by state special revenue, with no general funds. Their DP's are on D-147 of the LFD Budget Analysis. DP's 11, 12, 13 and 14 are bureau base adjustments and DP 18 is an appropriation for the legal contingency fund.

Discussion:

REP. WITT referred to Exhibit 9, Page 4, stating that he has received letters from constituents since the Board of Barbers and Cosmetologists have been combined. He inquired, "Has this issue been resolved?" **Mr. Brown** replied that this has been resolved with the change of some administrative rules that benefitted both groups.

REP. WITT said, "If a person lives and is licensed in a rural community but has to leave for an emergency, is there any stipulation that allows a short-term hire without a license?" **Mr. Brown** responded that he is not aware of any emergency provisions, but believes a license is needed. **REP. WITT** noted that he has heard complaints from Hill County and Havre that in small communities an "expert" that does not have money for a license may be available to fill in for a person who must leave on emergency status. He asked if there was any chance for revision. **Mr. Brown** replied that he would be happy to chat with **REP. WITT** when time allows about need of revision.

SEN. SCHMIDT inquired if DP 18 is re-establishing this fund, and also if this fund is typically used. **Mr. Brown** responded that this contingency fund is requested every session as a one-time-only appropriation. He added that since he has been with the division the fund has been used two or three times.

SEN. SCHMIDT asked how the Division determines if a licensing falls under the Business Standards Division or Department of Health and Human Services. **Mr. Brown** stated that the legislature has made that decision and that there are not guidelines determined by the Division. **SEN. SCHMIDT** stated that it is unclear why the Business Standards Division should license certain programs. **Mr. Brown** replied that he is also not aware of these standards.

Governor's Commission on Community Service

{Tape: 2; Side: B; Approx. Time Counter: 25.7 - 29.5}{Tape: 3; Side: A; Approx. Time Counter: 0 - 4.1}

Will Soller, Governor's Commission on Community Service, works to encourage citizens to engage in service, expand service opportunities for all Montanans, and involve youth in the life and work of communities. This commission coordinates the Governor's Award on Civic Engagement, Governor's Conference on Civic Engagement, AmeriCorps Grant, Grant Planning, and training. These programs are explained in Exhibit 10. He noted that Montana ranks in the top of the nation for time spent in community service; thousands of alumni are involved in strengthening the community.

[EXHIBIT \(jch18a10\)](#)

LFD Comments and Issues

{Tape: 3; Side: A; Approx. Time Counter: 4.1 - 10.6}

Shane Sierer distributed to the committee the Department of Labor and Industry agency profile, Exhibit 11. He explained that the ESA issue, an explanation of which begins on D-121 of the LFD Budget Analysis, is spread between multiple departments. It's purpose and account projections are included in the Budget Analysis. There is a potential \$6.1 million surplus without the proposed increase in the pay plan of approximately 3.5%. The committee needs to determine the public policy and usage of the ESA because with the proposed program switch back to general fund the revenue still exceeds the expenditures. He added that the amendment to DP 5 is shown on Exhibit 12.

[EXHIBIT \(jch18a11\)](#)

[EXHIBIT \(jch18a12\)](#)

Discussion:

{Tape: 3; Side: B; Approx. Time Counter: 8.5 - 20}

SEN. SCHMIDT asked if all programs listed under "August 2002 Special Session" are still under ESA. **Mr. Sierer** pointed to D-123 in the LFD Budget Analysis to show which programs are currently funded under ESA. He added that the Department of Health and Human Services (DPHHS) has recently appropriated \$1

million over the biennium from the ESA for the rehabilitation services.

Keith Kelly explained that the committee has before them a policy decision; the six programs on top of D-122 are the core services of the ESA and will have continued funding with ESA.

SEN. BALES voiced concern that if the ESA funds are expanded from their original intent then the account balance would decrease to the point where taxes that support the fund would have to be increased.

SEN. SCHMIDT asked about further information on when the Reed Act Funds disappeared. **Mr. Kelly** explained that there was a one-time large infusion of money about two years ago, which was used to fill in holes in the Governor's budget. The fund was dissolved because there was no pay plan going into the 2005 legislative session.

SEN. SCHMIDT commented that she has heard of a bill that is out to put limitations on the ESA. **Mr. Kelly** responded that HB 159 proposes limiting the purpose of the ESA so it cannot be used for outside purposes. **SEN. SCHMIDT** asked if the purpose would be limited to the core programs stated earlier. **Mr. Kelly** stated that it would be limited to job service and training programs as decided by the community which supports the fund through taxes.

SEN. SCHMIDT asked for further information on apprenticeship grants. **Engrid Childress** replied that the apprenticeship program creates a contract whereby on-the-job training is given by the employer and classes are taken by the apprentice, ending in a certification of the apprentice.

SEN. BALES clarified that HB 159 will include the core programs as well as vocational education training. **Mr. Kelly** confirmed this statement, adding that this bill has passed the house and will soon be heard in the Senate.

SEN. BALES commented that during the last session extraordinary measures were taken in the budgets and the committee should help in getting things back to where they need to be.

SEN. SCHMIDT asked, "If the account were kept to its core purposes, would the fund be solvent in the long run?" **Mr. Kelly** replied that the current balance is \$6.1 million. By the time the pay plan increase and DPHHS money are taken out, the account will be under \$4 million; this takes the account balance down substantially.

CHAIRMAN CALLAHAN inquired about the purpose of the Research and Analysis Bureau. **Ms. Childress** stated that this is funded by the ESA and is used for surveys and analysis and publication on topics such as unemployment rates and wage analysis.

CHAIRMAN CALLAHAN asked if the Department relates any projects to the higher education system. **Ms. Childress** replied that there is a partnership with the Commission of Higher Education; she noted that while the majority of occupations need secondary education, most only need a two-year degree.

Mr. Sierer directed the committee to D-125 of the LFD Budget Analysis to explain DP's for the Workforce Services Division. He explained that the majority of funding is from federal special revenue. Corrections to DP 999 and DP 1 are shown in Exhibit 12.

SEN. BALES inquired whether additional appropriations are needed besides the base and present law adjustments for the switch of Reed Act funding back to general fund. **Mr. Sierer** responded that the funding has just been changed back to the base from the Reed Act funds.

Mr. Sierer continued with explanation of Department of Labor and Industry DP's on D-127. He added that the commissioner's office will bring the rates that will need approval for the proprietary funds. No further LFD issues on the Department of Labor and Industry DP's need to be presented to the committee.

{Tape: 3; Side: B; Approx. Time Counter: 20.5 - 29.5}{Tape: 4; Side: A; Approx. Time Counter: 0 - 5.5; Comments: Employment Fund}

CHAIRMAN CALLAHAN asked for details for the implications on companies that do not have insurance. **Mr. Keck** replied that there are two sources of funding for the Employment Fund (EF) that supports affected workers; one is reimbursement from companies if the injured party lost wages and experienced medical costs. The second fund is a penalty for the employer for not having insurance and is up to double the amount the business would have had to pay if they had Montana insurance. This fund is sufficient unless there is a major claim. If the fund is depleted the medical bills would be pro-rated and the medical agency will pursue the remaining amount from the injured party.

CHAIRMAN CALLAHAN inquired, "If the fund cannot cover the worker and the worker must pay for the bills, what fund protects the worker?" **Mr. Keck** responded that an action can be brought

against the employer for these fees, but the medical provider will send the bills to the employee.

SEN. BALES expressed concern that a company could end up in double jeopardy if there has already been a settlement and the employee asks for remaining medical costs from the employer. **Mr. Keck** replied that there could be litigation over the manner in which these funds are given. He explained that the wage payments have first claim, then medical bills. These issues become complicated, which is why the Worker's Compensation Court exists.

SEN. BALES asked if a an employer that has a one-million-dollar claimant will be able to reimburse the employee. **Mr. Keck** stated that he is unsure.

SEN. BALES asked, "If the employee takes action and is reimbursed for medical costs, doesn't that free the company from any further medical costs?" **Mr. Keck** confirmed that the company is relieved from further medical costs upon settlement. **SEN. BALES** asked if there was any policy or contingency to await outcomes of litigation. **Mr. Keck** stated that they are currently working with the Worker's Compensation Court to make such an agreement.

CHAIRMAN CALLAHAN asked for assurance that at the end of the matter, the employer that did not have insurance would be responsible for the decided amount. **Mr. Keck** confirmed this statement and added that the employee could come back for further damages. He noted that some businesses have no worker's compensation because they are already financially unstable.

Mr. Sierer returned to DP's on D-147 and D-148, informing the committee that these base adjustments include travel reimbursement for board members.

SEN. BALES asked, "What additional travel is needed?" **Mr. Brown** replied that the additional travel relates to board meetings, committee meetings, and increased staff travel for inspections.

SEN. BALES inquired about the total travel budget. **Mr. Sierer** replied that he has line items for travel but no total. **SEN. BALES** explained that he wants to see what increase has occurred from where the travel budget has been. **Mr. Kelly** informed the committee that the Department has began running longer meetings to minimize travel and to make them more economic.

Mr. Sierer noted that the narrative for DP 20 on Page D-155 is incorrect. They are asking for \$10,000 a year in travel and rent increases that have created an indirect cost for the Centralized

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Services Division. The total request is \$24,000 in FY06 and \$25,000 in FY07. **Mr. Sierer** had no further comments on DP's relating to tomorrow's executive action.

ADJOURNMENT

Adjournment: 11:30 A.M.

REP. TIM CALLAHAN, Chairman

SHANNON SCOW, Secretary

TC/ss

Additional Exhibits:

[EXHIBIT \(jch18aad0.PDF\)](#)