MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 8, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Don Ryan (D)
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: SB 484, 3/2/2005; SB 491, 3/2/2005; SB 439, 3/2/2005; HB 493, 3/2/2005; SB 146, 3/2/2005
Executive Action: None.

HEARING ON SB 484

Opening Statement by Sponsor:

SEN. STEVEN GALLUS (D), SD 37, Butte, opened the hearing on **SB 484,** Increase retirement benefits for firefighters with 25 yrs or more of service. **SEN. GALLUS** indicated this is an equity issue. He did not agree with the fiscal note.

Proponents' Testimony:

Doug Neil, Montana State Fireman's Association, testified a member would have his retirement benefit calculated at 3% after 25 years. He characterized the bill as a career bonus plan. Firefighters cannot do firefighting into their sixties. Firefighters currently pay more into the retirement system than any other employee in the state of Montana covered under a state retirement plan. Firefighters are not eligible for social security. Those hired before 1986 also are not eligible for Medicare. They see this as a way to save cities money. By allowing fire fighters to retire at 25 years at a higher rate, they will be replaced by younger employees, thus driving down the cost.

Pat Clinch, Montana State Council of Firefighters, advised he represents the union members of the Firefighter's Unified Retirement System (FURS). They believe by allowing firefighters to retire after 25 years at a higher rate, it will increase promotional opportunities for younger firefighters. One reason firefighters now stay longer than 25 years, is the need for additional retirement monies for insurance purposes. One of the other provisions under the Social Security Act is that firefighters who work at outside employment or work another career after they retire, only get thirty percent of the amount they should be getting when they reach Social Security age and start drawing Social Security. They believe this is an equity issue.

REP. BOB BERGREN repeated they don't look at this as an increase in retirement, but more as a career bonus option. As people reach eligibility age, the insurance factor has become a reason not to retire. The bill would help turn firefighting back into a young person's game. It is a hazardous profession and their life spans are lower than average. They pay one of the highest out-of-pocket rates for the same benefits as others in state retirement systems. He said it is nice to have senior members stay if the incentive is there. He cited the importance of institutional knowledge.

Kurt Bushnell, Montana State Firemen's Association (MSFA), advised, in 2001, police officers were offered a benefit option called the draw program. This is a way to extend the careers of firefighters who are still effective in their communities and reward them for it.

Opponents' Testimony:

Mike O'Connor, Public Employees Retirement Administration, opposed the bill because of an equity issue and because the bill increases the unfunded liability to the retirement system. He handed out and explained summary tables of all the retirement plans for which the state is the plan sponsor.

EXHIBIT(fcs51a01)

He explained a worksheet that showed an example of increased benefits with SB 484.

EXHIBIT(fcs51a02)

He contended if the committee feels this is an important benefit to provide, then contributions should be increased to pay for it. Another issue is if this is good for the firefighters system, there are four other public safety systems that have the same per year of service. The actuary is recommending, based on the funding status to these systems and the expectation of losses in the future, that all new legislative proposals include a provision for financing the entire cost of the proposal.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BOB HAWKS asked about the Medicare provisions. **Mr. O'Connor** advised, on April 1, 1986, the Social Security System changed and all new hires were covered for Medicare; existing employees were not.

SEN. GREG LIND asked if any of the other categories are in the same position with respect to Medicare and Social Security. **Mr. O'Connor** indicated municipal police officers and highway patrol are not covered by Social Security; sheriffs and game wardens are covered.

SEN. RICK LAIBLE questioned whether the individuals who are not covered have not paid into the system and **Mr. O'Connor** replied, yes. **SEN. LAIBLE** asked **Mr. Bushnell** about a similar proposal for police officers in 2001. **Mr. Bushnell** advised that proposal

passed the Legislature in 2001. It was revised in 2003 and in the current session. The program allows police officers to continue their service within the municipality that they serve in an effort to keep experienced officers on the street, as opposed to the training issue and the cost of getting new officers up to speed. It is a way for them to defer their retirement for a designated period of up to five years.

{Tape: 1; Side: B}

SEN. LAIBLE asked a further question and was told the program allows them to continue to work and draw their retirement at the same time. **SEN. LAIBLE** asked if their rate still stays at 2.5% of the average of their wages. He was told their benefits do not accrue during the five years of deferred retirement.

SEN. DAN WEINBERG asked **Mr. O'Connor** about a comparison of percentage of contribution to retirement benefit for the various groups. **Mr. O'Connor** pointed out Table 5 of the handout. The majority of employees pay 10.7%. The state contributes 32.61% of compensation into the firefighters' retirement. **SEN. WEINBERG** asked about the total available contributions as a percentage of payroll and how that relates to the benefit. **Mr. O'Connor** indicated, based on the benefit structure today, if there were no unfunded liabilities, 26.12% would be needed to pay that benefit. The other 31.53% comes into the system to pay off unfunded liabilities. That is paid by the employee, the employer, and the state.

CHAIRMAN MIKE COONEY asked **Mr. Neil** about his concerns about the fiscal note. **Mr. Neil** said they believe the fiscal note is correct. **CHAIRMAN COONEY** questioned if 5.68 percent in additional compensation would need to be authorized. **Mr. Neil** said they understand there is a need for an increase to keep the system sound. They believe it could run out the unfunded liability. The unfunded liability has increased over the last couple of sessions when the market was down. He thinks the market will stay on the upswing and the unfunded liability will go down and stay within the thirty-year parameter.

SEN. GREG BARKUS asked how **REP. BERGREN** will explain to teachers in his district that he came down here and fought for an increase in the firefighter pension which will be double what teachers are getting in their retirement benefit. **REP. BERGREN** thought a bill should stand on its own merits and the Legislature is working diligently on the Teachers Retirement System. There are problems with the school funding system as well as the health insurance program for teachers. Regarding the fiscal note, the actuary used a smoothing so the numbers don't spike up and down when they

do the actuarial figures. In the last three years, the numbers are the worst they have looked in many years. He hoped they can address the issue of the unfunded liability. **SEN. BARKUS** referred to the $667 increase for the fireman's average monthly benefit which is over 50% of what teachers get. He asked how they can justify that if they vote for this bill. **REP. BERGREN** replied there has been a dramatic flaw in the Teachers Retirement System for quite a few years. It is called back-end loading; they take the average final compensation, three years of comp time, two years of vacation, and a certain percent of sick leave, and all that money is paid in the last month or year. That inflates the amount of money they are allowed to take out of the system and is a structural imbalance that has been in the system for several years. There are protections in the Firefighters Retirement System to prevent that.

SEN. JOHN ESP asked **Mr. O'Connor** what the fiscal note would look like in the out years. **Mr. O'Connor** said the 32% is current law and that is why it is not in the fiscal note. The actuary is saying if contributions are increased by 5.68% that $21.2 million is what would be collected. That is what additional revenue is needed. **SEN. ESP** asked if the $1.2 million would increase incrementally or is it based on inflation. **Mr. O'Connor** replied it is a percent of salary; as salaries increase, so does the percentage.

Closing by Sponsor:

SEN. GALLUS offered to lower the three percent to make the fiscal impact much less. They could make the three percent only applicable to the extra five years that the firefighters would work. He urged the committee to resist comparing this to teachers, game wardens, or peace officers.

HEARING ON SB 491

{Tape: 1; Side: B; Approx. Time Counter: 17.8}

Opening Statement by Sponsor:

SEN. STEVEN GALLUS (D), SD 37, Butte, opened the hearing on **SB 491**, Revise benefits and definitions in firefighters' unified retirement system. **SEN. GALLUS** referred to the language on line 23 which would include overtime in how benefits are calculated at the end. Page 2, line 19, refers to the highest average compensation. This is the difference between taking the final three months of employment and averaging 36 months as compared to the best three years ever. Using the highest 36 months would

allow mobility within the system and make the system stronger overall.

Proponents' Testimony:

Kurt Bushnell, Montana State Firemen Association, (MSFA), testified this is an equity issue, with some concessions. All the other retirement systems, except police officers, enjoy their retirement benefits compensation based on overtime, holiday pay, comp time issues, and payments in lieu of sick leave. On page 1, line 23, the concessions are excluding holiday pay, shift differential, compensatory time, and payments in lieu of sick leave. This legislation just includes the overtime. He referred to some issues with the fiscal note. Their information shows that firefighters' overtime budgets were much less than police officers in the big seven cities. He noted a bill by the police officers this session will include the shift differential, overtime, and holiday pay. He urged support for the bill.

Doug Neil, Montana State Firemen's Association, addressed the fiscal note. The seven largest fire departments in the state of Montana represent approximately 350 of the 438 members in the FERC system. Of those 350 members of the seven largest departments, their overtime budgets for the current fiscal year represent $626,000. The fiscal note shows a figure of $2.177 million. He did not think the other departments would make up the other 72%. As **REP. BERGREN** alluded to in the prior bill, overtime has been excluded from retirement benefits because in the past they had final month compensation. Currently, they use final average compensation over 36 months and they want to change that to the highest average compensation. **Mr. Neil** testified he is a captain in Great Falls, one of the largest departments but one of the least paid of the largest departments. He said he would be precluded from going to Livingston, Lewistown, or any of the smaller departments, to apply for a fire chief's job. His career goal is to go out as a fire chief and he has taken extensive training. For his family's well being, he will not be able to continue his career at a smaller department and be able to share his knowledge. For city employees, other than police officers, overtime benefits are included in the calculation for retirement. Firefighters do not get a lot of overtime, and they do not see a huge increase to the city in paying for retirement.

Pat Clinch, Montana State Council for Professional Firefighters, stated support for the bill. Many of the fire departments in Montana are understaffed. Some overtime budgets are large because departments are balancing their budgets by working longer hours. Current firefighters in Montana work 45-48 hours per week on average. When they do get overtime, it is straight time pay.

They feel they are entitled to this being considered in the retirement benefit.

{Tape: 2; Side: A}

REP. BERGREN, observed the fiscal note assumes that every member would receive $5000 annually in overtime. This is disputed by the facts and they will attempt to provide a sponsor's fiscal note. Not all of the overtime that is paid is on a time-and-a-half basis. Many times it is paid time-and-a-half for a middle of the night call. If it extends beyond two hours, it drops back to straight time. He said he made about $1000 in overtime last year. Some of the smaller departments such as Kalispell, Miles City, Livingston, and Havre have fire-based ambulance services. The number that work with those are limited. They strongly disagree with the fiscal note. There is more accurate information that can be provided.

Opponents' Testimony:

Alec Hansen, League of Cities and Towns, expressed appreciation for the fire service and the good service they provide. He did not think the bill is affordable. The fiscal note indicates additional employer contributions of $325,000. HB 426 provides a similar benefit to police officers. Together with that bill, the total annual cost will increase employer contributions for cities and towns in excess of $500,000 a year. In 1510-420, the Property Tax Limitation Act, cities and towns are allowed to increase their tax-financed budgets by one-half the rate of inflation. One half the rate of inflation for the cities is about one percent. This bill and the police bill will eat up the inflationary adjustment in the property tax law beginning in 2005 and every year thereafter.

Informational Testimony:

Melanie Symons, Public Employee Retirement Board (PERB), said when viewing legislation the Board considers whether there is an additional cost to the retirement system that is being funded by the bill. Unlike the previous bill, it appears from the actuarial evaluation there is little actuarial impact. The Board has a concern regarding whether the bill will result in consistency in the definition of compensation. A chart showed the definition of compensation for different retirement systems.

EXHIBIT(fcs51a03)

The firefighters include payments in lieu of annual leave and the police do not. The remaining public safety systems exclude only

maintenance, allowance, and expenses from their definition. The Board encourages the committee, if the bill passes, to bring this more in line with the other definitions of compensation and to add shift differential and holiday pay to the definition as well. This would result in consistent definition for all systems, would make administration easier, and would prevent other retirement systems from coming back to the Legislature to ask for the same things previous retirement systems have gotten. The Board acknowledges they do not have all the necessary information to determine compensation. There is a lack of data regarding the expected increase in compensation due to the addition of overtime. The Board's fiscal services bureau chief has contacted twenty-two of the first and second-class cities regarding the amount budgeted for overtime, holiday pay, and shift differential. Overtime alone increases compensation, according to these cities, by $1,186,852 which is approximately a 5.92% increase in compensation. Changing the definition of compensation to include overtime, holiday pay, and shift differential would increase the compensation for those cities by $1.4 million or seven percent. The same change for the police, in HB 426, would increase compensation for the police by $2,410,000, which is a 9.825% increase in compensation. The firefighters want to change the final average salary to highest average compensation. The police and the firefighters are the only retirement systems that still use final average salary. If the Legislature believes this change is appropriate for the firefighters, this is also appropriate for the police. The Board asks that the change be made for both systems

Questions from Committee Members and Responses:

SEN. ESP asked if the change from the final average to the highest average and including overtime in compensation would allow picking up the months where there was the most overtime in the last four or five years and pulling them together. **SEN. GALLUS** didn't know if it allowed using the best three months ever, but thought they had to be grouped together. **REP. BERGREN** said it was any consecutive 36 months. **SEN. ESP** asked **Mr. O'Connor** for clarification. **Mr. O'Connor** confirmed it is 36 consecutive months. **SEN. ESP** asked if that is something that is understood or if it is defined. **Mr. O'Connor** indicated the definition of compensation would say what highest average compensation is.

SEN. LIND asked about the impacts that component of the change would have on the fiscal note. **Mr. O'Connor** advised usually the last 36 months is the highest 36 months. In theory, there is no cost.

SEN. LAIBLE asked **Mr. Hansen** about the collective bargaining process where the retirement benefits and wages are negotiated. **Mr. Hansen** advised the negotiations are between the cities and the fire unions. Pension benefits are set in statute by the Legislature.

SEN. ESP asked if the percentage of pay set is in statute or negotiated. **Mr. Hansen** said the pension programs were established and controlled by the Legislature and are set in statute.

Closing by Sponsor:

SEN. GALLUS stressed the fiscal note is inaccurate regarding overtime. He is trying to make communities better. This brings the police and fire service up to speed on their compensation packages. This is about equity. He indicated the proponents would be available.

HEARING ON SB 439

{Tape: 2; Side: A; Approx. Time Counter: 21.4}

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT (R), SD 23, Roundup, opened the hearing on **SB 439,** Participation by certain employers in firefighters' unified retirement system. **SEN. GEBHARDT** distributed a report from **Sheri Heffelfinger, Legislative Services Division.**

EXHIBIT(fcs51a04)

SEN. GEBHARDT advised SB 439 allows fire districts to be under the Firefighter's Unified Retirement System. In the initial hearing on the bill there were a number of proponents. **Kelly Jenkins, Public Employees Retirement Board,** testified in favor of the bill. Revenues increased in the insurance premium tax. In 2002, there was $22 million going into that fund, and now there is $28.7 million.

Proponents' Testimony:

Mike O'Connor, Public Employees' Retirement Administration, stated support for the bill and characterized it as a policy issue. He said it is a matter of good retirement system design. If there are employees in the state who are paid firefighters, they should be in a public safety system. Currently, these

individuals are in the Public Employee Retirement System (PERS). They are similar to city firefighters and should be in the Firefighters Unified Retirement System. The bill does not create any unfunded liability.

Scott Waldron, Frenchtown District Fire Chief, articulated a request for equal pay for equal work. The current retirement system is a thirty-year retirement program with limited benefits. Some may have to stay in the system until age 65, when it is difficult to do the work, to obtain a full retirement. It is difficult to compete with other departments for new hires.

Brett Waters, Belgrade Fire Chief, advised this is the fourth session in which the fire districts have asked for a fair and equitable system for retirement for all firefighters in the state of Montana. The risk and the job are the same. The ability to hire new firefighters is hampered.

Bob Fry, Volunteer Fire Chief, Livingston, expressed support for the bill. He has a mixed department and it is a challenge. He pointed out in some smaller departments there are one or two career people. There is the expectation that they not only fight fires, but also act as administrators. The bill corrects inequities.

{Tape: 2; Side: B}

John Semple, Montana Fire Alliance, represents five of the fire service organizations in the state. He stated support for the previous testimony.

Pat Clinch, Montana State Council of Professional Firefighters, advised the first time he was apprised of the situation of rural firefighters who were not in the Fire Fighters Unified Retirement System was in 1997, by **SEN. CAROLYN SQUIRES.** She asked about a provision to allow the Missoula Rural Fire Department and the Missoula Fire Department to consolidate. One of the problems was the retirement issue. Some legislation was enacted in 1997 that allowed those firefighters to be city employees. That hasn't happened and this is the fourth session where they have tried to get rural firefighters into the FURS. The system was created, in 1981, to bail out several municipal fire department relief organizations that were about to go bankrupt. It took all the consolidated assets of the other remaining cities put together to create this new system. At that time, he didn't think it could have been expanded to include the rural firefighters. Now that the system is a little more actuarially funded, it is the right time to do this, he contended. These firefighters do the same job as those in municipal fire departments. Some of these

departments have coordinated and immediate responses with municipal and rural fire fighters working at the same call on an equal basis. In 1899, the insurance premium tax was used to fund the firefighters retirement system after an explosion in Butte that killed thirteen firefighters. The system was designed so once the money used for the retirement system was used up, the remainder would revert to the general fund. If they had continued to use the insurance premium tax in that way, he didn't think there would be an unfunded liability in the firefighters' retirement system.

Kent Bushnell, Montana State Firemen's Association, testified about working with district fire departments. Bozeman has a mutual aid agreement with Belgrade. He had the opportunity to fight fire with Chief Waters over the years. He described the chief as one of the most educated, well-trained, gutsy firefighters he ever had the opportunity to work with. He had also worked on wild land fires. They do the same work he does and it is only fair to afford them the ability to join the retirement system.

Doug Neil, Montana State Firemen's Association, advised retention, along with recruitment, is also a huge issue due to the retirement issue.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. KEN HANSEN, referred to line four of the bill and cited a concern with the word "certain". He asked what that word actually means. **SEN. GEBHARDT** advised there are fire districts within the state that are all volunteer and some with volunteers plus some hired personnel. This would only apply to those with hired employees.

SEN. ESP thought private firefighting companies would not qualify. **SEN. GEBHARDT** indicated there are private firefighting companies and they wouldn't be eligible. **SEN. ESP** asked **Mr. O'Connor** how many participants in PERS are rural. **Mr. O'Connor** advised they estimate there are ninety-four paid professional rural fire fighters. Not all of them are expected to elect in to the system. **SEN. ESP** asked if the effect on the PERS system would be negligible. **Mr. O'Connor** indicated there are 30,000 employees in PERS. **SEN. ESP** said the effect would be in the employee contributions, and the state general fund contribution would change considerably. **Mr. O'Connor** confirmed that was

correct; employee, employer, and the state contributions would be affected. **SEN. ESP** asked about the impact to the state general fund. **Mr. O'Connor** advised it is $1 million. Rather than the 32% that is requested now from the general fund, it is moved into a state special revenue fund. **SEN. ESP** asked what the net fiscal impact on the state, both special and general, increased contributions will be. **Mr. O'Connor** replied $1 million.

SEN. TRUDY SCHMIDT inquired who the "certain" people are. **Mr. O'Connor** said it refers to departments that are public agencies. **SEN. SCHMIDT** said some rural fire districts are under PERS and some are not. **Mr. O'Connor** indicated if they are a public agency they are covered under PERS. He did not know of any that are not. **SEN. SCHMIDT** asked about the differences. **Mr. O'Connor** replied the differences are in the formula. In the firefighter's system, someone can retire after twenty years with fifty percent of their average salary at any age. More important is the disability benefit. In the firefighter system, someone would receive fifty percent of their average salary if they became disabled. **SEN. SCHMIDT** asked why some are choosing to stay in PERS. **Mr. O'Connor** said it is how the law is structured. Unincorporated areas are only allowed to be covered under FURS and this bill allows that option.

SEN. ESP asked if about seventy-five would opt to be covered under FURS. **Mr. O'Connor** replied in the affirmative and advised it might not be advantageous for those nearing retirement. **SEN. ESP** said there would be state costs of about $15,000 per year per firefighter plus increased fire district costs. **Mr. O'Connor** said that is correct.

SEN. LAIBLE asked if both of these systems are similar or if PERS includes payments for Social Security and Medicare. **Mr. O'Connor** responded the majority of those in PERS are covered under Social Security. In the 1950s, when they started covering local government, the local government had the option of PERS and the majority of local governments in Montana are covered. There may be small local governments that are not.

SEN. JOHN COBB stated that, under this bill, firefighters hired after July 1, 2005, would become members of the FURS instead of PERS. Under Assumption 7, it is estimated that this provision will affect 94 employees that are already hired. **Mr. O'Connor** clarified if the individual rural fire district elects to be covered with this provision, any new hire would be covered after July 1. The 94 would have the option. **SEN. COBB** wondered whether just the new ones could be covered in order to get the cost down. **Mr. O'Connor** said, in the 2001 session, they did

something similar to the Montana Air Guard Firefighters. New hires after October 1, 2001, would be in FURS and the current ones would stay in PERS. There is an active lawsuit that says that is impairment of the contract. He said he would rather not go down that road.

SEN. LIND asked if there is a way to phase this in. **Mr. O'Connor** indicated the 94 people would be given the option of electing or not electing but also the option of starting new service in FURS. With whatever money they had in PERS, they could buy service in FURS.

Closing by Sponsor:

SEN. GEBHARDT advised the 14.36% rate for FURS is shown on the fiscal note, and the 6.8% for PERS is not that much different when the Social Security contribution is included. The employees would pay a little more in contributions. The FURS state contribution of 32.61% of compensation pays for the errors made prior to 1981, by the cities and the state. If more people are included in this, it should more quickly reduce the unfunded years that **Mr. O'Connor** referred to. The tax on the fire insurance premiums will provide the funding for it.

HEARING ON HB 493

{Tape: 2; Side: B; Approx. Time Counter: 15.8 - 30}

Opening Statement by Sponsor:

REP. ART NOONAN (D), HD 73, Butte, opened the hearing on **HB 493,** Revise Aerospace Technology Bond Program. He described space and aerospace leasing as the final frontier of economic development. There is no appropriation in the bill and the bill is a rewrite of the conditions that were set on the aerospace bonding bill in 1997. At that time, money was set aside to help develop indigenous industries within this field. Just the existence of the money in the program has helped to begin to develop industries but people have found it difficult to utilize. The original bill was drafted by **Mae Nan Ellingson.** Along with some amendments in the House, the bill rewrites the ways people can access this money.

Proponents' Testimony:

Andy Poole, Department of Commerce, said the department has been in charge of administering the Aerospace Bonding Program since it was passed in 1997. It was originally passed as part of the

Venture Star Project. Montana was competing with fifteen other states to land the project which was going to be a space vehicle that could take off and land under its own power. The number of jobs talked about was 2500. Several areas of the state were interested in locating this project including Glasgow, Great Falls, and Hardin. The bill was modified in subsequent sessions. He indicated there would be an amendment to clarify the word "department".

Jim Camich, Chairman of the Board of Montana Aerospace Development Association, said his organization is newly created to advance the economic development prospects of the aerospace industry throughout the state of Montana. Entities involved include the University of Montana, Montana State University, several private aerospace companies, and the local governments of Butte-Silver Bow, Great Falls, and Missoula. The industry is growing and creating jobs at a rapid pace in Montana. This bill is an economic development tool.

Frank Cote, MSE Technology Applications, Inc., advised they are a high-end engineering firm located in Butte that does business around the world. One of their projects is the Mariah Wind Tunnel Project. They are very supportive and very involved in the aerospace industry. They think the bill will help an industry that is just beginning to take off in Montana.

{Tape: 3; Side: A}

Tony Preite, Department of Commerce, stated strong support for the bill. Prior to becoming Director, he spent the last year-and a-half at the University of Montana as Director of the Office of Space Commercialization. During that time it became clearly evident that the wave of the future for creating high paying job opportunities was in the aerospace industry. He is confident this legislation will be of great assistance in promoting that industry.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. COBB asked why the House amended page 1, line 18. **REP. NOONAN** said he drafted an amendment to correct a drafting error. It was always the intention to include port authorities and airports. The other change was a review by the Department offered by **REP. DAVE GALLIK. SEN. COBB** said the projects would be aerospace transportation and technology projects that would be

at an airport or port authority. **SEN. NOONAN** clarified it has to be linked to those specific types of projects.

CHAIRMAN COONEY said this has been in law since 1997, and the Board of Examiners has never approved a bond sale. **REP. NOONAN** replied there has never been one.

SEN. SCHMIDT referred to the comment of **Mr. Camich** about a $60 million industry in Montana and she wondered if that is now or potentially. **Mr. Camich** responded research and development is going on right now in companies across the state.

SEN. GALLUS asked about the specific important changes in this language. **Mr. Camich** said last fall they engaged bond counsel, Mae Nan Ellingson, to review the bill to make it more user friendly for small companies.

SEN. BARKUS asked about Section 1(3). **Mr. Poole** said if an aerospace bonding project comes forward and wants the state to construct a facility, the state would do that providing the company can prove they are creating enough jobs and economic activity that the taxes generated would pay off the general obligation bonds at the time. The State would own the facility and would lease it to the company at a lower cost than market rate based upon taxes generated. **SEN. BARKUS** asked if that is how the original bill was drafted and **Mr. Poole** said that is correct. **SEN. BARKUS** asked if that was why there had not been any bonds issued. **Mr. Poole** said the difficulty has been creating enough new employment to be able to amortize GEO-bonds over time. The bill allows the project to use the multiplier effect on employment for new taxes.

Closing by Sponsor:

REP. NOONAN closed on the bill. He said this is about the future growth of these industries.

HEARING ON SB 146

{Tape: 3; Side: B; Approx. Time Counter: 9.6}

Opening Statement by Sponsor:

SEN. DAN MCGEE (R), SD 29, Billings, opened the hearing on **SB 146,** Statewide public defender system. The bill creates a Chief Public Defender's Office and the position of Chief Public Defender. It creates Deputy Public Defenders and establishes the

ability to form as many as eleven regions. It is creative in concept and provides a variety of solutions to public defense. It establishes standards and procedures for the Chief Public Defender and for all public defense. The fiscal part of the bill is a moving target. In FY 06 $900,000 will be expended and $3.8 million in FY 07. The original bill called for a seven-member Public Defender Commission which was amended to eleven. By July 1, 2005, the Commission will be established. By December 31, 2005, they will have hired a Chief Public Defender. By July 1, 2006, the standards, procedures, and the general format for the Chief Public Defender's office will be in place. Currently, there is $8 million to $10 million spent on public defense a year. The counties pay for those costs and are reimbursed by the District Court Council. The increased amount of spending is between $2.5 million and $3.5 million for the biennium. He complimented the cities and counties for their work on this. The ACLU is suing the State of Montana; the case is on hold pending action by the Legislature. This bill is needed because if the ACLU were to win in that case and suggest that there has been ineffective assistance of counsel because there have been no standards or standard procedures, everyone who has ever been in the state prison or is currently in the state prison could decide to sue the State of Montana. He said this is not a knee-jerk reaction to the ACLU suit. This is the right policy for the state. The total increase in state spending as a consequence of this bill will be around $3 million to $4 million. He noted there are amendments that need to be put on the bill.

EXHIBIT(fcs51a05)
EXHIBIT(fcs51a06)

Proponents' Testimony:

Ron Waterman, **Participating Attorney**, **ACLU**, complimented the work of **SEN. MCGEE** and the legislative subcommittee. In 1976, a Supreme Court decision extended counsel to all individuals charged with a felony. The State of Montana asked the National Association of Legal Defense Funds to evaluate the public defender system. The system was found woefully deficient and probably unconstitutional. The ACLU brought suit in 2002 because, between 1976, when that report was passed, and 2002, nothing had changed. In 2004, the same group came back to re-examine what the system was like and they found the system had deteriorated. The trial was scheduled for May 2004. The Attorney General came to the ACLU and asked that the Legislature be given an opportunity to resolve this problem before pressing forward to litigation. **Mr. Waterman** maintained the lawsuit would have prevailed. If the system was determined to be unconstitutional, the Legislature would have had to come together

in an immediate special session to address the legislation. Everyone who had been convicted of a crime, or who had pled guilty to a crime, and had the assistance of appointed counsel, potentially would have had a claim that their counsel was ineffective because the entire system was unconstitutional. There would have been an additional 2000 or more appeals to the Montana Supreme Court. He advised they took about 84 depositions, and he took more than half of them. One of his responsibilities was to find what the system was costing. He stated there is no number because information was not being centralized, localized, or gathered. The Supreme Court administrators told him, as he took their depositions, they were never able to get uniform reporting from all the counties. Counties reported in different ways and were never audited. They estimate at least 100 people a year have been sent to Montana State Prison (MSP) who are inappropriate for that placement. That is either because they were inadequately represented or inadequately represented at sentencing. That is a $5 million expenditure. If the system is improved, at least 100 individuals a year can be diverted from MSP at approximately $50,000 per inmate per year. The bill puts in place a system that will correct 30 years of delay.

{Tape: 3; Side: B}

Pam Bucy, Assistant Attorney General, advised she is the attorney working on the lawsuit that the ACLU filed against the State of Montana. She indicated she did not agree with everything that **Mr. Waterman** said, but confirmed they approached the ACLU to postpone the trial until this May to give the Legislature the opportunity to work on this. Just like the school finance case, regardless of what happened, it had to come back to this body to be dealt with. They did it not because they thought they would lose the lawsuit, but it was done because it is the right thing to do and this is the place the issue needs to be settled. The Attorney General's office assisted in prosecuting two cases. One was a juvenile case out of Miles City that involved seven defendants. That case did not go to trial, and did not even get close to trial. One defendant, where the attorney did not even interview the co-defendants, charged the State of Montana $300,000 for the defense of that case. Six other defendants also had their attorneys submit bills. Another case was the Bar-Jonah case out of Cascade County. In that case, the defense bill was $600,000. They think this bill will result in cost savings. The Supreme Court Administrator currently has no way to audit or control costs. This bill sets up a system that will mean a cost savings for Montana. She commended the interim committee and **SEN. MCGEE.**

Scott Crichton, Executive Director, ACLU Montana, expressed gratitude for the cooperation everybody has shown in trying to solve a real problem for real people. He thanked **SEN. MCGEE** in particular for his statesmanlike leadership in tackling a very difficult problem with an open mind. He provided handouts to the committee. These included a summary of a Supreme Court decision *Gideon v. Wainwright* and a letter that **Sheri Heffelfinger, Research Analyst,** received from David Carroll, who offered technical assistance from the National Legal Aid and Defender Association (NLADA). The fourth handout was a series of stories of people and how their lives were impacted when they have to wait two years in jail to see a public defender. The Constitution is clear about due process and a speedy trial. The bill is aimed at addressing that. The final handout concerned Heath and Human Services poverty guidelines.

EXHIBIT(fcs51a07)
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EXHIBIT(fcs51a10)

Gordon Morris, Montana Association of Counties (MACo), testified this issue began in 1999, when a bill passed creating an interim study of the district court system. That resulted in a bill in the 2001 Legislature, SB 176, which was the genesis of state assumption of district courts. In 2003, MACo took it upon themselves to begin another piece of unfinished business and that was the issue associated with the public defender. They did not think it had been done appropriately in SB 176. They brought SB 218, which failed in the 2003 session. This was started long before the lawsuit arose in Montana. They were well on their way by way of the state assumption of district court. He pointed out the significant fiscal note. The counties assume that they paid for the most significant portion of the fiscal note in 2003, with SB 499. MACo worked with the Department of Revenue, surveyed the counties, and identified what counties had paid in the prior year for all district court operations and all variable costs. Variable costs are those costs associated with the public defender system associated with district court. The total dollar amount they came up with is $18.6 million. That amount was returned to Montana as a result of SB 499 inside of the entitlement bill, HB 124. The counties gave the State of Montana $18.6 million to fund fixed and variable costs of district courts. **Mr. Morris** referred to page 6 of the fiscal note. He said the bill not only clarifies the assumption of state costs for public defense but adds a new element--the cost of justice court and municipal court. Justice court costs are $1,040,000 and city municipal court costs are $737,000. The cities and counties are putting another $1.8 million into the pot to fully

fund state assumption of district court and the variable costs associated with the public defender system at the district court level, justice court, and municipal court. This bill is much needed and now is the time to do it.

Linda Stoll, **Missoula County**, thanked all who worked on the bill. She recalled in the mid-1980s, public defender costs almost broke some counties. The counties were terrified at the prospect. The counties decided to take money from motor vehicles funds to put into a pool to be administered by the Supreme Court office through a reimbursement program. All the counties submitted district court costs and the Supreme Court reimbursed 80% of those costs. If there was any money left over at the end of the year, the balance would be zero by giving each county an amount that was pro-rated based upon its expenditures. This was a reimbursement program that pre-dates state assumption and will help the committee understand why there were failed expectations when SB 176 was passed and later implemented. Under that reimbursement program, there were disputed costs for fitness to proceed ancillary costs. Fitness to proceed is when a defendant comes in and the judge orders the person to go to Warm Springs for a mental evaluation. If they are not fit to proceed, those costs go to the Department of Public Health and Human Services. If they are, the county picks up the costs of everything beyond the examination. That is a policy decision that was made by the District Court Council and it surprised many counties. Up until this time, through the reimbursement process, counties were reimbursed for the expenses associated with the "fitness to proceed" examinations specifically. Those can sometimes be extraordinary costs. As a result, counties are keeping these people in jail. When she was a county commissioner, there were three suicides in the new county jail within one year. Those sorts of costs can be very expensive. She didn't think the method of cost containment by keeping folks in jail is a good one. There are liabilities associated with that. Counties have had to do that because they are no longer being reimbursed for the expenses of room and board. She advised she has been part of the dispute on the question of the fitness to proceed. She referred to page 88 of the bill. Missoula County is one of six counties that will have the special audit done with the purpose of reducing the entitlement costs associated with this bill. Actual costs are defined on page 88, line 11, and will be audited for the purpose of subtracting the counties' amount of the entitlement share for 2003 and 2004. In those years, the counties will have expenses they paid that are categorized as un-reimbursed public defender costs. A large part of those will be the fitness to proceed costs, and they are not currently covered in this bill. For the purpose of deciding how much money a county will have reduced from its entitlement fund, the bill says they will audit the actual costs for 2003 and 2004. That will be

divided by two to get an average annual cost and that will be multiplied by 1.06% to include an inflation rate. The actual costs are all expenses by the county for public defender services in justice court and all expenditures by a county for public defender services in district court that were not reimbursed. Because it says they are going to use actual costs to determine what they subtract from the entitlement fund, she maintained Missoula County will pay twice for not-reimbursed costs. They paid once when they paid them and did not get reimbursed, and a second time when those numbers are included in the amount of money that is subtracted from the entitlement share. She said she was assured by **Greg Petesch, Legislative Counsel,** that they will not really subtract those un-reimbursed costs from the entitlement fund. She maintained the bill clearly says the counties will never get reimbursed for those ancillary costs associated with fitness to proceed. **Ms. Stoll** indicated that **Margaret Ward, Chief Public Defender, Missoula County,** had concerns that the public defenders would no longer be used to represent the children in guardian ad litem cases. The bill seems to be silent on who would represent those children and who would pay those costs. She said she would work diligently with others to come back to the committee prior to executive action with amendments.

Alec Hansen, League of Cities and Towns, testified that currently the cities and towns pay about $741,000 for public defense. The bill takes that out of the entitlement based on a formula of $1.70 per capita. The counties would not have to be concerned about public defenders any more. He thought that was a good idea in terms of policy. There will be winners and losers, particularly in some of the smaller towns. He maintained the real liability is the cost of doing nothing. This is a good bill, it needs to be done, and the cities and towns support it. It causes a little consternation among the membership of his organization, but it is worth it. He thanked all those who worked on the bill.

Harold Blattie, MACo, referred to #12 in the fiscal note, which changes the entitlement share numbers for the two consolidated governments and the cities. The numbers in the entitlement share that are used as an offset for counties were based on FY 04 actual costs and a survey conducted by MACo last summer. The number the interim committee seized upon was $1.46 million for the counties' share of the public defender costs. The apportionment of the cost is based on a per capita formula. Butte-Silverbow indicated they were being charged twice--more than double what their true costs were. He said they were correct in that they were being assessed the actual costs

reported in the MACo survey and were also being assessed a city component.

{Tape: 4; Side: A}

He explained an amendment to the bill that would reallocate that city component to the rest of the cities. He urged the committee to look favorably on the amendment.

EXHIBIT(fcs51a11)

Jami McCall, City of Billings, advised, initially, Billings was resistant to the bill because they have an excellent public defender program and wanted to maintain local control. They recognize this is good bill that needs to go forward. A comprehensive system is needed. They wanted to go on record in support.

Joe Mazurek, City of Great Falls, stated this is one of the most important bills to be considered this session. He commended **SEN. MCGEE** and the Law and Justice Committee and noted the Attorney General and the ACLU sought a legislative solution. They initially had some concern about the funding mechanism, but no longer do, and support the bill.

Charles Brooks, Billings County Commissioners, said the commissioners stand behind the bill and urge approval.

Jacqueline Lenmark, ACLU, said this was an extraordinary collaboration between parties. The bill is carefully thought out and crafted. She said the bill must pass because it is the right thing to do. It will be expensive, but these costs are being paid now and are not getting collected or reviewed. She said those who had been working on the bill continually reviewed every version of it. They wanted to be sure the litigation is resolved by this legislation and there is no possibility of any successful court challenge to the public policy or the statutes contained in the bill. The first set of amendments, #11, are primarily technical amendments. The bulk of them relate to the removal of the notion of partial indigence in the bill. When the substantive provisions were removed, there were a number of references throughout the statute that were not caught. There is a correction of the section dealing with the prosecution of crimes committed while a defendant is incarcerated in prison or in jail and to correct the references to the funding of that and the reimbursement to the counties. The burden of that falls primarily on Anaconda-Deer Lodge, but occasionally on other counties. As now drafted, that amendment correctly reflects the intentions of all of the parties. All of the parties agree that

the amendments are necessary and appropriate. The amendment the counties and cities referred to are set #12 and the ACLU and the Department of Justice have no position on that. She held the program must be adequately funded if it is to be successful or the litigation will not be fully resolved and will have to be determined by the court. She expressed concern that some of the assumptions in the fiscal note are not accurate. Fully accurate assumptions are not possible because of the lack of knowledge all parties have of the cost of this system. She addressed the Missoula County issue and said she learned statutory construction and interpretation from **Mr. Petesch** when she was at the Legislative Council in 1976. She indicated there would not be a double deduction in the way that the withholding from the entitlement share is calculated. The Department of Justice and the ACLU agree that if that policy issue in this litigation can be resolved, they will support that resolution. That is the reason they asked for more time before executive action and she believes it is possible to craft a resolution. She contended incorporating the audit into the legislation was brilliant because there is not adequate detail to make a good policy decision going forward. The audit will be of benefit in the next legislative session when looking at the necessary appropriation to fund this program.

Kande Matthew Jenkins, Advocate for Families Falsely Accused of Abuse and Neglect, spoke in favor of the bill. They contend there will be money saved in other areas of the state budget by having adequate and proper defense for all persons that are brought before the court. In one such case, if there had been proper defense, $912,000 of children's mental health money would have been saved. In another case, two years of unauthorized foster care would have been saved.

Betsy Brandborg, State Bar of Montana, said her organization represents all lawyers in the state of Montana. She quoted Martin Luther King who said injustice anywhere is a threat to justice everywhere. She said the last witness spoke to the type of unquantifiable costs that she has been encountering in her position as the Bar Counsel who talks to unhappy family members who are represented within the public defender system, not necessarily always the defendants themselves. Another unquantifiable cost that is worth considering, in terms of adequate funding for this bill, is the lawyers in the system. She had two recent calls from lawyers who chose to no longer be public defenders. In Missoula County there were several public defenders who were privately and publicly admonished and disciplined because their workload is unmanageable and they dropped the ball. She said lawyers, defendants, families, and friends are walking away with a bitter taste and a disrespect for

government and society's structure. She urged adequate funding for this bill.

Pastor Cooke, Kaddish, said his organization was established in 1989, as a result of pastors being falsely accused and it led to involvement with Families Falsely Accused. He has a family of seven children. His youngest daughter lost both kidneys and that brought the family into the system. It was decided by Child Protective Services (CPS) that sexual abuse was involved. This occurred in the state of Washington. The state of Washington dropped the case but passed it to Montana. His third daughter has seen over twenty therapists and psychiatrists. Nineteen of those therapists did not tell CPS what they wanted to hear. His son has languished for six years in the system. **Pastor Cooke** was self-supporting and they were a self-contained family. He was made indigent by the system and funds are being expended to this day. Even the prosecution acknowledged there never was any evidence. He spent about four or five months in a detention center. He saw people commit suicide, people with unaddressed medical needs which could lead to litigation, and innumerable prisoners trying to contact their counsel. Reform is needed in the whole system. He knows this will cost more, but the alternative is much worse.

Melissa Worthan, Missoula, testified she was also a parent falsely accused of child abuse and neglect. She observed the state could have saved $24,000 in her case. She asked for support for the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. COBB asked if any new staff would be added. **SEN. MCGEE** said, yes. They tried to craft the bill to address a variety of situations. Missoula County has an excellent county employee public defense program. Flathead County has a contract system. Both of those two judicial districts are happy with how things are working. The public defenders are happy, the prosecutors are happy, and the judges are happy. As far as he knows, the defendants are happy. The bill allows for the Chief Public Defender to create regions. The regions will have deputy public defenders. Those deputy public defenders, together with the commission and the Chief Public Defender will decide what system will seem to fit best in a particular area. That will include the number of cases that a public defender will be able to manage successfully using NLADA standards that have been adopted

nationwide. **SEN. COBB** asked if there is enough staff for the number of caseloads. **SEN. MCGEE** said, yes. **SEN. COBB** asked where the 133% came from. **SEN. MCGEE** said the Law and Justice Interim Committee had a subcommittee dealing with public defense and they looked at a variety of states including Washington, Oregon, Vermont, Wyoming, Idaho, etc. A variety of numbers are used to define upper level of indigence. Wyoming used 125%. The subcommittee decided the policy, the Law and Justice Interim Committee accepted that and it has come forward as part of this bill.

SEN. ESP referred to testimony about finances and the growth factor that is built into the numbers. His perception was, there would be growth factor based on counties and cities no longer having a dog in the fight and a change in behavior because of it. There would be an offsetting benefit from services being coordinated. He wondered if those would offset each other or if there would be a net cost to the state because of that change in behavior. **SEN. MCGEE** said when they started with the public defender idea, they looked primarily at felony criminal cases and when a person is entitled to public defense. It was brought up that there is a requirement for public defense in misdemeanor cases. That includes the justice courts, cities and municipal courts, and civil commitments. The bill tries to address every single court in the state of Montana, every single time anyone is entitled to public defense, whether criminal or civil. He thought **Ms. Stoll** has a legitimate concern about the numbers and whether or not the reimbursements are being made appropriately. There is a policy decision to make with regard to fitness to proceed. He thought if the prosecuting attorney decides to order the fitness to proceed determination, the county attorney should pay for it. If the public defender needs a fitness to proceed determination, then the state should pick it up. If they both agree, the cost would be shared. When he first gave the information on the floor of the Senate, that was his thinking. Later he found out the the un-reimbursed costs would be factored into the audit.

{Tape: 4; Side: B}

They tried to address every single issue and circumstance they could. He did not see those expenses for travel and housing for fitness to proceed as a significant policy issue and he thought they should default to it. He didn't know if anyone could say what the cost would be. **SEN. ESP** asked **Jim Oppedahl, Supreme Court Administrator**, if the state becomes responsible for the variable costs of indigent defense, if there would be a change of behavior by the counties that would escalate those costs. **Mr. Oppedahl** advised he started as Court Administrator in May of

2003, after the session. Some behavioral changes are not always predictable. There is a variable dollar amount that will be spent year to year that depends on the kinds of cases. He believes this bill is the best solution because it puts a system together. The management of that system is put in one place and makes those who run the system accountable. **SEN. ESP** agreed this is needed and that the shared accountability will not be a factor.

SEN. LIND asked **Ms. Brandborg** if she sees an opportunity for improving the workloads in Missoula. **Ms. Brandborg** said absolutely. This is not unique to Missoula. Typically, new lawyers start in a public defender's office. There is a revolving door of new attorneys. The person who is walking away from it had been practicing for twenty years in the public defender arena. In Missoula, because the revolving door is moving so fast, they don't have enough attorneys to handle the complaints. The district court judges have taken it upon themselves to appoint regular practicing lawyers to represent criminal defendants. It is another train wreck waiting to happen. They are charging $60 an hour and are spending quite a bit more time because they aren't familiar with the work. Lawyers who are being appointed are being overwhelmed. In other places, people are sitting in jail for a long time waiting for even one phone call.

SEN. SCHMIDT asked **Ms. Bucy** how many lawyers will be needed to run this system. **Ms. Bucy** did not know how many would be needed eventually but they looked at the system that is currently in place and the caseloads those lawyers are working under. Each region can adapt to what it needs. **SEN. SCHMIDT** asked about the revolving door and if that might not happen with this new kind of system. **Ms. Bucy** was almost certain that it will not happen. The system will provide oversight, standards, and structure. She thought qualified people will continue to do this work. **SEN. SCHMIDT** asked about the plan for the number of lawyers needed in a region. **Ms. Bucy** clarified cities will be included in a region. She anticipated regional offices in populated areas. There will be a contract manager to deal with the smaller counties. It is designed to look at where the most amount of services are needed and how to reach the most amount of people in the state. **SEN. SCHMIDT** asked about amendments and **SEN. MCGEE** advised there will be two more. **SEN. SCHMIDT** asked **Ms. Stoll** to respond. **Ms. Stoll** referred to page 22, line 5. The new language in the psychiatric evaluation in 46-14-202 says the cost of the examination only. She thinks that turns the policy decision by the district court counsel into statute and they won't pay for anything else. When the person is determined to be unfit, the costs go to the Department of Public Health and Human

Services (DPHHS). Other associated expenses are provided in 4614-221(5). **SEN. SCHMIDT** asked **Mr. Waterman** about the 100 people in the correctional system who have been wrongly sentenced. **Mr. Waterman** said the number is the best estimate of individuals who have been inappropriately placed in MSP. They believe additional savings will come from that. There are other additional savings. As individuals sit in prison, they will plead to crimes simply to get the sentence done. There are cases where people are sitting and waiting for court proceedings and by the time they get to the court they are released because the length of time that they have served pre-conviction is longer. The system is largely broken and has been broken for years. This bill replaces that broken system with a system that responds appropriately and there will be savings.

CHAIRMAN COONEY asked, if the bill passes, if they could reduce the budget for the Department of Corrections based on anticipated savings as a result of not sending so many people to prison. **Mr. Waterman** advised the only way to address the criminal justice system is to screen early on. That will keep a number of individuals out of the system. It is somewhat expensive to put into place initially, but it may keep people from migrating to the more expensive end of the correctional system. The correctional system has been responsive to a broken public defender system for years. That is part of the reason for the enormous growth that they have seen and have paid for over time. By making sure that the public defender system at the front end works effectively, in the long run they will see the savings come through at the correctional level.

SEN. LAIBLE asked if there will be a way to look at higher costs in certain areas and why. **SEN. MCGEE** said the purpose of the audit is to try to find the dollar amount to be reduced from the entitlement share going back to the counties. The six counties were chosen because there would be no reason to audit smaller jurisdictions. **SEN. LAIBLE** appreciated the oversight by the state in the bill and the possibility to reign in those regions and municipal governments that don't do this in the most cost-effective way. **SEN. MCGEE** replied Flathead County has a contract system and it would be the wrong thing to do for the Chief Public Defender to say all those attorneys would have to become state employees. The system there is working fine. Missoula County has a great public defender system. If the Chief Public Defender and the Commission decide to leave them as county employees, they would be able to do that. In District 22, which is Stillwater, Carbon, and Big Horn Counties, they don't want to be part of the Billings system. The Billings system has public defenders who are county employees. The Chief Public Defender, the Commissioner, and all the Deputy Commissioners will look at the

systems that are currently in place and go with the system that best fits those locales and the desires of those who do this work. Every public defender, whether a contract person, county employee, or state employee, will go through a rigorous training cycle. They will learn standards and procedures that are common throughout the entire public defense system. That is the goal of this bill. The right numbers won't be known until this system has been in place for awhile with an accounting system that is uniform across the state.

SEN. COBB wondered if the fiscal note for the second year should be a lot higher because there are not enough public defenders for the caseloads. There could be a bigger budget in the next biennium. He thinks they are short money to get this up and running. Otherwise, it is still going to fail because there aren't enough people.

SEN. ESP requested that either **Mr. Oppedahl** or **Mr. Blattie** provide the committee with historical data about the cost of indigent defense from 1999 through the first half of 2005 before the committee takes executive action.

{Tape: 5; Side: A}

Closing by Sponsor:

SEN. MCGEE advised this is a significant policy decision. He noted a lot of people worked on this bill, including **SEN. WHEAT**, **REP. PARKER**, those on the Law and Justice Committee, the Judiciary Committee, as well as staff including Valencia Lane, Mr. Doig, and Harry Freeborn. He recommended the committee work with the staff. He believed ten years from now there will be a net savings to the state of Montana. With adequately trained and staffed public defense, there will be a reduction in the number of people incarcerated and the number challenging a case because of ineffective assistance of counsel.

ADJOURNMENT

Adjournment: 12:05 P.M.

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SEN. MIKE COONEY, Chairman

_____
PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

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