MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 16, 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. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Don Ryan (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 505, 3/10/2005; HB 119, 3/10/2005; HB 203, 3/10/2005
Executive Action: HB 505; HB 203; HB 119; HB 53; HB 452; SB 333; SB 376; SB 238; SB 239

HEARING ON HB 505

Opening Statement by Sponsor:

REP. GARY MATTHEWS (D), HD 40, Miles City, opened the hearing on **HB 505**, Install interactive videoconferencing system at Pine Hills. This will assist with training, education, medical and psychological needs, emergency situations, and access to parole officers and attorneys for the youth at Pine Hills.

Proponents' Testimony:

Steve Gibson, Department of Corrections (DOC), advised they are required by statute to send correctional officers to the Montana Law Enforcement Academy (MLEA)for 120 hours in a three week period. Videoconferencing would save money in per diem, travel, and overtime. The MLEA could monitor the training from Helena. The $69,000 is for the equipment. They did not include the fees, which run anywhere from $175 to $200 a month, and will absorb that cost in their existing budget from the savings from travel. If the bill passes, there will be a bidding process. Teleconferencing will be implemented in late summer or early fall. If it works out, there will be a substantial savings down the road.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. TRUDY SCHMIDT asked why this was not included in the presentation to the subcommittee. **Mr. Gibson** said they were not aware of this possibility until after they put together their decision package, and it did not come to his attention until January. **SEN. SCHMIDT** asked when the savings would be realized. **Mr. Gibson** said they average about eight to nine new correctional officers a year who are required to attend MLEA training for 120 hours within six months of employment. There are a number of mid-level correction employees who conduct the training for MLEA. Teleconferencing would save travel, the cost of lodging and meals, and overtime. They estimate $9,400 a year in potential savings. They have contracts with psychiatrists and psychologists who come on site, and there are potential savings for those services. There are students who graduate from high school who could access college courses while they are still in Pine Hills.

SEN. GREG LIND asked **Mr. Gibson** if he was sure this would meet the 120 hour requirement. **Mr. Gibson** indicated that MLEA staff can monitor this from Helena, and do not see a problem with it.

SEN. CAROL WILLIAMS expressed concern that teleconferencing means less face time for the child with the psychiatrist or attorney. **Mr. Gibson** replied an attorney comes on-site at Pine Hills once a month. They will not reduce the time for the psychiatrist from Billings; this will enable him to deal with emergency situations. Face-to-face contact will not be reduced; this will be an enhancement. The main savings will be in the training and per diem. Juvenile detention officers are also required to go to this training. Pine Hills is an accredited school with twelve certified teachers, two special ed teachers, a Title I teacher, a certified principal, and a certified guidance counselor, just like any school.

CHAIRMAN MIKE COONEY advised he is part of the Court Assessment Council with the Supreme Court. One of the things they have done is focus effort and energy into making the court system more accessible via teleconferencing for preliminary hearings, etc. He asked if this would enhance that for these residents of Pine Hills. **Mr. Gibson** replied, yes. The court already has this same system. They have used it on occasion for the Cost Containment Panel, which is related to the Juvenile Detention Intervention Program (JDIP). He thought all facilities should have this access.

Closing by Sponsor:

REP. MATTHEWS stated video conferencing technology would definitely help this institution. He advised **SEN. JEFF MANGAN** will be happy to carry the bill if it passes.

HEARING ON HB 119

{Tape: 1; Side: A; Approx. Time Counter: 10.1}

Opening Statement by Sponsor:

REP. GEORGE GOLIE (D), HD 20, Great Falls, opened the hearing on **HB 119,** Make permanent county recreational boating safety grants, boating advisory council. The removal of the sunset clause will allow the Recreational Boating County Grant program to continue with funding from existing sources. The program matches county money 1:1 with federal Coast Guard funds. Fish, Wildlife, and Parks (FWP) receives the county's matching dollars and returns double the amount with federal Coast Guard money. The current

program uses $20,000 county money and $20,000 Coast Guard money. If this bill does not pass, the counties will have to come up with additional funding to replace the matching Coast Guard contribution.

Proponents' Testimony:

Jim Kropp, FWP, explained that the county water safety grants are primarily for law enforcement work on the water. Game wardens are responsible for water safety in Montana, and they receive assistance from sheriff's officers through this grant. They have three sheriff's offices in Montana that participate in this activity. This bill makes permanent existing law.

EXHIBIT(fcs58a01)

Jim Smith, Montana Sheriffs and Peace Officers Association, spoke in support of the bill. Sheriffs have responsibilities in places like Fort Peck, Canyon Ferry, and Flathead Lake, and work very well with the wardens from FWP. They have an interest in safe boating and water safety.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. GOLIE thanked the committee for the hearing. This is not a large program. It is for safe boating and water-related activities. They do not want to lose the $20,000 in matching funds from the Coast Guard. **SEN. GREG BARKUS** will carry the bill on the floor of the Senate if the bill passes.

HEARING ON HB 203

{Tape: 1; Side: A; Approx. Time Counter: 15}

Opening Statement by Sponsor:

REP. DON ROBERTS (R), HD 56, Billings, opened the hearing on **HB 203,** Clarify responsibility of boards and Department of Labor and Industry. The bill revises laws relating to professional and occupational licensing in response to the HJR 20 Legislative audit. The licensing boards are funded by state special revenue and receive no general fund money. Members of the licensing

boards are appointed by the Governor and confirmed by the Senate. Licensing boards are mandated to protect the public by setting licensure and practice standards. HB 203 expands the membership of the Board of Sanitarians, the Board of Public Accountants, and the Board of Athletics.

Proponents' Testimony:

Jim Brown, Department of Labor and Industry, testified this is their bill. The Health Care Licensing Bureau and the Business and Occupational Licensing Bureau are in his division. The cost is $26,000 to add two members to three different boards. There will be additional costs for per diem and travel. The only board that will have to increase fees in order to support the additional membership will be the Board of Sanitarians.

Pat Melby, Rimrock Foundation, rose in support of HB 203. They are interested in Section 41, which clarifies educational requirements for licensing of addiction counselors. The requirement for an oral examination, which currently costs a candidate about $200, will be eliminated.

Don Hargrove, Montana Addiction Services Providers, stated the change for the educational requirements for licensed addiction counselors is a positive approach.

Jim Smith, Montana Pharmacy Association, advised there are a couple of discreet sections in the bill that relate to pharmacy, and neither one has any real fiscal implications. They support the bill and appreciate the help and cooperation they got from the Department and **REP. ROBERTS.**

Casey Blumenthal, Montana Hospital Association, stated support for the bill, particularly Section 2, which designates two of the Board of Nursing members to hold specific education experience. Up until this time, there has been an advanced practice registered nurse on the committee. Over two-thirds of hospitals in Montana are critical access hospitals, and many of them do not have physicians in their communities. The APRN's are their primary providers. Once the current APRN's term is up, there will not necessarily be a designated APRN on the board. Because so many of their facilities are small, they requested that one of the nurses be a representative for the small rural facilities. There is no cost for these changes.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN COONEY asked how important is it that these three boards get two new members each. **REP. ROBERTS** referred the question to **Mr. Brown**. **Mr. Brown** indicated the problem with three members on the board is they have to create a screening panel, which hears complaints and makes decisions, and an adjudication panel. Typically, there is one member on the screening panel, and that is not sufficient. The Board of Public Accountants had an increase in their workload due to Enron-related issues. **CHAIRMAN COONEY** asked how long these boards have been operating with three members. **Mr. Brown** did not recall when the boards were created, but those were the originally created memberships. The screening and adjudication panels are a fairly recent occurrence. The two small boards do not have many licensees, and there has been hesitancy to increase membership. This issue came up in a performance audit.

{Tape: 1; Side: B}

Mr. Melby testified he practices in front of boards. About ten years ago they began using screening panels for a due process reason. Prior to that time the board heard complaints and made decisions whether to proceed with an investigation and disciplinary action. The same board members who heard the complaint would proceed with disciplinary action to adjudicate the complaint. Currently, members of the board hear the complaint, determine if there is some merit to it, and determine whether an investigation and subsequent disciplinary proceedings need to go forward. The members on that screening panel cannot serve on the adjudicating panel. With only three members, there is a real problem.

CHAIRMAN COONEY asked how many people the Board of Athletics and the Board of Sanitarians have authority over. **Mr. Brown** advised the Board of Athletics has 1398 licensees. The Board of Sanitarians has 186. The Board of Athletics covers professional and semi-professional boxing, wresting, etc. Club boxing has become popular, and that is a twenty-six week season with about five matches per week. There are about 130 semi-pro club boxing events. The most popular sites are Missoula, Great Falls, Billings, Helena, Livingston, and Bozeman. In 1997, the change was made that required the screening and adjudicating panels.

SEN. JOHN ESP asked about Section 3 and Section 6, where changes had been contemplated. **Mr. Brown** replied they proposed changing several statutes to eliminate the requirements for U.S. citizenship. That ended up being where most of the objections to the bill were, so they took out all the attempts to remove the

requirement. **SEN. ESP** referred to page 7, lines 4 and 5, and asked in what instances would physicians be employed by the federal government. **Mr. Brown** indicated that would include the Indian Health Service, the Veteran's Administration, out-of-state firefighters, and public health services. **SEN. ESP** said the reason for that is they have no authority over those.

SEN. LIND asked about language in Section 42, page 35, lines 1 and 2. He asked if they were removing the ability to deny licensure for private investigators. **Mr. Brown** said they are striking that in the interest of standardization of all of the boards. There are 32 licensing boards in five programs. **SEN. LIND** asked **Mr. Melby** about removing the oral examination requirement for addiction counselors and expressed concern about falsification of credentials. **Mr. Melby** advised the oral exam would be removed; however, everyone involved with the licensure of addiction counselors and the training agreed this would speed up the process.

SEN. SCHMIDT noted the Board of Respiratory Care Practitioners and Board of Professional Engineers were stricken from the bill. She wondered if they were incorporated somewhere else. **Mr. Brown** indicated that was one of the sections where they proposed eliminating the citizenship requirements. There was opposition so they dropped that entire section of the bill, which leaves that section of law as it is currently in the licensing statutes. **SEN. SCHMIDT** wondered why the language for board members for the Board of Nursing and the Board of Medical Examiners was not similar. **Lisa Addington, Department of Labor and Industry,** clarified when the Legislature passed the composition for the Board of Medical Examiners, they did not include an administrator. **SEN. SCHMIDT** asked why they wanted to remove the requirements that the board members must be citizens of the United States. **Ms. Addington** said during the audit they were asked why they were requiring U.S. citizenship. They consulted with their attorneys, and there was no good reason for the requirement. They proposed to take that language out. When they got into the hearing in House Business and Labor, there was a lot of opposition to removing citizenship requirements, and amendments came forward.

SEN. BOB HAWKS revealed he is a licensed optometrist. He asked if there was a discussion of reciprocity in licensure in meeting state requirements. **Ms. Addington** said they have standards in statute that allow for licensure by endorsement. They license individuals that are licensed in other states and hold an unencumbered license. **SEN. HAWKS** asked if they accept license

requirements that are equal to Montana's from other states. **Ms. Addington** indicated, that is correct.

SEN. SCHMIDT asked about page 2, line 14, where one member is a licensed physician assistant-certified. She said there was a bill in Senate Public Health that cut the language "certified". There might need to be an amendment if that bill passes. She wondered why physician assistant is in the same category as the doctors and why there is not a separate section for licensing physician assistants. **Mr. Brown** advised, statutorily, physician assistants were put under the Board of Medical Examiners for regulation of their licensure program by the Legislature. Physician assistant-certified is how he had always heard it referred to. **Ms. Addington** added that physician assistant is in statute. There is another bill going through the session on physician assistants. If that bill passes, "certified" will be removed from that title. This would be changed in codification. **SEN. SCHMIDT** asked why they were not under a separate board. **Ms. Addington** replied, when the Legislature passed licensing of physician assistants, they simply placed them under the Board of Medical Examiners.

SEN. LIND inquired about page 7, lines 7 and 8, dealing with nursing regulations. **Mr. Melby** responded, on behalf of the **Montana Medical Association**, that the language "under supervision of a licensed physician" was proposed to be stricken by the Department. They objected because this issue has not been decided. There is currently a case in front of the Montana Supreme Court, *Montana Society of Anesthesiologists v. Montana Board of Nursing*. He thought the Association of Certified Respiratory Nurse Anesthetists is also a party to that lawsuit, where the issue of whether or not advanced practice registered nurses can practice independently will be ultimately decided. The advanced practice registered nurses think they can, and the physicians think they cannot. The Association objected to the deletion of this language; a compromise was to add the language "under the conditions and limitations defined by law". This would not affect the Supreme Court case. If they had just deleted this, someone could have filed a supplemental brief with the Supreme Court saying the Legislature recognizes that APRN's do not have to practice under the supervision of a physician.

Closing by Sponsor:

REP. ROBERTS addressed the comment of **SEN. SCHMIDT** about the physician assistant. Physician assistants have to have a physician sponsor. If someone is practicing in Jordan, Montana, where they do not have a physician but have a medical assistant facility, they will practice in an isolated location but will

have a physician to whom they report. If they are practicing with an orthopedic group, physicians will be assigned to those practitioners. In Montana, there are 37 boards and about 80,000 people who decided they would like to have boards oversee their quality of practice.

EXECUTIVE ACTION ON HB 505

{Tape: 1; Side: B; Approx. Time Counter: 25.1}

Motion: SEN. COBB moved that HB 505 BE CONCURRED IN.

Discussion:

SEN. SCHMIDT indicated she called **Mike Batista, MLEA,** who said the community college in Miles City has this equipment and that they could be using the video conferencing system right there in Miles City instead of purchasing their own.

SEN. HAWKS wondered if it presents any security problems or expense to move people out of the institution to use that facility, or if it is portable. **SEN. SCHMIDT** said she would like to wait before doing executive action on this until these things could be cleared up.

SEN. COBB withdrew his motion.

EXECUTIVE ACTION ON HB 203

{Tape: 1; Side: B; Approx. Time Counter: 27.1}

Motion/Vote: SEN. COBB moved that HB 203 BE CONCURRED IN. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 119

{Tape: 1; Side: B; Approx. Time Counter: 27.6}

Motion: SEN. BARKUS moved that HB 119 BE CONCURRED IN.

Discussion:

Taryn Purdy, Legislative Fiscal Division, advised the current statute that governs this does not expire until the end of FY 2006. Currently, in HB 2 there is contingent language that, if

this bill passes, the budget would be increased by $20,000 in FY 2007 only. They can make the effective date June 28, 2006. **SEN. BARKUS** asked if she was suggesting delaying this for a year. **Ms. Purdy** said they could do it either way. It is in the base that is carried forward. There is no money in the current budget for this bill.

{Tape: 2; Side: A}

Motion: SEN. BARKUS moved a CONCEPTUAL AMENDMENT TO CHANGE THE EFFECTIVE DATE ON HB 119 TO JUNE 28, 2006.

Discussion:

SEN. KEITH BALES questioned whether the subcommittee had already funded $20,000 for the year 2006 out of special revenue and federal revenue. **Mr. Purdy** said the language in HB 2 adds $20,000 of state special and $20,000 of federal funds in 2007 only, on the assumption that is when this bill would expire. If this bill were to pass, that money would automatically go in for 2007 only. **SEN. BALES** asked what happens in 2006 if they change the effective date. **Ms. Purdy** stated the bill is in effect until the end of FY 2006. The decision of the appropriations committee was to make sure that money got added in 2007, when this bill expires. **SEN. BALES** thought if the money is already in there for 2006, then the fiscal note was written wrong. It should have had zero for 2006. Changing the effective date would not make any difference. **Ms. Purdy** said that is probably right; they can change the effective date or not. This amendment would insure that HB 2 conforms with this bill. They can do it either way.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: SEN. BARKUS moved that HB 119 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote.

SEN. BARKUS will carry the bill on the floor.

EXECUTIVE ACTION ON HB 53

{Tape: 2; Side: A; Approx. Time Counter: 4.6}

Motion: SEN. STEVE GALLUS moved that HB 53 BE CONCURRED IN.

Discussion:

CHAIRMAN COONEY indicated **Ms. Purdy** wanted to find out if money in agency funds or agency accounts was counted towards the cap, and, if not, there may be a cap issue. There is a cap issue regardless if they put it in state special revenue. **Ms. Purdy** stated agency funds are not being counted in the expenditure limitation cap. Consequently, if these funds are moved to a state special revenue account, it would increase the 2007 expenditures by $800,000. She talked to **Scott Seacat, Legislative Auditor,** prior to the hearing on this bill to ask him about the ramifications and potential options for the committee. He indicated that if the bill was not passed, the Department of Livestock would get an audit exception or finding that they are not in accordance with the law. They would not receive an adverse audit opinion, but they would have an audit finding in their next audit.

SEN. LIND asked what the effects would be of moving the effective date to after the next biennium. **Ms. Purdy** indicated it would not appear in the expenditure cap at all. Her conversation with **Mr. Seacat** indicated, because they have another audit coming up for this next interim, they would get an audit finding in that report.

SEN. GALLUS stated that the Department of Livestock would not appreciate this, but if the committee could find a way not to count it against the cap and make it an audit finding he would not care.

SEN. DAN WEINBERG inquired how bad it is to have an audit finding. **Ms. Purdy** advised when their division had an audit finding, they did not like it. The audit division did not do that audit. An audit finding is a blemish on an accounting record. Beyond that, it is more a question of when and how they are going to fix this. There is an expectation, if an audit finding is made, that the problem will be fixed at some point.

CHAIRMAN COONEY responded that **SEN. BOB KEENAN, SEN. ESP, SEN. COBB,** and himself are either on the audit committee or have previously served on the audit committee. Audit findings are serious. Either the agency or the audit committee can bring forward a bill in response. He indicated he had mixed feelings about this, since the $800,000 will apply to the cap. That can be avoided by waiting; the agency will get an audit finding, and maybe it can be fixed in two years.

SEN. HAWKS asked about changing the effective date to immediate, if that would make it a supplemental, and if that would get around the cap another way. **CHAIRMAN COONEY** indicated it would just carry it forward into the next biennium. **SEN. COBB** said if

they make it effective July 1, 2007, it would be the next biennium.

Motion: SEN. ESP moved TO CHANGE THE EFFECTIVE DATE TO JULY 1, 2007.

Discussion:

SEN. WILLIAMS said she was happy to do this. She said they are up against the cap, and they need to do it. She hoped nobody makes political hay out of this. Many times, agencies come before the committee, ask for a solution, and the Legislature does not give it to them. They get agencies in a bind, and then go kick them around in the press or with their constituents. She wanted it to be on the record that is what they are doing here. These people came to them for a solution and were told no.

SEN. BARKUS commented the agency has come to them to fix this problem. The agency is in violation, and the auditor has seen it. If this body decides to pass over it until 2007, they ought to have a legislative audit on themselves. They are the ones making the problems, not the agency.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: SEN. ESP moved that HB 53 BE CONCURRED IN AS AMENDED. Motion carried 11-8 with SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COONEY, SEN. HANSEN, SEN. LARSON, SEN. SCHMIDT, SEN. TESTER, and SEN. WILLIAMS voting no.

SEN. ESP volunteered to carry the bill on the floor.

EXECUTIVE ACTION ON HB 452

{Tape: 2; Side: A; Approx. Time Counter: 15.5}

Motion: SEN. COBB moved that HB 452 BE CONCURRED IN.

Discussion:

SEN. COBB advised this is part of the Medicaid Redesign program. It has no fiscal impact. This bill will help the Tribes get some Medicaid money and save the state money too.

Vote: Motion carried 16-1 by voice vote with SEN. BARKUS voting no.

SEN. COBB will carry the bill on the floor.

EXECUTIVE ACTION ON SB 333

{Tape: 2; Side: A; Approx. Time Counter: 18.3}

Motion: SEN. WILLIAMS moved that SB 333 DO PASS.

Discussion:

SEN. WILLIAMS recalled this is **SEN. FRANK SMITH'S** bill and is actually being tested in court right now. This gives the ability to take retirement money out of impact aid funds. There were no opponents.

SEN. COBB asked if this is the one they lost in court. **CHAIRMAN COONEY** said the Legislature made this change two years ago, it was challenged in court, and the court said the Legislature could not do what they did. This is like putting the toothpaste back into the tube.

SEN. ESP wanted the committee to remember that Superintendent Anderson described schools as "basically four walls and good teachers". He thought that was a good definition.

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 376

{Tape: 2; Side: A; Approx. Time Counter: 20.1}

Motion: SEN. HAWKS moved that SB 376 DO PASS.

Discussion:

SEN. HAWKS recalled those in opposition to the bill were Realtors and the building industry. The petition for special status for the Gallatin was approved by the Martz administration in 2002. With this special designation, any development along that corridor will not downgrade the river beyond the status of the EIS. It essentially freezes the water quality at that point; it does not stop development. Under current law, there have already been $2.4 million in fines for environmental damage along the Gallatin. The development pressures are very heavy. The Department of Environmental Quality (DEQ) stated they do not have funds to do this EIS, even thought they have taken in $2.4 million in fines. One wonders, he said, if the orientation of

DEQ through this process has not been in this direction. In 2003, the Legislature changed the responsibility for payment of the EIS. Since then, Trident Cement, which is on the Gallatin River, wants to burn tires. This potentially has the effect of polluting downwind soils, water, and population, and DEQ paid for the EIS. That seems to be a strange orientation for DEQ, according to **SEN. HAWKS.** He thought the opposition was ingenuous in claiming not to oppose the EIS, but just opposing the funding. That does not hold water, in his thinking, but that strategy has been working for four years. Funds were set aside in the Natural Resources Subcommittee to do this. Montana rivers belong to the people of Montana. The Gallatin is a blue ribbon stream, and they have an obligation to save those waters and maintain them. It needs to be done now--the pressures are heavy.

SEN. LIND advised he first heard this bill in Senate Natural Resources Committee. There were no real opponents to water quality. From the testimony they heard, it is not an anti-development bill. He said he strongly supports this bill.

SEN. ESP commented this committee has to prioritize things, and he was not sure this should be priority number one. In the junk vehicle fund, they had to raise the fee on licenses because there was not enough money to handle the problem of junk vehicles. The county sanitarians needed more money to take care of that problem. In 2003, they increased the payments to the counties out of that fund because counties did not have enough money. Now it is being proposed to take money out for some other purpose. He did not think that makes good sense. He thought this was an inappropriate use of IT funds and an inappropriate priority at this time given the other needs that will be coming before this committee within a few weeks, including mental health needs, child support, foster care needs, etc.

SEN. BALES recalled testimony in the hearing that the law was changed last session. He thought it was clear that the intent of the Legislature was not to pay for the EIS. In the previous bill, they went against their auditors. He thought if the people in that area think it is important enough, they can probably raise enough money to fund the EIS. He was not in favor of the bill at this time.

SEN. JOHN BRUEGGEMAN indicated he had a lot of experience with the junk vehicle program. He worked on the bills to raise the fee and to change the nature of the disbursements in the last session. This is a program that has struggled for a lot of years to gain a foothold. He thought it was a stretch to fit what they were trying to do under the junk vehicle program. He did not disagree with the nature of the bill, but he could not disagree

more with the funding source. The junk vehicles program has to be maintained.

SEN. LAIBLE said the rationale behind using the junk vehicle money could be used with any other fund that happens to have money. The reason cited was that, in years past, people disposed of their old vehicles in waterways. The real reason was it was available. He said they need to remember the RIT is for reclamation, not to provide EIS reports.

{Tape: 2; Side: B}

Many of those opposed to this bill are not necessarily opposed to claiming that the Gallatin River is an outstanding resource water. The funding mechanism is beyond the scope of the statute. He believes this would be a policy change. Whenever an organization, group, or entity decided a river ought to be an outstanding resource water, the state would have to pay for he EIS. He supports the efforts to make this river an outstanding resource water, but he disagrees with the funding mechanism. For that reason, he would vote in opposition to this bill.

SEN. BARKUS said he is opposed to the bill because DEQ has already received $2.4 million in fines from the Yellowstone Club and other big developments in that area; $250,000 would be small drop in the bucket. He did not think the rest of the taxpayers in the state of Montana ought to be picking up the tab.

CHAIRMAN COONEY advised there is $250,000 in state special revenue in HB 2 right now. The fiscal note says it is general fund. **Ms. Purdy** clarified the Department testified it is state special revenue. The statute itself compels the Department to do this EIS. The EIS will be done if this bill passes. However, if there is money in HB 2 to do this, then that is the only thing they can use it for; they do not need the statute to conduct the EIS with the funds that are currently in HB 2. This bill forces them to do it. The Department has essentially had this on their plate for the last six years; they have simply not prioritized it, and their Department has not had the money to do it. If the bill does not pass, it does not mean that the EIS will not take place, because they have money in HB 2 right now to do it. It is one-time-money restricted for that purpose.

SEN. LIND said that was not his understanding from the presentation. **Ms. Purdy** said the bill compels the action; that is all they can use the money for in HB 2. They still have the authority to do the EIS. This bill makes them do it. **CHAIRMAN COONEY** said if this bill does not pass, and the $250,000 stays in

HB 2, then they can choose to do it. If this bill passes and the money stays in HB 2, then they must do it.

SEN. ESP thought the money in that state special was taken out of RIT and junk vehicles. **CHAIRMAN COONEY** said he was not disputing that, but the fiscal note is unclear.

SEN. WEINBERG did not object to the funding mechanism. He said he has been a student of **SEN. COBB** with respect to creative funding, and he thought this was entirely appropriate.

SEN. HAWKS said the point is this job is not getting done, and that is why this bill is here. The recommendation for using these funds has come from the professionals who know the business and know how these funds can and should be used. The application pre-dates the action of the 2003 Legislature. This has been authorized and has not been unauthorized. He argued that the junk vehicle fund has generous funds at this point. The original intent of the RIT is as **SEN. LAIBLE** described. When it reaches its cap of $100 million, the funds beyond the $100 million can be appropriated, and the guidelines for the use of those excess funds are much broader from an environmental standpoint. The use of the funds in the RIT excess, which is $252,000, is appropriate. If this passes and the funds are later removed, then this bill should go on to send a message to DEQ to get the job done.

SEN. ESP agreed the junk vehicle fund may have more funds than anticipated at this point. It probably has to do with the one-time licensing option. As those cars that are ten years old do not have to be licensed anymore, they will not be paying into the junk vehicle fund every year like they have been. It may not bode well for the future of that fund.

SEN. LAIBLE asked about the funding. There is $250,000 in HB 2 that is restricted for this use from the RIT and the junk vehicle fund. If this bill passes, and that money is removed from HB 2 as part of the process, he wondered if the study will be done. If this bill fails, and those dollars are left in there, he wondered if the EIS will be performed. **Ms. Purdy** reiterated if they pass the bill and there is no funding, DEQ will be compelled to perform that EIS with the funding they already have within the Department. They must follow the law. She was not sure if she could answer the second question, because that would be for DEQ to determine within their priorities. They would not be able to use that money for any other purpose. If they were to determine that they did not want to spend the junk vehicle or the RIT, then they would not be compelled to perform that analysis. **SEN. LAIBLE** said if they wanted to go forward with it, they could use

the money in HB 2 that is already designated for this purpose. **Ms. Purdy** replied, they could.

SEN. HAWKS clarified that the funding originally was to come from the RIT. They discovered after the fact that the subcommittee on education had taken $98,000 from that fund for the School of Mines to do water studies. They had to drop back to the secondary funding recommended by DEQ.

Vote: Motion carried 11-8 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, and SEN. STAPLETON voting no.

SEN. BALES asked about SB 501. He has a bill in taxation that may have a fiscal note that reduces revenue. His understanding was the reason these bills are in this committee is because of the effect they will have on the cap. His thought was this bill should not have an effect on the cap; it should have an effect on the revenue estimate by reducing the revenue estimate. He wondered if his bentonite bill passes and comes on to the House floor and shows a little less tax, if it is automatically going to be sent here also, even though it will not affect the cap. **CHAIRMAN COONEY** replied not all bills that come down here are just cap-related. He had been in conversation with the chairman of the taxation committee, and he is requesting that some bills that may come out of that committee come down here so the committee can see what kind of impact they are going to have. He could not say **SEN. BALES'** bill would not come before the committee. He said they were not cherry picking. There are several National Guard bills, and they need to be looked at instead of just passing them carte blanche. **SEN. BALES** did not recall taxation bills going to Senate Finance any time in the past. He wondered if they are starting a new precedent that tax bills get heard in taxation and also in Finance and Claims. **CHAIRMAN COONEY** emphasized that revenues and expenditures have to be dealt with.

EXECUTIVE ACTION ON SB 238

{Tape: 2; Side: B; Approx. Time Counter: 17.9}

Motion: SEN. GALLUS moved that SB 238 DO PASS.

Motion: SEN. LAIBLE moved that SB023801.ATP BE ADOPTED.

EXHIBIT(fcs58a02)

Discussion:

SEN. LAIBLE said the amendment eliminates the fiscal note. The responsibility of the agency is to assist consumers, to educate them, and to provide guidance when they call with questions. He thought they were funding something within this bill that they have already funded in the budget. In the hearing, he asked, if this was such an overriding desire on the part of the agency, why they did not present this to the subcommittee as either a new proposal or a decision package. The Department said they did not think about it. He said this solves the problem with the bill. He indicated he presented a copy of this amendment to **SEN. WHEAT**, who did not indicate whether he would support the amendment or not.

SEN. HAWKS said they heard testimony from **Alicia Pichette**, **State Auditor's Office**, that there is no area in their current budget for education beyond the basic publications that they currently have available. If the program is to be expanded, there would need to be some funding. He asked about the Department's orientation towards education. **Karen Powell**, **State Auditors Office**, advised, as **Ms. Pichette** testified, the Department does as much outreach as possible. They do not have money in the budget to go out in the field to talk to people. The bill does not allow increased staffing. It provides some funds to prepare materials and pay for travel costs for the existing staff for outreach in communities. **SEN. HAWKS** asked if the Department has no funding sources internally to extend the program. **Ms. Powell** said, that is correct.

SEN. GALLUS thought they should vote on the bill on its own merits, without this amendment. He urged the committee to vote no.

CHAIRMAN COONEY said, if this amendment is not approved, he will have a conceptual amendment to reduce the amount of money.

SEN. LAIBLE asked **Ms. Powell** what the overall budget is for this agency. **Ms. Powell** said they gave a copy of their budget to the secretary in the hearing. **Ms. Purdy** advised, for the entire agency, it is about $10 million. **SEN. LAIBLE** thought education is important for this agency. They are being funded by a tax of 6.27% from all taxpayers in the state that is submitted by insurance companies. He did not think this is a policy they want to bring forward. He believes there is enough money within their budget to fund what **SEN. WHEAT** is trying to accomplish without changing the policy. He asked for support for the amendment. It creates a state special revenue account and says the agency will use existing funds.

Vote: Motion passed 10-9 by roll call vote with SEN. COONEY, SEN. GALLUS, SEN. HANSEN, SEN. HAWKS, SEN. LIND, SEN. RYAN, SEN. SCHMIDT, SEN. WEINBERG, and SEN. WILLIAMS voting no.

Motion: SEN. SCHMIDT moved that SB 238 DO PASS AS AMENDED.

Discussion:

SEN. COBB asked **Ms. Purdy** if they take $100,000 general fund and turn it into state special revenue fund, on page 2, line 28, if it could be subject to appropriation of a portion of the taxes. That would allow every Legislature to decide how much should go into that education fund.

{Tape: 3; Side: A}

Ms. Purdy commented that section of the bill just came out with the passage of the amendment.

SEN. BARKUS told **Ms. Powell** that her agency does a great job with all they do. He asked her if they already have a charge within their agency to educate the consumer. **Ms. Powell** replied, they do. **SEN. BARKUS** said, as the bill is now amended, theoretically this should just be done through HB 2. The agency should ask for these funds in the subcommittee on general government. **Ms. Powell** said this morning is the first time she had seen that amendment, and she did not know how it would impact their funding system; they may have to lay off employees. She acknowledged they have a mandate to provide education to the public.

SEN. HAWKS asked if they were removing $100,000 from the Departent's budget in this process. **Ms. Purdy** indicated they were compelling the creation of an account and the Auditor would move whatever money was necessary. **SEN. LAIBLE** said the amendment strikes Section 2, which deals with the $100,000, and Section 3 in its entirety.

Vote: Motion carried 13-6 by voice vote with SEN. BALES, SEN. BARKUS, and SEN. ESP, voting no. SEN. BRUEGGEMAN, SEN. KEENAN, and SEN. STAPLETON voted no by proxy.

EXECUTIVE ACTION ON SB 239

{Tape: 3; Side: A; Approx. Time Counter: 5.8}

Motion: SEN. GALLUS moved that SB 239 DO PASS.

Motion: **SEN. LAIBLE moved that SB023901.ATP BE ADOPTED.**

EXHIBIT(fcs58a03)

Discussion:

SEN. BARKUS asked **SEN. LAIBLE** what the difference is between creating a fund and requiring the Department to perform the function within their budget in HB 2. He wondered why they were creating a separate fund. **SEN. LAIBLE** said, according to testimony, it was an oversight by the Department that they did not ask for funding to do this, and **SEN. WHEAT** believed it was an important function of this agency to provide education to the consumers. The amendment would provide a special revenue account so they can put funding into it and use that money for education. If this amendment passes, there is nothing in the bill that says how much has to be spent. They are charged with providing education. They might take the money that they are allocating now for education and put it into this fund, along with any additional funding. He was trying to balance out the needs of the agency along with the desires of **SEN. WHEAT.** **SEN. BARKUS** warned this could potentially become restricted. If they do not have money in the fund, they may not be able to do any investor education. If the special revenue fund is not funded, this bill could require them not to spend money from outside this fund on education by default. **SEN. LAIBLE** replied if they did not have the funding to provide education, which is their charge, they would not be doing it now. His amendment says they have the ability to put money into a special revenue account for the purpose of education. He was trying to accomplish what **SEN. WHEAT** wanted--a focus on education.

SEN. GALLUS commented because the State Auditor wanted to take a step forward, they are not only not going to give him that step forward, but they are going to ask him to take a step back. He urged people to resist the amendment and then vote on the bill on its merits.

SEN. ESP gave a hypothetical example of **SEN. TESTER** running for governor with **SEN. COONEY** as the Lieutenant Governor candidate, and **Mr. Morrison** running for Governor with **SEN. ESP** as his Lieutenant Governor. The Legislature appropriated money to allow **Commissioner Morrison** to go around the state to educate people. He might like that because he was on the same ticket, but **SEN. TESTER** might not. He indicated he would vote yes on the amendment and no on the bill. He did not think they want to go down this road.

CHAIRMAN COONEY thought that was an interesting point. This is a statewide elected official they are dealing with, and there are other statewide elected officials that they have not reigned in as far as their ability to utilize the profile of their office. It happens all the time. There was a bill that passed earlier that restricts the use of public service announcements. He cautioned the committee that, if they are interested in going in that direction, they should probably have a consistent policy for all elected officials, including justices on the Supreme Court, etc. There is a special fund in other offices that has been allowed to be used for those types of operations.

SEN. COBB asked if the amendment strikes all the existing law permanently. **Ms. Purdy** clarified existing law would remain as it is.

SEN. LANE LARSON advised he served on the General Government and Transportation Committee when the Auditor's office made their presentation. They had the funding they needed and asked for some increases. He did not think there was a problem with the Auditor's budget.

SEN. HAWKS told **SEN. ESP**, with the bill amended as it was on line 3, the official's name cannot be attached to the information that is being sent out, and maybe he ought to support this bill as it is amended.

SEN. GALLUS said he would move to table the motion. He had never heard of them opening and closing on motions like they had today. He wanted to vote.

SEN. LAIBLE said there is nothing in this amendment that can prevent or encourage elected officials from doing exactly what **SEN. ESP** feared, from either a special fund or out of existing funding. He encouraged support for the amendment for the same reasons as the last amendment.

Vote: Motion failed 8-11 by roll call vote with SEN. BARKUS, SEN. BRUEGGEMAN, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, SEN. LARSON, and SEN. STAPLETON voting aye. SEN. BALES voted aye by proxy.

Motion: SEN. GALLUS moved that SB 239 DO PASS AS AMENDED.

Motion: SEN. COONEY moved A CONCEPTUAL AMENDMENT TO REDUCE THE $100,000 TO $25,000.

Discussion:

SEN. BARKUS urged them to resist this amendment. The agency is already getting funding and is charged to do this. This is an additional appropriation that should have been done in HB 2 in the general government subcommittee.

Vote: Motion carried 11-8 by voice vote with SEN. BARKUS, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, SEN. LARSON, and SEN. STAPLETON voting no. SEN. BALES voted no by proxy.

Motion/Vote: SEN. GALLUS moved that SB 239 DO PASS AS AMENDED. Motion failed 8-11 by voice vote with SEN. COONEY, SEN. GALLUS, SEN. HANSEN, SEN. HAWKS, SEN. LIND, SEN. SCHMIDT, and SEN. WILLIAMS voting aye. SEN. RYAN voted aye by proxy.

Motion/Vote: SEN. LAIBLE moved that SB 239 BE TABLED. Motion carried 11-8 by roll call vote with SEN. COONEY, SEN. GALLUS, SEN. HANSEN, SEN. HAWKS, SEN. LIND, SEN. SCHMIDT, and SEN. WILLIAMS voting no. SEN. RYAN voted aye by proxy.

ADJOURNMENT

Adjournment: 11:06 A.M.

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SEN. MIKE COONEY, Chairman

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PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs58aad0.PDF)