

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on February 2, 2005
at 3:30 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Mike Cooney (D)
Sen. Jon Ellingson (D)
Sen. Jeff Essmann (R)
Sen. Steven Gallus (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: Confirmation Hearings:
Keith Kelly, Department of Labor &
Industry;
Maj. Gen. Randall Mosley,
Department of Military Affairs;
Mary Sexton, Department of Natural
Resources and Conservation
Executive Action: None.

Keith Kelly - Director, Department of Labor & Industry

Keith Kelly was appointed by President Clinton as Administrator of the Farm Service Agency in Washington, D.C. He was Director of the Montana Department of Agriculture under former Governor Ted Schwinden, served as Deputy Secretary of State under former Secretary Mike Cooney and was Arizona's Agriculture Director for seven years under a Republican governor. He recently served as Division Administrator at the Montana Department of Labor and Industry. Mr. Kelly served with the Army 101st Airborne Division in Vietnam and was awarded the Bronze Star. He graduated from Red Lodge High School and received his bachelor's degree in agriculture business and his master's degree in economics, both from Montana State University. Mr. Kelly is married with four children and four grandchildren.

Mr. Kelly stated the Department's mission was to promote the well-being of Montana's workers, employers, and citizens and to uphold their rights and responsibilities. Its vision included: customer needs and satisfaction; continued improvement of processes; ethics in the workplace; individual growth for employees; and individual responsibility. He provided a copy of his State employment application and an organizational chart showing the Department's divisions and bureaus, and proceeded to walk the Committee through it.

EXHIBIT (sts26a01)

EXHIBIT (sts26a02)

{Tape: 1; Side: A; Approx. Time Counter: 11.5}

SEN. RICK LAIBLE, SD 44, VICTOR, surmised that the licensing bureaus had the ability to impact Montana's citizens, and change the dynamics of the economy, through rule-making authority and asked about oversight. **Mr. Kelly** advised the Department had oversight, and was charged with reviewing and testing; any proposed rule was required to be within the framework of the law and the guidelines of the board.

SEN. LAIBLE noted the Department was responsible for job listings for the unemployed as well as for employers looking for workers, and added, the university system had its own placement system. He asked Mr. Kelly's position with regard to having two separate programs. **Mr. Kelly** advised he had no problem with it or the third group, the so-called headhunters. He added that the university system was more likely to appeal to college graduates or first-time employees, and opined whoever did the best job for the public would get their business. He talked about job service offices in outlying areas which become human resource centers and

deal with employment related claims while those in bigger cities have a totally different dynamic.

SEN. LAIBLE stated the job service office in Hamilton was doing an excellent job, but he was concerned there might be two different classes of service, as some of were state offices and publicly funded and some were privately run. **Mr. Kelly** advised the State Workforce Investment Board was charged with tying together the Department of Labor, the Department of Commerce, and the university system; he felt it would be worth looking into whether these entities were competing with each other and services were being duplicated.

{Tape: 1; Side: A; Approx. Time Counter: 20.1}

SEN. VICKI COCCHIARELLA, SD 47, MISSOULA, referred to the maximum unemployment benefits of \$335 per week while workers' compensation benefits were \$504; she asked Mr. Kelly whether or not he would advocate for raising unemployment benefits. **Mr. Kelly** replied unless there was a directive from the Governor, his agency would provide the Legislature with the necessary information, and have them determine the amount of benefits under UI. He was willing to take a look at increasing benefits, but for him to be an advocate, he would have to be sure it would not have any adverse effect on the Fund. **Mr. Kelly** advised he would be an advocate for higher wages for all Montanans.

{Tape: 1; Side: A; Approx. Time Counter: 26}

SEN. JEFF ESSMANN, SD 28, BILLINGS, asked Mr. Kelly how many employees the Department had, how many of them were in Helena, and how many were eligible for retirement within the next five years. **Mr. Kelly** advised the Department had about 750 employees, and more than half worked in 22 field offices; as far as losing employees to retirement, he did not have specific numbers but knew the percentage was rather high.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, wondered whether he had asked for any more FTEs, such as building inspectors. **Mr. Kelly** recalled several bills which included requests for additional FTEs, but could not recall specific numbers.

{Tape: 1; Side: B}

Mr. Kelly stated they had also requested an additional boiler inspector, and six FTEs for the occupational licensing bureau to accommodate the new regulations on independent contractors.

SEN. SQUIRES contended that some supervisors who served on the Department's boards did not monitor their staff which could lead to poor decision-making; she suggested that he should take a closer look at who should be appointed to them. **Mr. Kelly** advised such a meeting had already taken place, and two board members had been let go.

SEN. SQUIRES referred to the marked difference between small town job service offices and those in bigger cities, saying the latter were more employer-oriented. She expressed hope that under Mr. Kelly's tenure, employees would be a priority again.

SEN. COCCHIARELLA stated that Butte had a "One Stop" office, which was set up to combine service providers for displaced workers under one roof and asked Mr. Kelly whether there should be more places like that. **Mr. Kelly** stated the concept of "One Stops" made sense but he was not sure the services should be combined under one roof as this would necessitate new facilities.

SEN. COCCHIARELLA contended the perception was that the Department of Labor was moving further away from taking care of "labor" and asked about Mr. Kelly's approach to this. **Mr. Kelly** was unaware of this; he restated his commitment to workers, which included better wages and longer hours.

SEN. COCCHIARELLA commented that her perception was partially due to her involvement with the Workforce Investment Board where 51% of the membership was required to come from the business sector. **Mr. Kelly** stated he was not bothered by this requirement; what was important was for the different sectors to come together to improve working conditions and morale in order to move Montana forward.

{Tape: 1; Side: B; Approx. Time Counter: 12.8}

SEN. DAVE LEWIS, SD 42, HELENA, wondered whether the department had taken a position on the minimum wage bill. **Mr. Kelly** stated they had provided information only.

{Tape: 1; Side: B; Approx. Time Counter: 13.9}

Major General Randall Mosley - Department of Military Affairs

Maj. Gen. Mosley has served as director of the Department of Military Affairs since September of 2004. His military career began in 1970 as an ROTC graduate from the University of Montana, where he received a bachelor of science degree in forestry and later a bachelor's degree in business administration. He served on active duty until 1972, including one tour in Vietnam as a

helicopter pilot. In 1995, he received a master's degree in National Security and Strategic Studies from the Naval War College in Newport, Rhode Island. Maj. Gen. Mosley has 31 years experience in executive-level management positions in State government, and has served the country for 34 years as a Commissioned Officer. State agency experience also includes stints as Deputy Director of the Department of Natural Resources and Conservation, and Division Administrator of the Department of State Lands. Maj. Gen. Mosley is an avid runner and has competed in 26 marathons.

Maj. Gen. Mosley provided his resume, along with a copy of his assignments and awards, and reviewed his career with the Committee.

EXHIBIT (sts26a03)

He advised his Department was responsible for providing trained and ready units in case of Federal or State activation; there were programs to provide assistance to communities; the National Guard also provides support for disaster and emergency services; and there was a program helping high school drop-outs to assimilate back into society. **Maj. Gen. Mosley** stated there were 168 State and over 800 Federal employees, and reviewed the training, function, and funding of the Montana National Guard. He advised that September 11, 2001, changed the Guard from a strategic reserve to one that could be mobilized and deployed with just a few days' notice, adding that over 80% of Montana's Air National Guard has been deployed and about 70% of the Army National Guard, for a total of 1500 soldiers. He stated his mission was to have a trained and ready force, and to make sure the families of deployed soldiers were taken care of. He added it had become necessary to hire full-time staff to administer support to those families.

{Tape: 2; Side: A}

Maj. Gen. Mosley advised that he had attended farewells and the funeral of every active service member, stating there was nothing more important to him than the soldiers and their families. He was also concerned about the impending restructuring faced by the military nationwide, as it would severely impact Montana's National Guard. He feared diminished strength across the State as the Guard was unable to maintain the authorized force structure of 3,200 members; it currently has under 2,500. He touched on Homeland Security issues, and advised the State had received a total of \$45 million in Federal grants in the last five years to improve the Guard's readiness. He handed out a copy of the 2003 Impact Brochure, adding that even though he had

talked primarily about military issues, he was also involved with the Youth Challenge, Emergency management, and Veteran's Affairs programs.

EXHIBIT (sts26a04)

{Tape: 2; Side: A; Approx. Time Counter: 5.3}

SEN. JIM SHOCKLEY, SD 45, VICTOR, stated that the Guard was in the habit of locking the doors at their facilities; he did not think this was much of a deterrent, and asked Maj. Gen. Mosley to comment. **Maj. Gen. Mosley** replied the Federal government mandated specific security measures for all facilities, and the Guard had to comply.

{Tape: 2; Side: A; Approx. Time Counter: 6.9}

SEN. LAIBLE asked whether the number of Guard members was being reduced because vacancies did not get filled, or whether the intent was to cut back. **Maj. Gen. Mosley** replied it was a combination of both which had increased the Guard's reliance on the reservists; another reason was the decision made by the military that certain types of units were no longer needed in the force structure, as they had been designed for now obsolete combat methods. He explained that none of the units were at 100% strength but had to be deployed at full strength, which meant people from other units had to be transferred.

SEN. LAIBLE asked whether this restructuring would affect Montana's federal funding. **Maj. Gen. Mosley** replied that it would.

SEN. COCCHIARELLA asked what steps could be taken to improve the numbers, especially in light of the fact that the current war influenced recruitment negatively. **Maj. Gen. Mosley** stated bringing the force structure down to the level of their strength should make for an organization that was closer to 100% strength and more in balance with what they could attract and retain. He stressed there had not been a significant drop in soldiers who had come back from overseas deployment.

SEN. COCCHIARELLA wondered whether there would be enough Guard members should the State experience another year of wildfires. **Maj. Gen. Mosley** was quick to point out that more than half of the National Guard was still in the State, able to handle any disaster; even during the peak of the wildfires of 2000, there were never more than 500 Guardsmen out on the fire lines at any given time. He added when the numbers went below 50% because of deployments, he would contact Federal Headquarters and let them

know that Montana was not able to fully conduct State active duty and Homeland Security missions.

{Tape: 2; Side: A; Approx. Time Counter: 16.7}

SEN. JEFF ESSMANN, SD 28, BILLINGS, surmised he had no control over the five-day deployment notices but wondered whether there was anything he could do make it easier for the families involved. **Maj. Gen. Mosley** replied that normally, there was a 30-day mobilization notification, and the orders were issued about 30 days prior to deployment. He explained, if there was an urgent need for certain specialties, it would be the only time when there was less notification time; this pertained mostly to individuals rather than units and presented not only logistics problems, but was hard on the families emotionally.

SEN. JOSEPH TROPILA, SD 13, GREAT FALLS, wondered whether enlistments were down. **Maj. Gen. Mosley** stated the numbers were down significantly in the Army National Guard while the Air National Guard was fairing better.

SEN. TROPILA inquired whether the Federal government offered any enlistment bonus. **Maj. Gen. Mosley** advised that it had increased from \$5,000 to \$15,000.

{Tape: 2; Side: A; Approx. Time Counter: 20.6}

Mary Sexton - Director, Department of Natural Resources & Conservation

With a long history of service, **Mary Sexton** has most recently been a County Commissioner in Teton County. Additionally, she is involved with her family's farm/ranch operation, and the Stage Stop Inn in Choteau. She worked as the Administrator and Education Director for the Nature Conservancy's Pine Butte Preserve, and spent over ten years teaching high school English and German in Hamilton. She has been a member of the Choteau Chamber of Commerce, the Private Land/Public Wildlife council, Bureau of Land Management Resource Advisory Council, and Shared Leadership Committee. Ms. Sexton attended CM Russell High School in Great Falls, received her bachelor's degree from Stanford University, and her master's degree from the University of Montana. She is married to Rich Clough and has one daughter, Maggie.

Ms. Sexton provided copies of her resume and goals for the Department, and shared a brief overview of her life and career.

EXHIBIT (sts26a05)

EXHIBIT (sts26a06)

She advised the Department's five major divisions included the trust lands; the Water Resources Bureau; the Forestry Division; the Conservation Resource Development division; and Central Services. In her opinion, the three major challenges facing the Department were trust land issues; water adjudications process; and sustained yield timber program and fire suppression issues.

Ms. Sexton stated her strength lay in balancing interests, and the department provided a perfect venue, as it has to weigh the needs of various interest groups with the needs of the land.

SEN. LEWIS referred to their difference of opinion with regard to the Rocky Mountain Front, and asked about the drilling on Flesher Pass.

{Tape: 2; Side: B}

He asked whether she had changed her position on this, given her responsibility as manager of State lands and to maximize revenue.

Ms. Sexton advised, as County Commissioner, she had opposed the project for economic reasons and because of the Federal involvement, as all proposals were on Federal land; she had proposed a swap of the existing Federal leases, especially since she felt another twenty years would pass before another EIS was completed. She felt there were opportunities for slant drilling on private or State lands, without the same ecological concerns. She was in favor of investigating other options, and improved technology in order to pinpoint the exact location of gas pools for drilling some time in the future.

SEN. COCCHIARELLA was curious how she proposed to balance the enhancement of State lands with the need to explore and harvest natural resources, given her reputation that she would never drill on State lands. **Ms. Sexton** took offense at generalizations and stated it was a balancing act as she would look at opportunities for finding recoverable amounts, road issues, and community sentiment. She felt the State had taken a pro-active approach to issues concerning State lands.

SEN. COCCHIARELLA recounted several friends' stories who had worked for the Department and then found themselves displaced because of differences of opinion; she asked whether Ms. Sexton would "clean house" and replace employees with people who shared her views. **Ms. Sexton** replied, while philosophical differences were commonplace, she had inherited a good staff, and favored dealing with personnel issues in a straight-forward manner. She had no intention of replacing current employees but would look at

structural issues within the constraints of her budget and resources; political agendas had no place in her Department.

{Tape: 2; Side: B; Approx. Time Counter: 6.1}

SEN. JOE BALYEAT, SD 34, BOZEMAN, mentioned coal bed methane development, Otter Creek coal tracts, and harvest of old growth timber, all on State lands, and asked her response to each of these issues. **Ms. Sexton** stated she had some reservations about the Otter Creek tract as it was a very complex issue; the Department had done initial studies which would help the marketing of the tracts as there were accessibility and coal-quality, as well transmission line issues. She stated her willingness to work with private industry to resolve these issues.

SEN. BALYEAT referred to the money appropriated to test the reserves at the Otter Creek tracts, and wondered whether it was going forward; he also was curious what would be done with the information. **Ms. Sexton** advised the study had been done and the funds depleted; the information had been forwarded to Great Northern Properties, but she was not sure if it was publicly available yet.

SEN. BALYEAT asked whether she could share any preliminary information with the Committee. **Ms. Sexton** replied there were no cultural problems and the quality of the coal was such that it could not be as widely used as coal from other areas; she added the Class 1 air shed for the Northern Cheyenne was still unresolved.

SEN. BALYEAT inquired about her position on the development of coal bed methane. **Ms. Sexton** stated she had met with several different interest groups, namely Fidelity and the Northern Plains Resource Council, and their biggest concern was the water issue; she contended the water's salinity was the main concern of adjacent landowners and ranchers as well. She felt not all of the issues regarding coal bed methane development had been resolved.

SEN. BALYEAT asked Ms. Sexton to address the timber harvest issue. **Ms. Sexton** advised of the completion of the sustained yield study, which resulted in a sustained yield approach program of 53 million board feet per year. She stated, in order to reach that goal, the Department needed more flexibility in how the harvest was conducted because they were required to come up with a habitat conservation plan; this might restrict, or at least put parameters on, where and how trees were cut. **Ms. Sexton** also talked about selective cutting, and longer term licensing which

would give them more flexibility with regard to their timber program.

{Tape: 2; Side: B; Approx. Time Counter: 12.2}

SEN. ESSMANN asked for assurance that the department would not play games with regard to the leasing of State lands, such as accepting a bid and then lowering the price, thereby losing income for the School Trust Fund. **Ms. Sexton** explained that due to recent changes, as long as the bids were competitive, the landlord had the authority to determine who would be the best steward. Since a high bid did not necessarily reflect the economic potential of the land, the lease amount was based on market value; she stated that, currently, the median price was between \$10 and \$12 per Animal Unit/Month (AUM). The bid amount could be reduced to the median value in that area, the rationale being that the income should be equal to market value.

SEN. ESSMANN wondered if someone wanting to lease State land for recreational rather than agricultural purposes would be given the same consideration under the new regulations. **Ms. Sexton** advised, for recreational purposes, one could get a license and a lease for grazing; these two could be piggy-backed, resulting in two sources of income to the State.

SEN. ESSMANN referred to real estate development on State lands and asked whether the State would sell or develop the land by putting in improvements such as water and utilities, or whether they would try to maximize income by collaborating with a developer. **Ms. Sexton** replied they were doing both, depending on the proposed use; they could lease and enter a partnership with a developer, or they could sell a parcel or the developing rights only. The goal was to establish long-term income because of the Department's fiduciary responsibilities.

SEN. ESSMANN hypothesized there was a developer who touted the adjacent State land as being undeveloped and park-like, and asked how she would deal with such a situation. **Ms. Sexton** replied she would actively seek a lessee for the State land portion as she was charged with providing income for the School Trust Fund.

SEN. TROPILA asked, if a person bid on State "landlocked" lands, how would he get access. **Ms. Sexton** stated the Department did not have access to some of their lands and was looking at exchanges. She advised, when they sold property, it was appraised as if they had access because, when the Federal government turned this over to the states through the Enabling Act, there had been the assumption of access to all State parcels. She did not know whether this had ever been tested, and

promised to look into it.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

MARION MOOD, Transcriber

CS/cj/mm

Additional Exhibits:

EXHIBIT ([sts26aad0.PDF](#))