

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 17, 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. 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. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Jon Tester (D)
Sen. Steven Gallus (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 66, 3/11/2005; HB 232,
3/11/2005; SB 147, 3/15/2005; HB
83, 3/11/2005
Executive Action: SB 249; SB 275; SB 66; SB 232

HEARING ON SB 66

Opening Statement by Sponsor:

SEN. SAM KITZENBERG (R), SD 18, Glasgow, opened the hearing on **SB 66**, Investment tax credit. **SEN. KITZENBERG** remarked he had been working on this bill for ten years. His nickname for this bill is Route 66; it is the roadway to jobs. Ten years ago, Boise, Idaho, and Billings, Montana, were the same size. Today, Boise is three times the size of Billings. He attributed that growth to the investment tax credit in Idaho. The key to getting the investment tax credit is the creation of a job. He supplied the committee with a copy of his sponsor's fiscal note.

EXHIBIT (fcs59a01)

If everything goes right, the net impact to the state will be \$35,000. The bill has a sunset provision and calls for an assessment by the revenue committee. To be eligible for the investment tax credit, the assets of a company cannot be more than \$5 million. He built the bill to serve his area, which is in severe economic straits, but it was decided to offer it statewide. He did not sign the fiscal note, which showed a worst case scenario of \$500,000. He claimed this bill will create jobs; if the job does not last three years, the tax credit is taken away.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Jim McKeon, Department of Revenue, indicated he would be happy to answer any questions.

Questions from Committee Members and Responses:

SEN. GREG BARKUS inquired about the reason for the \$5 million cap. **SEN. KITZENBERG** replied, many investment tax credits are in trouble right now because of being unfairly applied. Investment tax credits for large corporations are primarily the ones under attack. He decided to fly underneath the cloud of judiciary review. With the \$5 million cap, he was limiting this mostly to

businesses that exist in Montana. Originally, that limitation was not part of the bill. He was told by **Lee Heiman, Legislative Services**, that they would not have to worry about the judicial reviews for a minimum of ten years. He had no qualms about dropping the cap; this tax credit has worked with big businesses in Idaho. He hopes this works so well that they will expand it in two years. **SEN. BARKUS** assured **SEN. KITZENBERG** that Boise did not grow from businesses with \$5 million in assets.

SEN. RICK LAIBLE said, in order to qualify for the credit, a business must invest in a piece of equipment plus hire an employee. He wondered, why not just give the credit for hiring new employees. **SEN. KITZENBERG** said there been other credits offered to stimulate jobs. He knew of one large corporation that took the tax break in Montana, went to Idaho, invested in some new equipment, and got the investment tax credit for creating jobs in Idaho. He wanted to be sure that a job was created, and if it was not, that the credit was taken away.

SEN. BOB HAWKS questioned comparing Boise to Billings. The development and growth in Boise was primarily high-tech and strongly University-based. He asked if there is a strong enough correlation to give a sense of how this might work in a more rural environment. **SEN. KITZENBERG** did not think it was one particular factor. Success begets success. He acknowledged **SEN. BARKUS'** point about limiting this to \$5 million. This model is based exactly on the Idaho model. There would be more impact if the credit was offered at the same level as Idaho. The Governor of Idaho recently asked that their investment tax credit be renewed. He thought Montana would have similar results. He quoted Hemingway by saying you have to risk the deep water to catch a big fish.

CHAIRMAN COONEY asked **Mr. McKeon** if he had the opportunity to read the sponsor's fiscal note. **Mr. McKeon** advised, no; he had read the official one. **CHAIRMAN COONEY** requested that **Mr. McKeon** read it and then talk about it later on.

Closing by Sponsor:

SEN. KITZENBERG contended they need to take some risks, but he is trying to minimize the risks. He stated that he had so much confidence in this model, that he would have no problem at all taking off the \$5 million cap.

HEARING ON HB 232

{Tape: 1; Side: A; Approx. Time Counter: 25.7}

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, Billings, opened the hearing on **HB 232**, Require pre-sentence report to propose payment of IT charge. The information technology surcharge is for technology for Montana district courts and courts of limited jurisdiction. The \$5 surcharge began in 1995 and was increased to \$10 in 2003. It raised slightly more than \$1.2 million in 2004, which was about \$600,000 less than was anticipated. Judges may not be including the charge in sentencing as they are required to.

Proponents' Testimony:

Jim Oppedahl, Administrator, Montana Supreme Court, described the effort made for long-term stable funding for the courts. They are trying to kill the idea of zero-based budgeting for court information technology. Every two years they have to get a bill through the Legislature to get funding for IT. That creates a short planning horizon; he cannot sign a contract with a vendor for more than two years maximum. On July 1, 2005, he is not sure of the money for IT planning and procurement for the court system. There has been progress made over the last two years. They have a state standard case-management system in over one-hundred courts of limited jurisdiction. Part of that is through the surcharge, and part of that is federal funding. In the Supreme Court, there is no case management system. It has a docketing system without a database that runs on WordPerfect 1.1, which is six generations behind the current version. They need a stable, long-term, adequate funding source, and this bill is a step in the right direction.

{Tape: 1; Side: B}

Ted Clack, Montana Magistrates Association, supported the bill. The state Courts of Limited Jurisdiction have been pursuing automation since 1988. The bill will eliminate uncertainty and extend the revenue stream for sufficient time to get the court automation process completed and maintained.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BARKUS asked **REP. NOENNIG** what the pre-sentence investigation report is. **REP. NOENNIG** said when someone is convicted of a crime, the next phase is sentencing. The judge has a range of parameters with which to impose the sentence. An

investigation is done, and a recommendation is made to the judge regarding the sentence. **SEN. BARKUS** asked if this is after a court proceeding. **REP. NOENNIG** said it is after someone has pled guilty or has been found guilty. **SEN. BARKUS** asked why they are only assessing those who are found guilty. More revenues could be derived if everyone who is burdening the system paid. **REP. NOENNIG** advised that is the way it works. The surcharge applies to a defendant who is convicted of a criminal offense; the initiating party in a civil or probate case at the commencement of each action, proceeding, or filing; and each defendant or respondent upon appearance in civil cases. This bill deals with the narrow issue of the charge imposed on a defendant when he or she is being sentenced. The others are easier to administer because someone is filing the case. This is one that is slipping through the cracks.

SEN. LAIBLE asked about the fiscal note. **REP. NOENNIG** thought the fiscal note covered revenue that is generated from the fee and is related to the extension of time. There is a checklist reminder for the judge for one type of fee that is collected.

SEN. LAIBLE said the real issue is changing the sunset, and **REP. NOENNIG** concurred.

SEN. LAIBLE asked **Mr. Oppedahl** if the fee is not going to pay for the full court system by 2007. **Mr. Oppedahl** said, that is right. When the courts asked for the surcharge in 1995, they asked for what they thought they could get. They now have a strategic plan. The surcharge has been inadequate to meet those needs. When state assumption of district courts came along in 2001, and none of the money came up for IT from the counties, the pressure on the funding source became greater. Their preference at the beginning of this session was simply to ask for what they need, which they think ought to be general fund. The needs are greater than what the surcharge can actually bear. The surcharge sunsets every two years, so it is not a stable source of funding. This is the only entity in government that is treated this way in IT.

SEN. LAIBLE said the Judiciary submitted a request for IT in the subcommittee. He asked to what extent that was funded, and how that will be dealt with in HB 2. **Mr. Oppedahl** was positive they would not get double-funded. The proposal they made to the budget office was for \$2.2 million in general fund in 2006 and \$2.6 million in 2007. Governor Martz took the position they should not use general fund and should come back in for the surcharge. She funded \$1.4 million one-time-only for case management in the district courts. Governor Schweitzer's budget includes approximately \$1.9 million each year of general fund and assumes that the surcharge will continue. This \$1.6 million will come to the general fund under HB 536 to backfill part of that general fund. The subcommittee deferred action on both the

continuation of the base amount for the surcharge and the \$1.9 million until passage of either HB 536 or HB 232. In HB 2, there is the base amount expended in FY 04, \$1.4 million, that is unfunded. It is a committee bill. **SEN. LAIBLE** asked what the full cost is of the full court IT program that this bill is going to fund. **Mr. Oppedahl** indicated the total cost of the package they put together for the ongoing maintenance and staffing is for \$2.2 million in FY 04 and \$2.6 million in FY 06-07.

SEN. JOHN ESP said the bill extends the old law. He asked how they get the funds out of state special and into the general fund. **Mr. Oppedahl** clarified there is about \$300,000 of general fund in HB 2 in FY 06 and \$600,000 in FY 07 that made up the difference between their request and the Governor's proposal of \$1.9 million. The rest of the money in HB 2 is unfunded. It depends on the passage of this bill, or a decision not to fund the courts with state special revenue and funding them with general fund. **SEN. ESP** said they need to track how that works at some point in the process and coordinate those things.

SEN. TRUDY SCHMIDT asked if the surcharge is not collected if there is no sentence imposed. **Mr. Oppedahl** said the judge can make a decision at the time of sentencing based on the recommendation, and they might not impose this surcharge. **SEN. SCHMIDT** asked if they are unable to collect fifty percent of the time. **Mr. Oppedahl** advised the issues are time payments, how it is paid, and ability to pay. One of the difficulties is the stability of this funding source. When they left the session in 2003, there was \$1.8 million appropriated in each year of the biennium to support IT. When FY 04 ended, they had to pay back \$200,000 at the county level.

SEN. JOHN BRUEGGEMAN said he has never been a fan of sunset provisions. Planning information technology projects takes a longer vision. Retaining a vendor is a concern. One of the problems with IT in Montana is in taking the short term approach; operation and maintenance is not fully addressed. Maintenance is the biggest issue. Keeping a team in place to build the system and continue through the maintenance process gives a better chance of success.

Closing by Sponsor:

REP. NOENNIG closed on the bill.

HEARING ON SB 147

{Tape: 1; Side: B; Approx. Time Counter: 19.6 - 30}

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, opened the hearing on **SB 147**, Revise payment of school retirement costs. **REP. RYAN** described the bill as an important piece of legislation. SB 147 would undo something the Legislature did in the last session and deals with the retirement costs. Previously, a district would choose to have those retirement costs put into their general fund or take retirement costs for federal programs, such as Title I, Special Ed, and Impact Aid out of the money that comes from the federal government for those programs. Other districts treated all employees the same and put this on the county retirement levy. That allowed them to maximize the dollars that came to the districts for those programs in hiring personnel to meet the needs. In order to get a funding increase in the entitlements, legislation passed last session required that, for any federal program, the complete cost of employee benefits had to be paid with federal dollars, and schools were not allowed to have those costs put into the county retirement fund. The county retirement and the retirement levies are based upon state GTB. Mills are levied and a low wealth district is supplemented by the state to meet those costs. In most districts this legislation led to a reduction in services in these particular programs. The idea of SB 424 was, with No Child Left Behind and the federal government's huge infusion of money that was going to come to the state for federal programs, that they would be able to afford to pay retirement. The federal government has pulled away from their financial commitment to No Child Left Behind. The new monies were directly tied to particular programs. Some districts were forced to reduce services because the new dollars did not offset the need. If this bill passes, local districts will have the discretion to decide whether to use federal money to fund the retirement or that they need the services more and to move this onto the county retirement. That local authority was taken away last session in order to supplement the small increase in entitlements. He noted the bill carried by **SEN. FRANK SMITH** on Impact Aid. The fiscal note for this bill will be reduced by the amount of the Impact Aid money.

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), distributed written information to the committee.

EXHIBIT (fcs59a02)

They believe it is necessary to reverse the policy passed last session. Last session, they were looking at the rapid expansion of federal funding for public education and believed it was

necessary to avoid a large tax increase at the county level for retirement. They changed the law to require school districts to pay for the retirement costs of those federally funded employees out of their own funds. It was not anticipated that school districts would have to dip into general fund in order to do this. The projections used to drive this policy forward were that schools would have \$133.5 and \$144.6 million in federal funding in the No Child Left Behind Act. The premise was to give present law adjustments to pay for the increased costs. Much of that was swallowed by declining enrollment. Authorization levels at the federal level are always higher than the appropriations. The federal money came up short by \$22.295 million. School districts had to use the increase of \$17.8 million that was intended for addressing the needs of students. The net effect was that all of the increase granted to schools was swallowed up. Currently, if things do not get worse, they are scheduled for a \$2 million cut in federal funds.

{Tape: 2; Side: A}

There are some creative ways to address the fiscal impact of this bill. Last session they converted HB 124 block grant monies to increase state facility support and fund the ANB increases in SB 424. There are block grant funds that are outside of the general fund, about \$5 million a year, that if converted could cover the fiscal impact of this bill. Significant harm has been inflicted on schools in the last two years as the result of the policies that were passed in SB 424. SB 147 proposes a necessary reversal of that policy. Schools need those resources to serve children who have the needs referenced in the federal law. This is about education for impoverished children. The cut really came from Title I funds and is based on free and reduced lunch. They decided to take money that could have been used to narrow the achievement gap between the haves and have-nots. He urged support for the bill.

Eric Feaver, MEA-MFT, testified that nothing alienated the education community more than what happened with SB 424 last session. The impact of SB 424 shifting the cost of retirement benefits to federal funds or to the general funds of schools was to damage the school districts with the lowest student performances in the state, largely predicated on their special needs and their income. It was simply wrong. They argued vigorously against it and killed SB 323 several times over. In the magic of the legislative process, a bill that had a big title that was not intended to do anything about county retirement levies or federal funds, became a vehicle for the provision they now want to erase. It was a last week deal. Every comment they made in committee was that this was the wrong thing to do, and it has proved to be wrong. He was glad the Legislature was looking

at fixing things that were broken. The best example of that was HB 447, the state pay plan, and SB 206, that would provide a twenty-five cent increase for a significant number of Montana state employees who received no pay increase to this point. SB 333, by **SEN. SMITH**, corrects that portion of SB 424 that pertains to Indian impact aid and was a violation of federal law. The rest of the impact was on Special Education and Title I. He encouraged them to fix this situation. He described this as a priority of this Legislature, above and beyond almost anything else that it could do in terms of school funding. One way to do this is to use the miscellaneous block grants and district transportation grants. He said they will actually be money ahead, and it is not uncommon for the Legislature to dip into block grants and specify how they might be expended.

Madalyn Quinlan, Office of Public Instruction, advised they opposed SB 323 last session that put this provision in place. They continued to oppose this provision that requires school districts to charge their federal funding sources for the retirement benefits associated with federally funded employees. She reiterated that the federal money increases that they were projecting last session did not materialize. This hurts schools that are receiving targeted monies for Title I for economically disadvantaged students, and also those school districts that received special education monies under the federal Individuals with Disabilities Education Act.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. HAWKS asked if there is any correlation between the guidelines on impact aid and other federal programs with regard to using those funds for retirement. If this is put back in the category of discretionary, he wondered about legal trouble. **Mr. Melton** thought by returning it to a discretionary basis at the local level, there is local control. A variety of funds are allocated to K-12 public schools, and those are expended in ways that are different than the way they were allocated. There is an issue in terms of the mandated solution, which is addressed in SB 333. This policy was put forward last session resting solely upon a letter from a mid-level staff member at the U.S. Department of Education, and only with regard to whether this could be done permissively under the No Child Left Behind Act. They did not have a letter on Impact Aid or Special Ed. There are different statutes that talk about maintenance of effort. He thinks if this is not addressed in this session, there will be an

argument from the U.S. Department of Education that this violates special education maintenance of effort requirements.

SEN. JOHN COBB asked **SEN. RYAN** about using something else instead of general fund. **SEN. RYAN** indicated there are monies that go out to school districts that are not general fund.

SEN. SCHMIDT asked **Ms. Quinlan** how many districts were affected by the legislation last session. **Ms. Quinlan** replied that all districts that retain employees out of a federal funding source were affected by this. Her testimony was that Title I monies are targeted assistance and go to schools with students that are economically disadvantaged and schools that have low test scores. It is money that is specifically targeted to bring up student achievement and to improve educational opportunities. Those schools that are receiving the money have staff that are paid out of Title I monies, and those are the same schools that now have to absorb the cost of retirement for those employees within the federal funds. They have to cut back on staff or cut back on something else in order to cover those retirement costs that used to be funded from the county retirement funds. The same would be true with special education. **SEN. SCHMIDT** asked if every school district was affected in some way. **Ms. Quinlan** advised all schools are subject to the law. There were some schools that were already charging their federal programs for those retirement benefits, so they did not take a hit after the law was passed. **SEN. SCHMIDT** asked about SB 323. **Ms. Quinlan** responded that SB 323 was the original version that was introduced last session that put this provision into place. That bill failed, but the provisions were ultimately put into SB 424.

SEN. ESP inquired if the costs associated with Impact Aid were in this fiscal note. **Ms. Quinlan** said the figures in the fiscal note will be reduced by about \$650,000 each year as a result of **SEN. SMITH'S** bill. She added that they were asked to do another fiscal note on that bill to show zero fiscal impact. **SEN. ESP** further questioned whether that was the state impact and not the local property tax increase. **Ms. Quinlan** said the state share is about 27% of the impact, and the county mill levy will be the remaining 73%. **SEN. ESP** stated the money would not necessarily go back to the schools in an inequitable way. **Ms. Quinlan** said, that is true. It is also true that last session when the rate increases were passed, and these provisions were put in place, schools received \$500,000 less in this biennium from the state compared to the previous biennium. There was no gain from the rearrangements that went on last session. **SEN. ESP** asked if that was somewhat a function of the enrollment. **Ms. Quinlan** replied, yes. That is compounded by the fact that these federal monies that the budget was built on did not materialize.

SEN. ESP asked **Mr. Melton** about the HB 124 block grants. **Mr. Melton** indicated there are three HB 124 block grants. A large piece of it is in the general fund and is \$43 million a year. He did not recommend they touch that, because it goes directly for tax relief. To the extent they use it, taxes will go up. There are two other block grants that are very small. One is the district transportation block grant, which is about \$1.8 million a year. To the extent they convert that, it would impact taxes. The other is the combined fund block grant. Last session, in SB 424, several block grants were rolled together into the combined fund block grant, and school districts were allowed to allocate it to any budgeted fund. If they allocated it to the flexibility fund, it was for spending, not for tax relief. That block grant is \$3.2 million, and those two block grants combined are \$5 million a year. If the full cost of SB 147 were funded by eliminating those block grants, there would be \$1.1 million left over. He suggested they could commit that back to the district transportation block grant or more adequately fund Indian Education for All in HB 2. It provides a way to do it without dipping into other expenditures within the state and to implement a good public policy. The most compelling argument last session was that federal funding was going to go up. It has been \$22 million short, so the major impetus behind the proposal never materialized. **SEN. ESP** said the problem is the schools are using that \$5 million to educate. If they are to continue to do those things, they will either have to raise local taxes, find the money someplace else, or not do it. **Mr. Melton** said \$1.8 of it is district tax relief; \$3.2 million is uncertain. It is allocated on an annual basis, and nobody is considering it to be part of their basic expenditures. It is money that some districts put to one fund, and some districts put to another. Ultimately, since the state touches it, it is the state's share. Right now, they are distributing it on a per-business equipment and vehicles basis instead of a per-child basis. **SEN. ESP** asked if any consideration has been given to getting rid of all these block grant programs. **Mr. Melton** believed that would ultimately be part of the solution that the Joint Select Committee on Education works on. It is working on a new funding formula. The state is very much exposed to be distributing money, its share, in a way that has no educational relevance. That needs to be done all at once, according to **REP. BILL GLASER**. There will be a big number of winners and losers in terms of tax rates in each community. When that is done, it had better be part of the solution for the new funding formula. **SEN. ESP** responded that to do something else with this money might not be in the best interests of the final solution. They might be better off to fund it straight up and not cause a local property tax increase to do those other things that are being done with the money now. **Mr. Melton** disagreed. He thought that those two remaining block

grants, other than the general fund block grant, are small when distributed on a statewide basis compared to the total budget of \$2.7 billion. This is an opportunity for the Legislature to implement good public policy to make headway against eliminating the current inequitable distribution of the state's share they currently have under HB 124 block grants, and not tackle that big issue, the \$43 million in the general fund budget, until they solve the whole issue in developing the funding formula. He thought it was good public policy to use those funds so they do not have to make inroads into other areas of HB 2 and solve this issue which was premised upon schools having \$22 million that they do not have. It will be worse next year when they lose another \$2 million in federal funding. **SEN. ESP** asked if that is \$22 million over the biennium. **Mr. Melton** said that is correct. In relation to the total spending and the impact that it would have on district taxes those block grants are small. There would be \$1.8 million that would impact district taxes on a statewide basis. The combined fund block grant is not tax relief. It can be allocated to any fund in the district. He presumed districts were putting it where they can spend it, in the flexibility fund or the technology acquisitions and depreciation fund. That will not impact taxes at all. **SEN. ESP** maintained they are using it to educate children. **Mr. Melton** said they are probably making \$3.2 million headway against this \$22 million shortfall.

SEN. LAIBLE was not sure he completely understands how the funding formula works. If this bill passes, school districts will have the option of either including the benefit packages within the federal funding or putting it back to taxpayers. If they put it back to taxpayers, the money in the fiscal note comes from the state to supplement for GTB. **Mr. Melton** said, yes. **SEN. LAIBLE** remarked that when SB 424 went into effect, a lot of school districts had change. He inquired how many school districts were already paying retirement out of the federal funding. **Mr. Melton** indicated the Great Falls district had already incorporated that into their practices. The fiscal note is a worst case scenario. He thinks the cost is going to be less than what is stated in the fiscal note. He offered to get that information. **SEN. LAIBLE** asked if this bill passes, why a school district would give up the matching state money. **Mr. Melton** advised in order to get that dollar from the state, they have to spend two dollars in county tax to get there. The state GTB is based upon the level that they are using the county tax to support the retirement obligations. That is why districts chose to do that voluntarily before last session's bill ever came along. **SEN. LAIBLE** said the fiscal note suggests net county property tax for retirement budgets are projected to increase by \$10.3 million and \$11 million in 2006 and 2007. He asked how many school districts that would include.

{Tape: 2; Side: B}

Mr. Melton assumed the fiscal note had to project what could happen if the wheels fall off, and everybody abandons the practice. He thought it would be smaller. The intent behind SB 134 was never to roll back county taxes below their present levels; it was to forestall the increase that is coming when the federal funding goes up. When taxes go down and go back up, that is a tax increase, but he looks at the bill as a sunset on two years of tax relief that occurred with this premise of federal funding. Property taxes went down last session by \$10.9 million and \$9.4 million and now will go back up. Two years of tax relief will go away if this bill passes.

SEN. KEITH BALES asked if there was about \$10 million in tax relief per year. **Mr. Melton** replied it was projected to be \$10.5 million in the first year and \$9.4 million in the second. **SEN. BALES** wondered if property taxes in all those districts went down by that much over this last two years. He had not noticed his property taxes going down. **Mr. Melton** replied he would not likely see his district property taxes go down; they would go up. County taxes for retirement were lowered; it is the aggregated costs of retirement in the entire county. The premise was that school districts would be able to pay for it with an increase of federal funds that was projected to be \$22.2 million larger than it was. When that money did not come through, inevitably, school districts needed to pass a levy. **SEN. BALES** asked if this bill authorizes another \$10 million in property taxes, per year statewide. **Mr. Melton** replied last session's bill said county taxes would go down by \$10.5 million in the first year, and \$9.4 million in the second year. Now, they will go back up by about the same amount. It may be slightly more because the county retirement levy is a function of staff salaries. As staff salaries rise, so does the fifteen percent benefit rate that is charged to the retirement levy for the mandated employment costs, including TRS. **SEN. BALES** said **Mr. Melton** testified the money was aimed at impoverished students. He asked where those students are located. He assumed the impact aid was targeted at the reservations. **Mr. Melton** explained it is based upon a school district's eligibility for free and reduced lunch. Rural areas have greater eligibility and poverty in many instances than urban areas. This impacts Special Education as well. He did not think there were any remarkable pockets of poverty in the state. The economic indicators from the Department of Labor indicate that rural communities do far worse on economic performance than do urban communities. **SEN. BALES** said most of the aid goes to poorer areas of the state that probably have less of a property tax base, and yet they are going to take the money for the retirement system out of that tax base in those impoverished

areas to pay the retirement. Part of the logic for passing the bill in the last session was there was an extra burden in those areas. **Mr. Melton** said some would argue that was the intent, but that would not be a correct interpretation. This levy for the retirement obligations is not assessed on a district by district basis. It is assessed on a countywide basis. If a county has a low tax base, being assessed for the retirement costs for employees on a district basis costs more than having it assessed on a county basis where richer neighbors can help share the burden. **SEN. BALES** argued that there are entire counties that may fall underneath that scenario. It does not necessarily follow that it is equalized, because it is countywide. There is quite a disparity in the property tax levies that are charged from county to county. **Mr. Melton** said that is correct, but that is a different issue. The issue here is whether to have individual school districts, with their individual tax base, pay for this issue, or whether to assess it on a countywide basis. This bill does not change what is happening in terms of a countywide levy versus paying it on a statewide level. There is GTB support when it is paid at the county level. The poorer counties get GTB support, and that is part of the fiscal impact of this bill. It negates the fact that they have a lesser degree of wealth than other counties. SB 424 said they will pay for this with federal funding and the federal funding did not come through; they are now paying for it on a district by district basis whether poor, rich, or medium with completely unequalized district taxes. This bill proposes to raise it back to the county level, which is GTB supported, and to the extent that there are entire counties that are impoverished in relation to other counties, there is a state formula to alleviate that. There is no formula to alleviate what school districts have to do right now to pay for this out of their own district funds and their own district taxes.

Closing by Sponsor:

SEN. RYAN noted there were amendments to the bill to include the cooperatives and to remove the countywide retirement block grants which no longer exist. He addressed the comments of **SEN. ESP** that the money allocated for Special Ed and Title I services is based upon the need within that district to get services to those children. When they took the money that was available through the state through GTB to help those districts fund those needs and distributed the entitlement formula, they took money that was targeted and distributed it out statewide to those that did not have as much need in those particular areas. Great Falls does not use any of their Impact Aid money in determining their retirement benefits. **SEN. LAIBLE** had asked a question about why districts would not do this. In his district, Great Falls looks

at their Impact Aid, Title I, and Special Ed and makes a determination. They do not use any of their Impact Aid money in determining retirement benefits. They keep that separated out. In Belt and in Cascade, those districts use all federal money to fund those federal programs. It is a local decision that the board has made. The reason boards make those decisions is because, especially in the areas of Special Ed, there are services that are required by law. If those services are required, they have to fund that service. If they can maximize their money in Special Ed by using all of the federal money to hire as many people or services as necessary and take the 15% that is added to retirement costs, they have maximized their federal dollars to meet the service. If smaller school districts like Cascade and Belt feel that they can meet the needs and the services of the students just using the federal monies available, they do that. They do it as best they can without passing it on. Most districts in the state receive some GTB and counties receive GTB. It varies all across the state how much GTB will be generated from the state as a match. When this ability was taken out, and all of those dollars had to come from the federal program; if the district was above the base and had to pay retirement out of general fund, then the district had to levy local taxes to meet that need. This is an issue they are looking at to make sure that there is equal access to revenue to fund all programs adequately long-term. Since the federal government did not come through with their promises, this policy needs to be reversed. This is part of the short-term solution to allow money to roll into the state while they fix the long-term situation. Every district is affected differently by this bill. This is about local control.

HEARING ON HB 83

{Tape: 2; Side: B; Approx. Time Counter: 18.9}

Opening Statement by Sponsor:

REP. MARGARETT CAMPBELL (D), HD 31, Poplar, opened the hearing on **HB 83**, Revise school district tuition payments. The bill was requested by the Office of Public Instruction and allows OPI to pay tuition for children that have been placed in foster care and group homes by state agencies and courts causing the students to attend school in a different school district. This bill makes the tuition payments more efficient. The money in the bill deals with the 55 mills that are collected in each of the counties that go to the state. The County Superintendent in each county pays tuition for state and court placement. Even though it is paid by the county superintendents, the money used for this tuition is

state money. That is appropriate because it is paying for a placement made by the Department of Health and Human Services (DPHHS) and courts. She agreed that state money ought to be used to pay this tuition, and HB 83 does not do anything to change that. What this bill does change is the method of paying the state tuition for state and court placements. The bill makes the process much more efficient by having the state pay for its own placement instead of having the 56 counties pay tuition using state money. By doing that the state can be sure that the payments are accurate and that state money is only used to pay for the kinds of tuition it is meant for. The bill does not cost the state any more money. The tuition is already being paid from the 55 mills that are collected at the county level. The amount of tuition will not change. She referred to the second page of a handout that showed the amount of over and under payments over two years.

EXHIBIT (fcs59a03)

It is hoped the bill will streamline things and make them more efficient.

Proponents' Testimony:

Joan Anderson, OPI, testified the purpose of the bill is to streamline the process so the state, through OPI, pays the state placement tuition to school districts rather than county superintendents. This bill has an appropriation of \$336,000 built in for the second year of the biennium in FY 07. Tuition for children who are attending starting next school year is, by law, paid the year after they attend. She explained the flow chart in Figure 2 of the handout (exhibit 3). There will be no increase in FTE. They requested that this appropriation be built into OPI's budget under HB 2 in order to be able to make those payments.

REP. FRANK SMITH referred to the spreadsheet (exhibit 3) which showed some counties do not understand the tuition program. This needs to be looked at seriously because some schools are getting shorted.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BALES asked **Ms. Anderson** about children that are assigned by the court. He indicated in the past he worked on trying to

streamline the process for all students that will be outside of their district. He wondered if there was any consideration given to trying to make this more universal for all out-of-district attendees other than just for the court-assigned foster children, etc.

{Tape: 3; Side: A}

Ms. Anderson indicated only a small portion of the number of children statewide may be attending out of district. The purpose was to solve a problem that OPI and the counties have in processing these particular payments. This bill did not try to do anything different with ordinary tuition in ordinary circumstances that are not the result of state placement. **SEN. BALES** wondered if this plan would work for other out-of-district situations. **Ms. Anderson** indicated this particular process is so specific to these kinds of children and the state placement and state payment for tuition, that it really does not apply to those other kinds of tuition. If a parent lives close to the border between two districts and prefers to send their children across the border into a neighboring school district, that tuition charge by that district would normally be picked up by that parent. The other situation that commonly occurs is if there is a district on one side of the mountains and a district on the other side of the mountains, the school district where a student resides will pay the tuition to have the child go to the other district.

Closing by Sponsor:

REP. CAMPBELL reiterated that this bill allows the state to accurately pay state tuition, rather than relying on the 56 counties to accurately figure out all of the complicated tuition laws and make payments. Local control of schools is extremely important, and it is preserved in this bill. School districts have all of the rights they did before in forming the tuition agreements and providing education for children that are placed in their districts. County superintendents will still help in the process by making sure the students are placed in good foster homes or group home settings and that their educational needs are adequately addressed in the local schools. Their goal will be educational rather than fiscal.

EXECUTIVE ACTION ON SB 249

{Tape: 3; Side: A; Approx. Time Counter: 3.4}

Motion: **SEN. COBB** moved that SB 249 DO PASS.

Discussion:

SEN. COBB explained this is the bill that would provide a statewide continuum of care between Corrections and Public Health on treatment for substance abuse. The first fiscal note had \$1.1 million, and the second one was supposed to be knocked down to \$200,000. The latest one was for \$500,000. Corrections decided to add \$100,000 each year. He asked them why they did that, and they said they were not sure how much it was going to cost, so they just put the money in. He said he would amend the bill conceptually to strike Section A, B, C, and D; section E would be retained. DPHHS and the Department of Corrections will still have to develop a care plan, correction standards, and a procedure to assist offenders leaving prison. It will not cost anything to do a plan. When people leave the prison system they can get health care or treatment from human services. The bill will be amended to terminate on July 1, 2007. There is still money in HB 2 to do those other things, and they can still do those things if the money is left in.

CHAIRMAN COONEY asked if this bill was referred from the floor.

SEN. COBB clarified it was referred from the floor but, with the amendment, it goes back on Second Reading.

SEN. DAN WEINBERG asked when they strike A, B, C, and D, what the new fiscal note will say. **SEN. COBB** said it would be zero. He asked DPHHS and Corrections if they can get this plan together. There are things they can do now for people. To study which outcomes work best and train personnel in the Department of Corrections to do better substance abuse treatment costs money. There are things they can do about coordinating whether people coming out of prison ought to be Medicaid or SSI eligible, whether to get them into treatment, etc. This bill would have them report what they are doing to a committee and get this done.

SEN. WEINBERG asked if they would be imposing this upon the Department or if the Department really wants to do this. **SEN. COBB** advised DPHHS said they would do it. Corrections spend most of their time working on mental health and not much on substance abuse. **Joan Cassidy, Chemical Dependency Bureau** had said this is what they want to do, and they will do it. Developing a plan needs to be done sooner or later. **SEN. WEINBERG** said if it is being imposed upon them, it will not get done or will not get done well. If this is something they are interested in, this bill should go forward. **SEN. COBB** repeated that **Joan Cassidy** wants to do this. They need to update their rules, which are twenty years out of date on substance abuse. Reporting to a legislative committee is the backup. There are things Corrections could be doing differently that do not cost money.

They have to come before a committee, and if they get nothing done, he did not think the committee will be pleased.

SEN. BARKUS asked if the \$100,000 for the IT analysis would still be in the fiscal note. **SEN. COBB** said, it would not. There will be a new fiscal note, but he did not sign it. They needed it for the baseline studies in Sections A, B, C, and D. They need a plan to work together, but will not get any more money. The \$200,000 in the bill was for human services to find out what is working and training. Corrections added more money in case it was needed. There should be no fiscal impact. If it comes back with more money, at some point they ought to kill the bill.

SEN. HAWKS asked if there is an underlying philosophical difference or differing treatment model between Corrections and DPHHS. If that exists, he wondered if this bill would bridge that gap. **SEN. COBB** said in the prison there is one size fits all. In human services, they are treated more as individuals or within groups of categories. When they cut out of the prison system, they treat them just before they get out or just let them out. Human services tries to treat the individual on an ongoing basis. There is a waiting list to get treatment. People violate their probation the third time and then are sent to prison.

SEN. BOB KEENAN declared this is vintage **SEN. COBB** to have people work together, and he said, this will work. This involves the Mental and Addictive Disorders Division. Four and one half years has produced positive changes and cooperation between AMDD and mental health at the prison. He went to the prison in April of 2000. Under Director Day of the Racicot administration, there was an admission that there were a handful of people in prison that had a mental illness. The number soon went from 350 taking psycho-tropic medication to 800. These were not just personality disorders; they were more severe diagnoses. Director Slaughter has been the coordinator for all of that and has done a tremendous job, according to **SEN. KEENAN**. The psychologist and psychiatrist at the prison serve on the Mental Health Oversight Advisory Council, which includes addictive disorders as well. The focus needs to be on mental illnesses as opposed to the chemical dependency side of things. Whether the bill is necessary all depends on the individuals involved. **Joan Cassidy** is new and is focused. She can probably do with chemical dependency, along with Director Slaughter, what has happened to mental health. A lot of the impetus for the cooperation on the mental health part of Corrections and AMDD came through the Mental Health Oversight Advisory Council. There is a lack of planning and oversight on the chemical dependency side. The focus is starting to come on the co-occurring aspect. This bill is not a "slap"; it is more of a "please". **SEN. COBB** has been

trying to do this for twenty years, sometimes successfully and sometimes not. It all comes down to the directors.

SEN. SCHMIDT said the subcommittee is working on a committee bill on these issues. They hope that the issue of mental health and chemical dependency in both Corrections and DPHHS can be coordinated. **SEN. COBB'S** bill is asking them to work together. She thought they needed to pass the bill out.

SEN. COBB wanted to put the amendment on to make sure the fiscal note is zero. If the bill comes out of subcommittee this bill may not be needed. **SEN. HAWKS** inquired whether it is wiser to turn the bill out with a statement that it be coordinated. **SEN. COBB** said the subcommittee bill is a study bill. This bill says to do it now. He wanted a fiscal note that is zero first. They can have the discussion in HB 2 whether they want to do other things.

Motion/Vote: **SEN. COBB** moved a **CONCEPTUAL AMENDMENT STRIKING SECTION A, B, C, AND D BE ADOPTED**. Motion carried unanimously by voice vote.

SEN. COBB said he wanted to delay taking further action. A new fiscal note will be requested.

EXECUTIVE ACTION ON SB 275

{Tape: 3; Side: A; Approx. Time Counter: 20.8}

Motion: **SEN. SCHMIDT** moved that SB 275 DO PASS.

Motion: **SEN. STAPLETON** moved that SB027501.ATP BE ADOPTED.

EXHIBIT (fcs59a04)

Discussion:

SEN. STAPLETON thought it was confusing to call the program a voluntary genetics program. He talked to **Jack Casey, Shodair**, who has no problem with calling it a statewide genetics program.

Vote: Motion carried unanimously by voice vote.

Motion: **SEN. SCHMIDT** moved that SB 275 DO PASS AS AMENDED.

Motion: **SEN. SCHMIDT** moved that SB027502.ASB BE ADOPTED.

[EXHIBIT \(fcs59a05\)](#)

[EXHIBIT \(fcs59a06\)](#)

Discussion:

Taryn Purdy, Legislative Fiscal Division, advised the primary thrust of the amendment is for a temporary \$1 fee to the insurance industry that reverts back to \$.70 at the end of this next biennium. **Mona Jamison, Shodair**, explained they worked hard with the Department and **Frank Cote**, on behalf of these health insurance plans, to come up with these amendments. The thirty cent increase is only for the biennium; beginning on July 1, 2007, the fee reverts to seventy cents. The Department, Shodair, **SEN. SCHMIDT** and she will work with the Insurance Department to find out how many other insurers can be picked up by those other self-insured entities such as the University System, cities, and towns to spread this over a wider base. The amendment assures the contractor will be self supporting and will absorb the costs of additional lab tests. The clarification of laboratory is critical to show there is a cancer lab in the state that can handle the scope of services as outlined in a \$1.6 million grant. Issues between **Shodair** and the Department were resolved.

{Tape: 3; Side: B}

SEN. STAPLETON asked if this is a balance that was struck and that the opponents are no longer opponents to this bill. **Ms. Jamison** advised, yes.

Vote: Motion carried unanimously by voice vote.

SEN. LAIBLE said after the hearing he had **Ms. Purdy** draft amendment **SB027502.ATP**. He thought this amendment prompted the parties to generate the compromise amendment. He said he would withdraw his amendment from consideration.

[EXHIBIT \(fcs59a07\)](#)

Motion/Vote: SEN. SCHMIDT moved that SB 275 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 66

{Tape: 3; Side: B; Approx. Time Counter: 4.5}

Motion: SEN. BARKUS moved that SB 66 DO PASS.

Motion: SEN. BARKUS moved a CONCEPTUAL AMENDMENT ON PAGE 2, LINE 8 TO STRIKE "\$5 MILLION" AND INSERT "\$100 MILLION".

Discussion:

SEN. BARKUS said the amendment is intended to include all businesses in Montana with the exception of the large, multi-state corporations. He did not want to exclude businesses that were creating jobs in this state.

CHAIRMAN COONEY asked if the amendment would change the fiscal note. **SEN. BARKUS** said the bottom line of the fiscal note probably would change. The essence of tax credits is a reduction of income. In the sponsor's fiscal note, there is no impact. If a tax credit is given to a business that has purchased \$100,000 worth of equipment and created one new job, the business equipment tax revenue increase would be \$3000. In essence they were getting the money back. In addition, they would get the income tax revenue from the employee. He argued that there could be a positive fiscal impact.

SEN. GREG LIND asked about the distribution of Montana business assets and the number of businesses. **SEN. BARKUS** replied the majority of Montana farms have assets of \$5 million. He did not know how to quantify the numbers. He said he was trying to fix the bill.

SEN. LAIBLE liked the amendment. The whole point of the bill was to stimulate business growth and job creation in the state. Part of the problem with fiscal notes is that they are retrospective instead of prospective.

SEN. HAWKS stated this should not have a limit if the policy is good. When dealing with the overall concept, they are in a good cycle at the moment. That natural growth that is occurring and the revenue that will come from that growth will be marginalized by this sort of a cut. There will be less coming in, and that would be counterbalanced by some theoretical benefit that might be generated. He said he would have to see the fiscal note on this.

SEN. BRUEGGEMAN asked if the thought was to amend this and wait. **SEN. BARKUS** replied that **SEN. LIND** requested a day for research. He wanted to amend the bill, and did not think they could get a fiscal note right away. **SEN. BRUEGGEMAN** commented he used to work for a high-tech company called Precision Engineering. They continued to upgrade and buy new equipment. With equipment like that, they had to hire highly trained professionals. Typically,

those are \$20 to \$25 per hour jobs. He favored the idea of removing the cap.

SEN. ESP thought a fiscal note was a mute point.

SEN. LIND expressed concern about up-front impacts and wanted to wait a day and do some research.

SEN. BARKUS withdrew his motion.

EXECUTIVE ACTION ON HB 232

{Tape: 3; Side: B; Approx. Time Counter: 15.9}

Motion: **SEN. LAIBLE** moved that SB 232 BE CONCURRED IN.

Discussion:

SEN. ESP asked the subcommittee members about the IT plan in the Judiciary and wondered who the Judiciary reports to. He asked if **SEN. LAIBLE** was confident the Judiciary gave enough information so they knew what was going on in IT in the courts. **SEN. LAIBLE** replied this is the Supreme Court and, historically, getting information has been difficult. He thought the presentations this session were much better and he was feeling confident about what they are doing with IT now.

SEN. HAWKS asked if removing the sunset on fees and increasing the fees would give some relief. There was a problem with stable funding. He asked if there was testimony in committee about the removal of the sunset or surcharge changes that might be a remedy here. **SEN. LAIBLE** did not remember that in committee. The bill does not remove the sunset; the sunset is moved out. This does not increase the fee, but continues the same fee that has been in place for four years.

SEN. BRUEGGEMAN said he chaired the subcommittee last session and worked closely with the Court and **Mr. Oppedahl** in the discussion of IT issues. He used to work for an IT vendor and had specific knowledge of how these things work. The Court has been in the stone age. He advocated for removing the sunset altogether and stressed the significance of operations and maintenance funding. The IT investments in the courts will fundamentally change the way they operate in the state.

SEN. SCHMIDT asked about the technical note that says this will have to coordinate with LC 2207. **Ms. Purdy** said that LC is the

bill that was referred to by **Mr. Oppedahl**. The bill eliminates the sunset until 2009 and then deposits those monies into the general fund. That bill would require a general fund appropriation in HB 2 in the amount deemed appropriate by the Legislature. The bills need to be coordinated, but the committee did not need to put language in either of the bills at this point. That coordination will be done in the final stages.

SEN. LAIBLE resisted the idea of removing the sunset. There is a process in place where agencies can request maintenance funds in a decision package through the subcommittee.

CHAIRMAN COONEY addressed **SEN. STAPLETON** about serving on the Council for the Supreme Court and asked for his thoughts on the matter. **SEN. STAPLETON** advised he served on the Information Technology Board and the Supreme Court Information Technology Committee. He was in support of about 95% of what they came up with. This bill falls in the category of the 5% and has to do with a bill in the last session. They were trying to piggyback the Court's technology needs onto HB 261. The Courts do not have a revenue stream, and the fees are not collected in some counties. His opposition is because they agreed last session to let this fee go away in two years. They came forward and the new administration agreed to fund their IT needs with general fund. The administration asked that the fee be extended with the money going to the general fund. That was not something the technology committee agreed to. It was not his belief that this bill is needed.

CHAIRMAN COONEY said **Ms. Purdy** suggested they hang onto the bill until they get **REP. CALLAHAN'S** bill and deal with them at the same time.

SEN. LAIBLE withdrew his motion.

ADJOURNMENT

Adjournment: 11:20 A.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT ([fcs59aad0.PDF](#))