



LEGISLATIVE FINANCE COMMITTEE

59TH Montana Legislature

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

SENATE MEMBERS

JOHN COBB, CHAIRMAN
KEITH BALES
MIKE COONEY
RICK LAIBLE
DON RYAN
CAROL WILLIAMS

HOUSE MEMBERS

ROSALIE BUZZAS, VICE CHAIRMAN
GARY BRANAE
TIM CALLAHAN
RAY HAWK
RICK RIPLEY
JOHN SINRUD

MINUTES

June 8 & 9, 2006
Room 102, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Fiscal Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document**

ROLL CALL

Sen. Rick Laible
Sen. Mike Cooney
Sen. Carol Williams
Sen. Don Ryan
Sen. John Cobb
Rep. Gary Branae
Rep. Ray Hawk
Rep. Rick Ripley
Rep. Rosalie Buzzas
Rep. Tim Callahan
Clayton Schenck, Legislative Fiscal Analyst
Diane McDuffie, Committee Secretary

ABSENT

Senator Keith Bales
Rep. John Sinrud

Attachments

Visitor's list #1

Call to Order (Tape 1A-001)

Senator John Cobb, Chairman, called the 196th meeting of the Legislative Finance Committee (LFC) to order at 1:00 p.m. on Thursday, June 8, 2006. The meeting was held in Hearing Room 102 of the State Capitol, Helena, Montana.

1. Approval of Minutes for March 9 & 10, 2006 (Tape 1A-0015)

MOTON: **Rep. Ripley** moved the minutes of the March 9 & 10, 2006 meeting be approved as submitted. **VOTE:** The motion carried unanimously.

Clayton Schenck, LFA, LFD, advised the committee of the resignation of Shane Sierer, Legislative Fiscal Analyst, LFD and the resignation of Lois Menzies, Executive Director, Legislative Services Division (LSD). He also presented a longevity pin to Pat Gervais, Senior Fiscal Analyst, for 15 years of service working for the State of Montana.

2. Subcommittee Recommendations on Resource Indemnity Trust Statutes and Policies

(Tape 1A-061)

Barbara Smith, Fiscal Analyst, LFD presented a report on HJR 36 Resource Indemnity Trust Study Recommendations to the Legislative Finance Committee. (Exhibit 1) Ms. Smith explained that after consideration of research, testimony and information, the subcommittee developed recommendations to include reallocation of Resource Indemnity Ground Water Assessment taxes to eliminate inter fund transfers, consolidation of grant and loan programs, elimination of two funds from the RIT matrix and statutory changes to clarify the use of RIT-related funds. The subcommittee also identified areas that required additional analysis. These include the requests for performance audits on the Orphan Share Program and the Future Fisheries program. The subcommittee also requested that staff continue looking at DEQ fees and the funding of the Natural Resource Information System. Ms. Smith also provided an updated table on the subcommittee proposed changes which show a positive ending fund balance for all funds. (Exhibit 1A)

Public Comment

Mick Robinson, Associate Commissioner for Fiscal Affairs, Office of the Commissioner of Higher Education, (OCHE) expressed concern with eliminating the statutory appropriation of RIT of \$240,000 per year to Montana State University – Northern. Mr. Robinson explained that it would be difficult for the campus to absorb this amount. If the campus continues this spending level it would amount to a tuition increase of 1.5 to 3.5 percent. He requested the option to phase in the amount over a period of time.

Senator Cooney asked if the subcommittee discussed the impact on different entities that would lose funding.

Representative Ripley said the subcommittee did discuss and realizes the impact on the MSU-Northern. The subcommittee recommended this statutory appropriation be eliminated because it is providing for infrastructure and staffing.

Ms. Smith explained that the original statutory appropriation was to develop the Water Quality program at MSU-Northern.

Senator Laible said one of the criteria for ranking these programs was to determine whether the use of RIT dollars met the intent of the statute and this program did not.

MOTION: **Senator Cooney** moved to adopt recommendations of the subcommittee and requested corresponding legislation. **VOTE:** Motion passed unanimously.

3. Subcommittee Recommendations on Long Range Building Funding Interim Study (Tape 1A-340)

Cathy Duncan, Senior Fiscal Analyst, LFD presented a report on Recommendation to the Legislative Finance Committee from the Subcommittee on LRBP Cash Program Funding. (Exhibit 2) The purpose of this report is to provide an update regarding options for the future funding of the Long-Range Building Program (LRBP). The subcommittee is charged with developing recommendations on two issues; the inadequate funding level of the LRBP and how

to reduce the deferred maintenance backlog. After hearing staff recommendations of different methodologies to address these issues, the subcommittee focused their efforts on two proposals: 1) a rental surcharge assessed by the agency based on number of square feet occupied and a renewal rate, developed for each building type; and 2) a future maintenance funding endowment trust based on an existing statute, Title 17, Chapter 7, part 206, MCA.

Senator Cooney recommended the LFC approve the two funding proposals; 1) rental surcharge to fund ongoing maintenance needs; and 2) LRBP endowment trust to fund reduction in the deferred maintenance backlog. He also recommended that if the Governor's office approves new one-time money that it be used to set-up the endowment trust and use the interest to address the deferred maintenance issue. If the LFC were to approve the endowment trust he recommended it be a constitutional amendment to protect the trust.

Senator Laible provided a revision of Figures 3 and 4. (Exhibit 2A) Figure 3 shows interest income that would become available for backlogged deferred maintenance projects and Figure 4 shows total funding of the LRBP generated with the proposed recommendations.

Tom O'Connell, Administrator, Architecture and Engineering, Department of Administration (DofA) said he supports the subcommittee recommendations and believes they have presented a plan that will protect state facilities.

MOTION: **Senator Laible** moved to have staff draft legislation to approve the rental surcharge assessed by agency based on number of square feet occupied and a renewal rate developed for each building and type. **VOTE:** Motion passed unanimously.

MOTION: **Senator Laible** moved to have staff draft legislation to approve a constitutional endowment trust and draft legislation to include what happens to the funds if the initiative doesn't pass. **VOTE:** Motion passed unanimously.

4. Final Report of Fiscal Notes Improvement Working Group (Tape 1B-075)

Jon Moe, Fiscal Specialist, LFD provided a report on Findings of the Fiscal Note Work Group and a summary of the decisions made by the Legislative Council on the various options presented in the report. (Exhibits 3 and 3A) The purpose of this report is to provide an update regarding the many options that are a product of the survey of legislators or suggestions by participants in the work discussions. Mr. Moe explained that 18 of 25 options identified by the work group were accepted by the council members. Accepted options include process changes, format changes, and content changes. The most dramatic change would have transferred the fiscal note function from the Governor's budget office to the legislative branch. The council did not adopt this recommendation because of a high price tag and because the various agencies would still provide the information needed to prepare the fiscal notes.

MOTION: Rep. Buzzas moved to endorse the work of the Fiscal Note Working Group and the decisions of the Legislative Council. **VOTE:** Motion passed unanimously.

5. Reliance on Federal Funds: Issues/Impacts (Tape 1B-432)

Clayton Schenck, LFA, presented a report on Reliance on Federal Funds: Issues/Impacts. (Exhibit 4) The purpose of this report is to continue work on the HJR 26 study passed by the 2005 Legislature and approved by the LFC. The resolution called for a study of the history and trends of state reliance on federal funds; history, trends, and portents of federal budget deficits; and options for dealing with budget deficits caused by federal cutbacks. This report focuses on recent and future trends in federal spending in Montana, and what it may mean for budget development in the 2007 Legislative Session by first identifying the largest uses of federal funds, areas with the greatest risk to the state if federal funds change, and areas with the greatest risk of change due to action already taken or proposed. Future work will be done, primarily in conjunction with the budget analysis, of particular impacts on Montana operations as they become clearer. In addition, an offshoot of this effort is the creation of a database of the largest federal funds utilized through state government. Standardized reports on the largest federal funds utilized in Montana will be created from this database and made available for use by the legislature and other interested parties.

Senator Liable asked if agencies have prepared a prioritized list of all the programs that receive federal funding. Mr. Schenck said that various staff members have worked with agencies to gather information but there hasn't been any prioritization.

6. Performance Management – New Proposal Process (Tape 1B-667)

Barbara Smith, Fiscal Analyst, LFD presented a report on Performance Management – New Proposal Process. (Exhibit 5) The purpose of this report is to provide a general overview of the LFD project to establish a standardized format for evaluating new proposals that add or significantly expand state government. Ms. Smith explained that the goal of the LFD is to collect data and information in a standardized format. LFD staff will streamline information collection and analysis in order to provide legislators information regarding the need for the program; goals and objectives; program monitoring; number and type of FTEs; revenue sources; identification of obstacles to implementation; and an evaluation of the risk to the state if the program is not implemented. This information will be documented in the budget analysis. Implementation of this project is dependent upon approval by the LFC.

MOTION: Senator Laible moved to approve implementation of the Performance Management – New Proposal Process. **VOTE:** Motion passed unanimously.

Status Reports on Other Interim Study Committees (Tape 2A-073)

Pension Plans Unfunded Liability: Update on SAVA Work/Proposals

Jon Moe, Fiscal Specialist, LFD reported that the SAVA committee is charged with reviewing legislative proposals related to the retirement systems. The SAVA committee sent out a solicitation for proposals from legislators, retirement boards, public employee and retirement associations and other interested parties. The due date for those proposals is June 9th. The SAVA committee will meet on June 22nd and 23rd to review the proposals. At this time, the only recommendation is the increase in employer contribution. The Board of Investments is taking a more aggressive approach to maximizing investment returns without increasing risks associated with the investments.

Senator Laible asked if there was any discussion regarding alternatives other than getting more money from the employers. Mr. Moe said one of the bill draft proposals is for GO Bonding. A spreadsheet has been prepared by the Auditor's Office showing a comparison between the costs for the increase in employer contribution and paying debt service on the bonds.

Chairman Cobb requested an update at the October meeting.

Report of Proceedings of DOC Advisory Council Study Subcommittee

Representative Callahan said that the Department of Corrections (DOC) Advisory Subcommittee will be meeting in June to bring recommendations to the full committee and he will have more to report at the October meeting.

Committee Administrative Business (Tape 2A-301)

Next LFC Meeting

Chairman Cobb said the next meeting of the LFC will be Thursday and Friday, October 12 and 13, 2006. The last meeting of the LFC is tentatively scheduled for Tuesday, November 28, 2006.

Clayton Schenck, LFA said the October meeting will be very extensive and the committee will be dealing with bill drafts, the Big Picture Report, and the conclusion of a number of items on the work plan.

Clayton Schenck, LFA presented the items under committee business. (Exhibit 6) He discussed the progress of the committee Work Plan and the LFD Cost Report. There were no items that required any action by the committee.

7. LFC/RTIC Draft Legislation to Revise/Clarify Revenue Estimating Statute (Tape 2A-415)

Clayton Schenck, LFA reported that the LFD now has a signed Memorandum of Understanding with the Department of Revenue (DOR) to facilitate the exchange of tax information.

Dan Bucks, Director, DOR addressed the committee regarding the legislation and said that managing the exchange of information from a revenue agency to any other agency involves

complex issues regulated by Federal law. Mr. Bucks said the department has implemented two important changes: 1) managing the exchange of information properly, internally; and 2) seeking an MOU with every agency with which information is exchanged. A significant element of the MOU is maintaining the confidentiality of tax records, particularly as it relates to federal law. Mr. Bucks expressed appreciation to the LFD for being great partners in working through issues that have been troublesome over the years.

Mr. Schenck presented LC0043 a bill draft revising and clarifying the laws governing access to tax information. (Exhibit 7) This bill would also allow the LFD and the OBPP access to more information from individual income tax returns and would clarify the penalties for unauthorized disclosure of tax information. This legislation was requested by the Revenue and Transportation Interim Committee (RTIC) with the LFC as a joint sponsor. The RTIC has deferred action on this legislation until their next meeting in late June.

Mr. Bucks said that there are concerns regarding the rights of individual privacy and the needs of the legislature. He is aware of the need to track certain tax returns over different periods of time and he has some ideas as how to enable that process to go forward so the LFD and the OBPP can select and track the returns over a period of years without dealing with names and SSN.

Senator Ryan asked Mr. Bucks if he had any information on the court decision dealing with PP&L tax protests and the fiscal impact to the state and local governments if the court decision were to be upheld. Mr. Bucks said he has the data and will distribute it tomorrow.

8. Committee Business (Continued) (Tape 3A-037)

Mr. Schenck presented the LFD Compensatory Time Balances and the Broadband Pay Plan Proposal for the Montana Legislative Branch, which will require committee action. Mr. Schenck explained that this proposal is for a revision to the existing pay plan. The new pay plan is based on a comparison to private and public sectors, other legislative staff and the executive in attempt to retain staff and stop the losses due to noncompetitive salaries. If this proposal is approved by Legislative Council, LFC and Legislative Audit Committee it will be put into place June 24,

2006. Pay increases would go into effect for the pay period that includes July 1, 2006. The LFD would need about \$80,000. Legislative Council met June 5 and unanimously passed the proposal.

“Bulldog” Reports

Federal Deficit Reduction Act – Letter to Congressional Delegation

Chairman Cobb presented a copy of the letter to the Congressional Delegation from the LFC regarding potential impacts of federal budget reductions. (Exhibit 8) The letter specifically states “... the committee, on a 7 to 5 vote, acted to express in writing our concerns and to ask you to carefully consider the impacts to the state of Montana” The following members of the LFC concurred: Senators Cobb, Cooney, Ryan, and Williams; Representatives Buzzas, Branae, and Callahan.

Agency Budget Presentations to Appropriations Subcommittees:

Chairman Cobb explained the purpose of this presentation is to provide examples of a standardized format for state agencies to follow when making presentations to the appropriation subcommittees during the legislative session.

Department of Revenue (DOR)

Senator Laible presented a template for the DOR. (Exhibit 9) This document provides a one-page summary of the agency description, agency budget, and policy issues. The purpose of this document is to provide more pertinent information from agencies in the subcommittee process and to help legislators make informed decisions regarding budget issues.

Department of Public Health and Human Services (DPHHS)

Chairman Cobb presented the template for DPHHS. (Exhibit 10) This document has more detailed information regarding individual divisions including program expansion, corrective action plans, FTE, goals and measures and significant issues.

Representative Buzzas asked who would be responsible for preparing the document and would it be part of their budget books in subcommittee. Greg DeWitt, LFD said the original intent was this is a template for the agencies to prepare.

Chairman Cobb requested the templates be sent to the appropriation subcommittees of the 2005 Legislature for comments.

SB 495

Senator Ryan discussed the options offered in the report by Roger Lloyd, Senior Fiscal Analyst, LFD on SB 495 Revisited. (Exhibit 11) Both Senator Ryan and Representative Ripley agreed the impact to the general fund should be as little as possible.

Roger Lloyd, LFD said the subcommittee discussed and agreed on Option 2 on page 2 of the report, to “Request DNRC to develop a phased reduction in net distributions to the guarantee account by varying the loan repayment so that the final payment is less than \$2.0 million, thus lessening the general fund budgetary impact in fiscal 2014”.

Rainy Day Fund Bill Draft Proposal

Jon Moe, Fiscal Specialist, LFD provided a hand-out on the Components of a Rainy Day Fund Concept. (Exhibit 12) Included in this document is the type of fund, fund size, source of monies, and use of fund. Mr. Moe suggested in terms of a goal the LFC could approve a committee bill.

Representative Buzzas said this is a general outline of the areas for negotiation with the budget office. If agreements can be reached a bill could be ready for the LFC to review in October.

Senator Laible said if the committee moves forward he would like to see a bill the legislature has some control on how the funds are used. With the approval of the LFC he would like LFD staff to work with the budget office on a nonpartisan bill the committee can endorse.

MOTION: **Senator Laible** moved to have LFD staff draft a “Rainy Day Fund” bill. **VOTE:** Motion passed.

LFC Action: The committee approved to continue with implementation of the agency budget presentation templates and to send examples to the appropriations subcommittee members.

FRIDAY, MARCH 10, 2006

ROLL CALL

Sen. Rick Laible
Sen. Mike Cooney
Sen. Carol Williams
Sen. Don Ryan
Sen. John Cobb
Rep. Gary Branae
Rep. Rosalie Buzzas
Rep. Ray Hawk
Rep. Tim Callahan
Rep. John Sinrud
Clayton Schenck, Legislative Fiscal Analyst
Diane McDuffie, Committee Secretary

ABSENT

Sen. Keith Bales
Rep. Rick Ripley

Call to Order (Tape 4A-365)

The 196th meeting of the Legislative Finance Committee (LFC) reconvened on Friday, June 9, 2006, and was called to order at 8:00 a.m. by **Senator Cobb**, Chair, in Hearing Room 102 of the State Capitol, Helena, Montana.

Members of the Children and Families Health, and Human Services Interim Committee (CFHH) joined the LFC for the presentation of the Deficit Reduction Act of 2005 – Update. The members of the CFHH in attendance were: Senators Trudi Schmidt, Dan Weinberg, and Jon Esp; Representatives Bill Warden, Eve Franklin, Emilie Eaton and Don Roberts.

Budget Oversight/Monitoring Issues

9. Federal Deficit Reconciliation Act Changes/Potential Impacts: Update (Tape 4A-374)

Lois Steinbeck, Senior Fiscal Analyst, LFD provided a report on the Deficit Reduction Act (DRA) of 2005 – Update. (Exhibit 13) The report summarizes new information related to the DRA. Ms. Steinbeck explained that DPHHS has made a preliminary estimate of savings related to changing Medicaid drug reimbursement from the average wholesale price to the average manufacturer's price. The change in drug reimbursement was one of the suggestions made by the National Governor's Association. DPHHS will also apply for one of the 10 demonstration grants established by the DRA to service children in the community who might otherwise be served in

an inpatient residential treatment center. DPHHS is finalizing its definition of a target population and the number of service slots that will be included in its request. The DRA allows states to offer some of the services formerly available only through an HCBS waiver as a new state plan service. However, the types of services available under the state plan option were not the types of community services that DPHHS believes are needed to serve adults with an SDMI successfully in the community. LFD staff will continue to monitor implementation of the DRA and provide updates to the LFC.

John Chappius, Deputy Director, DPHHS said the department chose an estimated 2 percent savings on drug reimbursement because Montana would be lower than the estimated 10 to 15 percent nationally. The department currently uses average wholesale prices minus 15 percent in drug calculations. CMS has put off release of the new index indefinitely.

Rep. Roberts, CFHH asked if the department changes to the average manufacturer prices will cut out the rebate from the drug companies. Mr. Chappius said he thinks the department would still get the rebate but it may be altered. The preferred drug list provides extra rebates but they could be altered as well.

Rep. Roberts, CFHH asked if this will affect any of the funding of current pharmacy programs dependent upon the rebate reimbursement. Mr. Chappius said they do not have the information yet to calculate that.

10. DPHHS “Bulldog” Reports (Tape 4A-583)

CHIP Enrollment Status: Follow-up

Senator Cooney provided an update on the Children’s Health Insurance Program (CHIP). (Exhibit 14) Senator Cooney explained that CHIP enrollment has lagged the level anticipated by the 2005 Legislature throughout FY 2006, increasing to 11,917 on January 1, 2006. The legislature approved two bills that will impact CHIP enrollment. First, the legislature approved the DPHHS request to pursue a Medicaid waiver, which created an additional 300 CHIP look alike slots. Second, the legislature raised the family asset limit for Medicaid eligibility for children from \$3,000 to \$15,000, which is anticipated to move 3,000 children from CHIP to

Medicaid. DPHHS is planning a targeted outreach for children living on Indian reservations and those served by Indian Health Service.

Montana State Hospital: Follow-up re: HIFA Waiver

Lois Steinbeck, LFD provided an update on the Montana State Hospital. (Exhibit 15) The purpose of this report is to track issues related to the Montana State Hospital (MSH) due to higher than budgeted population levels and the impact on the FY 2006 cost overrun for the Department of Public Health and Human Services (DPHHS). Ms. Steinbeck explained that the 2005 Legislature appropriated enough funds to support an average daily population (ADP) of about 169 after vacancy savings is taken into account. Through May, the FY 2006 ADP was about 199, while the ADP for April averaged 209. FY 2006 cost overruns at MSH are estimated to be \$3.2 million general fund. The 2005 Legislature also appropriated funds to support 105 slots or a HCBS waiver for adults with an SDMI. The goal of DPHHS staff is to implement the 105-slot waiver at 3 sites that serve 35 people each, beginning with the first site October 2006, the second site January 2007, and the final site in April. It is uncertain that the waiver will be approved and if it is approved that it will be up and running on the schedule that DPHHS has mapped out.

Joyce DeCunzo, DPHHS said it is not likely the first site will be up and running in October, 2006. The process will be in place and the information will be to the federal government but CMS is not allowing the regional staff to have conversations with states without the Baltimore staff online.

Rep. Buzzas asked Ms. DeCunzo to respond to the use of restraints and seclusion at the state hospital. Ms. DeCunzo said the department has provided consultation and training to staff at the state hospital to reduce seclusion and restraints. It is a high priority for the department to reduce the use of those methods. The department has also changed their policies regarding attendance of the physician and the amount of time that can pass before a physician has to see a person who has been put in either seclusion or restraint.

In response to a question from **Rep. Hawk** regarding medical treatment for DOC inmates, Mr. Chappius said about 30 to 40 DOC clients need inpatient care and the cost will be shared between DOC and DPHHS.

Public Comment

None

DDP: Follow-up re: rate reimbursement

Jeff Sturm, Director, Developmental Disabilities Program (DDP) provided a response to Senator Cooney's questions from the March meeting. (Exhibit 16) Mr. Sturm said DDP launched Phase II of the Provider Rate pilot in Region II on July 1, 2005. Based on legislative comments in HB 2, the prior pilot findings, and updated provider information, the rates were adjusted to accommodate budget neutrality, tested and validated. Regions I and III will be implemented in July 1, 2006. The overall impact to the Region is about \$1.0 million increase in revenue primarily as a result of I-149 funding.

Senator Cooney asked why one provider would experience a decrease. Mr. Sturm said the rates were applied based on hours of services. The decrease in rate to the provider reflects their actual costs of doing the service, not a decrease of service to the individual.

Senator Cooney asked if an analysis has been completed of the data collected from the other providers. Mr. Sturm said they are gathering data now and will meet with providers in May to determine how to move forward.

Senator Laible asked Mr. Sturm to expand on why the reimbursement to providers can't be a flat rate for the services. Mr. Sturm said that a flat rate would not give the consumer the flexibility to use the quantity of services needed. The hourly rate allows more flexibility for the provider to pay costs.

Senator Laible asked what the total costs is to service the 320 individuals on an annual basis. Mr. Sturm said the total cost for services in that region are just over \$10.0 million.

Senator Williams requested that the “Bulldog” committee continue to monitor this issue and requested a follow-up at the October meeting on the 15 individuals the department was funded by the 2005 Legislature to move from the waiting list.

Public Comment

None

Budget “Pressure Points”

11. Agency Appropriations Transfer Requests (Supplementals) (Tape 5A- 224)

Clayton Schenck, LFD explained to the committee that several supplementals were submitted at the March meeting of LFC and the committee chose not to take action at that time because staff had raised issues with meeting the criteria set forth in statute for the appropriations transfer. The Department of Revenue supplemental transfer request has been withdrawn due to a timing issue. (Exhibit 17) The LFD received an additional request from the Department of Natural Resources and Conservation (DNRC) for fire costs.

Department of Public Health and Human Services (DPHHS)

Lois Steinbeck, Senior Fiscal Analyst, LFD provided an update to the Appropriation Transfer Request – Department of Public Health and Human Services. (Exhibit 18) Ms. Steinbeck explained that there have been changes to the appropriation transfer amount and the plan to reduce FY 2007 expenditures. On June 1, the Office of Budget and Program Planning (OBPP) forwarded revisions that increased the transfer request from \$6.1 to \$9.0 million general fund and raised the proposed Medicaid provider rate reduction from 1.0 to up to 15 percent across the board. LFD staff has identified about \$3.5 million in state special revenue appropriations that can be used to offset general fund spending. Ms. Steinbeck provided several options for LFC consideration.

Joan Miles, Director, DPHHS addressed the committee regarding the appropriation transfer and mitigation plan. Ms. Miles thanked LFD staff for the work they have done and remarked how challenging it has been to get a grasp on how the department can minimize the projected overruns.

John Chappius, Deputy Director, DPHHS emphasized that this process is in a state of flux in terms of how much money the department will need. The impact of the DRA items is still questionable. Mr. Chappius said he is confident the amount will be below \$9.0 million.

Representative Roberts, CFHH asked if the additional money is a one-time only or the new base of the budget. Mr. Chappius said a great deal of it will be the new base.

Ms. Steinbeck provided a copy of a memo from Joan Miles, Director, DPHHS on the Executive Planning Process Request (Exhibit 19) and an EPP Worksheet. (Exhibit 19A)

Department of Corrections (DOC)

Pat Gervais, Senior Fiscal Analyst, LFD discussed her memo of May 23, 2006, Department of Corrections Appropriations Transfer Request. (Exhibit 20) Attached to the memo is a summary of the conference call held with the Joint Appropriations Subcommittee on April 20, 2006. (Exhibit 20A) Ms. Gervais explained that the DOC is requesting an appropriations transfer of \$11.5 from FY 2007 to FY 2006. LFD staff raised two issues: 1) the request is unnecessary because funding for secure care was appropriated as an unrestricted biennial appropriation; and 2) the mitigation plan relies on the release of offenders from pre-release centers, probation and parole supervision and other community placements. Statements in the mitigation plan raise concerns that the department does not intend to implement the plan as required by statute. Also, the mitigation plan does not include implementation of cost saving measures that might be less onerous.

Bill Slaughter, Director, DOC provided the following “pressure points”:

- There are approximately 12,200 offenders under supervision of the state, representing about 1 of 77 Montanans
- The system grows at a net rate of 1 offender per day
- 77 percent of the offenders are in programs offering alternatives to prison and that corrections is moving toward 80 percent
- There are more than 8,000 offenders on probation or parole

- 640 offenders in prerelease centers. The department is the largest mental health provider in the state.
- Youth services continues to reduce the number of kids in secure care facilities through the JADA program.

Mr. Slaughter reported that the department plans to open an 80-bed methamphetamine treatment facility in Lewistown in March 2007 and a 40-bed female center in Boulder will open April 2007. The department started an enhanced supervision program which allows 3 offenders to be served in place of 1 pre-release center bed. They have 8-beds set aside at the Montana Chemical Dependency Center for probationers that can't get services in their community. And they have moved 70 offenders to the overflow unit at Montana State Prison for offenders that have earned the right to go into a less restrictive environment.

Representative Sinrud asked how many violations it takes to put a youth in Pine Hills. Director Slaughter said it depends on the type of violation, the risk to the community, and the risk they pose to themselves.

Senator Laible asked why the department is over budget. Director Slaughter said that the results from some of these programs have not been seen yet. Also, there is no way to predict the growth in the system.

(Tape 6A-043)

Gary Hamel, DOC provided a handout on the DOC Adult Population Growth and information on the Population Management Committee. (Exhibit 21) Mr. Hamel said that department leadership is confident that utilizing a consistent method of information delivery will help decision-makers to better understand how the department provides correctional services. Population figures are the basis for the department's budget and in an effort to improve how that is calculated, the department formed a leadership-level committee. The purpose of the committee is to provide a consistent and understandable method of projecting population growth for adult and juvenile offenders. Members consist of representatives from the director's office, department management team, statistics unit, legal unit and budget bureau. The adult population growth

chart shows actual 2002 to 2006 growth and the estimated growth for FY 2006 though FY 2011 for the various facilities.

Senator Ryan asked for data on the recidivism rate of prisoners released due to lack of funds in 2003.

Rhonda Schaffer, DOC provided a breakdown of FY 06 Budget Overages for the DOC. (Exhibit 22) She discussed background information and details on the appropriation transfer request. Ms. Schaffer responded to various questions from committee members.

In response to a question from **Chairman Cobb** regarding the mitigation plan, Ms. Gervais said one of the primary issues with the mitigation plan was the indication by the department that the plan was not achievable, which would lead one to think that it will not be implemented.

10. General Fund Update: 2007 Biennium (Tape 6A-492)

Terry Johnson, Principal Fiscal Analyst, LFD offered a power point presentation on the General Fund Revenue Report and a spreadsheet on General Fund Revenue Monitoring. (Exhibits 23 and 23A) Mr. Johnson's presentation was discussed as following:

- Comparison: HJ 1 to now
 - Selected revenue source data
 - Individual income tax
 - Corporation income tax
 - Oil & gas production tax
- 2007 Biennium Outlook

In conclusion, the general fund account could end the 2007 biennium with a potential balance of \$509.7 million, or \$281.1 million more than anticipated at the end of December 2005 special session. The increased revenue is attributed primarily to higher than anticipated revenue growth in individual income taxes, corporate income tax, and oil and gas production taxes. Mr. Johnson responded to various questions from committee members.

Senator Cooney asked Director Bucks to address the audit collection trends. Dan Bucks, Director, DOR reported that the department is exceeding the total targets for audit collections set in HJ 1. The department also expects to hit targets for each individual tax type. Mr. Bucks provided and discussed the following handout: Audit Collections Summary FY 2004 through FY 2007 (Exhibits 24) Mr. Bucks responded to various questions from the committee members.

In response to a question from **Senator Laible** regarding the increase in litigation in tax appeal cases, Director Bucks said the majority of appeals are with respect to companies that are not rate regulated in Montana. A number of the appeals are not raising just valuation issues, but constitutional or statutory issues. If the state fails to defend the property values and assessments for major corporations, the state will create an incentive for corporations to file more protests for even larger amounts of taxes in the future. The department will vigorously defend these values and assessments to protect the integrity and equity of the state and local tax base.

Senator Cooney introduced Bradley Young, Former Chairman of Colorado's Joint Budget Committee and Author of *Tabor and Direct Democracy*. (Exhibit 25)

14. Expenditure Limitation Concepts: Colorado's Tabor Amendment Experience (Tape 6B-640)

Mr. Young offered a power point presentation on Montana's Proposed CI-97 & Colorado's TABOR ("Taxpayers Bill of Rights"). (Exhibit 25A) Mr. Young explained that two of TABOR's fatal flaws are contained in Montana's SOS initiative.

1. TABOR is a constitutional amendment and requires voter approval to override spending limit; and
2. The CPI plus overall population formula does not work

Mr. Young said that Montana's SOS fails to fix the fatal flaws with Colorado's TABOR. TABOR's other major flaws are that it becomes permanent even if it doesn't work and getting it back out of the constitution would be extremely difficult. TABOR also does not allow elected legislators to make the decisions they were elected to make. In summary, TABOR relentlessly shrinks government relative to the economy regardless of federal, judicial, and statutory mandates for government services.

13. Public Defender-Costs/Organization/LAD Audit (Tape 7A-001)

Pat Gervais, LFD provided a report on Public Defender: Costs, Organization, LAD Audit. (Exhibit 26) The purpose of this report is to provide the LFC with background information and an update of the implementation of the new statewide public defender system. Ms. Gervais explained that Implementation of the new statewide public defender system is progressing. It is likely that a request for supplemental funding will be requested from the 2009 Legislation. Current projections indicate a FY 2007 shortfall of about \$3.3 million. Given the likelihood of a request for supplemental appropriation and estimates that costs are exceeding legislative estimates by 20 percent or more, the LFC may wish to:

- Encourage the OPD to take action to mitigate the projected supplemental appropriation need
- Provide the OPD comments regarding legislative views of the estimated cost overruns

Randi Hood, Chief Public Offender, (OPD) addressed the committee regarding the implementation of the Statewide Public Defender costs and organization. Ms. Hood said that the vision of the OPD and the Public Defender Commission (Commission) is to ensure effective representation by qualified attorneys by using both FTE and contract attorneys. The strategic plan was developed by the Commission based upon information provided by the OPD. The plan provides for some shift in the way the public defender system has been in the past. As of July 1, the Commission decided to place some fulltime offices in areas of the state that did not previously have them and in the 11 regions contract attorneys will be used. The Commission also discussed setting a minimum of \$60.00 per hour on public defender work and a decision will be made at their next meeting. Information shows that in district courts, judges were paying between \$60.00 and \$65.00 per hour and courts of limited jurisdiction were paying roughly \$45.00 to \$125.00. The contract portion will not be fully operation by July 1. The OPD is in the process of sending MOU's to courts currently holding case in Montana.

Senator Williams asked if the \$60.00 per hour fee is driving the cost overruns. Ms. Hood said the cost overruns is caused by a combination of opening the new offices, moving cases from contract people to offices and the proposed plan cost \$1.0 million more than anticipated.

Representative Sinrud asked if the OPD has any assurance that the contract individuals will provide the required services. Ms. Hood said that the Commission has developed standards for public defenders and the regional deputy defenders will oversee the contracts to assure the services are being provided.

Senator Ryan asked if the \$60.00 per hour is a baseline or an average. Ms. Hood said that most cases can be handled at the \$60.00 rate but a major homicide or death penalty case would require greater pay.

Representative Sinrud asked if it would be possible to see the cost overruns and the details of getting the offices operational.

Mr. Freebourn said he could provide that information.

Senator Laible asked for clarification regarding the proposed FTE and the budgeted FTE on page 4 of Ms. Gervais' report. Ms. Gervais explained that the fiscal note estimated 90 FTE and the strategic plan adopted proposes 175 FTE.

Senator Laible asked if the shift in FTE is part of the additional costs. Mr. Freebourn said that they decreased the contract dollars to help pay for the personal services dollars. One of the reason they are \$3.0 million over is they did not reduce all the contract dollars. They kept \$1.0 million to get them through a transition period to keep services in place while putting the system in place.

Senator Laible commented that the shift in the strategic plan is a shift in what was sold to the legislature.

Chairman Cobb appointed **Representative Sinrud** to be the “Bulldog” committee on the cost overruns in OPD and to report back to the LFC in October.

Senator Laible requested to be informed what type of process will be used for contracting vs. hiring FTE in OPD.

15. HB 667 Issues

This report (Exhibit 27) was included in the LFC notebook but was not formally presented.

16. Information Technology Draft Strategic Plan Overview (Tape 7A-241)

Dick Clark, CIO, Department of Administration (DOA) presented the CIO Report and Major IT Project Portfolio. (Exhibits 28 & 28A) Mr. Clark reported that currently there are two projects in yellow (Caution) status; Justice - Merlin and Secretary of State - Statewide Voter Registration Service (SVRS). The issue with Merlin is the ability to fund the project. The SVRS was to remain in yellow status based on the outcome of the primary election. As the primary has passed, the software and the system worked well. They are expecting that there may be some issues to address coming from this exercise. The only project in red (Challenged) status is Administration - Office of Public Defender. Some of the issues identified with that system are: diverse technologies in multiple locations, ITSD resource availability to support OPD needs in an emergency and timely access to OPD resources.

Senator Ryan asked how we protect from a statewide computer crash. Mr. Clark said that the State of Montana needs to build a more robust and fully redundant system. Since the network outage approximately two weeks ago, the department has instituted the “48 hour” plan in where the department looks at any possibility of an outage and considers the time and day of the month. The department’s contingency plan needs to be updated using the “48 hour” plan.

In response to a question from **Senator Laible** regarding the schedule for the Office of Public Defender, Mr. Clark stated he has a three phase schedule. The first phase includes Butte, Missoula, Boulder, Bozeman, Kalispell, and Miles City which is suppose to be completed by the end of June. The second phase is Anaconda, Helena, Bozeman, and Billings to be completed by the end of July. The third stage is Havre, Glendive, Hamilton, Polson, Lewistown, Butte, Kalispell, and Great Falls to be completed the first of October, based on their ability to get all the

equipment out in a timely basis. Mr. Clark said this is an IT schedule and is not certain as to the schedule for the OPD as far as being operational.

Senator Laible asked if the shift in staffing has affected Mr. Clark's IT budget. Mr. Clark said he did not budget for this project. He is using his budget and will work with the OPD on a return.

Chairman Cobb requested a report on the OPD system be provided to LFD staff prior to the October meeting.

17. "Bulldog" Reports (Tape 7A-500)

Community College Funding Formula Recommendation

Alan Peura, Associate Fiscal Analyst, LFD presented a report on Community College Funding Study. (Exhibit 29) At the March meeting, the LFC deferred action on the community college funding study until the June meeting, when staff would address specific issues and data request. This study recommends two options for LFC consideration in an effort to reestablish the COE factor as a relevant part of the community college funding formula. The two options are: Rebase the cost of education factor using the CHE 201 form; or Use a formula devised by the National Association of College and University Business Officers (NACUBO). Neither option recommended would lead to an increase in the level of state funding. An analysis of the data tables in the report indicates that the model that uses the CHE201 form results in the least dramatic change to the state percent share level in order to maintain the current state funding levels stated in HB 2. Should the committee approve one of the models there would need to be a bill draft to amend minor language changes.

Senator Williams commented that everyone involved in the study knew there was a problem with the education formula and this will offer an opportunity for legislators to better understand the cost education.

Senator Laible said that the major component of the study is to provide a formula on how to fund the cost of education. The subcommittee looked at both the variable and fixed costs in

developing the basis for a formula. In the past, a percentage has always been used that had no basis.

Public Comment

Jane Karas, President, Flathead Valley Community College, and Sheila Stearns, Commissioner, Office of Commissioner of Higher Education testified in favor of Option 3.

MOTION: Senator Williams moved to adopt Option 3 “Rebase the cost of education factor using the CHE 201 form and draft legislation to reflect statute changes. **VOTE:** Motion passed unanimously.

Committee Action Required (Tape 7B-025)

Department of Corrections Current Budget Status and Long-Term Solutions

Pat Gervais, LFD presented a memo on Corrections Long-Term Solutions “bulldog” group. (Exhibit 30) The group met on Wednesday, June 7. The consensus of the group was to wait for the recommendations of the Corrections Advisory Council Study Committee and the Corrections Advisory Council and provide recommendations at the October meeting.

SB 495 Loan Repayment Options

Public Comment

Joe Lamson, Office of Public Instruction (OPI), testified on behalf of State Superintendent, Linda McCulloch. Mr. Lamson relayed to the committee appreciation for the work of the committee on this issue. He cautioned that accelerated payments can tend to pull down the general fund and that maximum flexibility should be considered.

MOTION: Senator Ryan moved that the LFC send a letter to the Department of Natural Resources stating the committee recommends Option 2 “Request DNRC to develop a phased reduction in net distributions to the guarantee account by varying the loan repayment so that the final payment is less than \$2.0 million, thus lessening the general fund budgetary impact in fiscal 2014. **VOTE:** Motion passed.

State Lands Management Recommendations

Barbara Smith, LFD, presented a brief update on the State Lands Bulldog Group. (Exhibit 31) The group met on Friday, May 26, 2006 to review information gathered from the DNRC and the Department of Fish, Wildlife and Parks (FWP) regarding specific land issues. The subcommittee was provided information on conservation easements, habitat acquisitions, land banking, inventory issues, and an update on the memo of understanding between DNRC and FWP. One key point raised was neither agency is in a position to procure large parcels of land when they come into the real estate market. The subcommittee determined this was one area to conduct further research. Other issues noted for staff follow up included:

- Affect of conservation easements on property taxes
- Legality of the exchange of fee title land for conservation easements
- Clarify 75-1-705(2) to address clean title at time of transaction
- Review of decision tool used to determine disposition of land.

Senator Cooney commented that a great deal was accomplished by getting parties together and mutually agreeing to move in a direction that needed to be taken.

Senator Laible expressed concern about how the process works. He thinks the Land Board needs an independent analysis of future land trades. He asked Ms. Smith to explain the Nevada Creek land exchange.

Ms. Smith said that she requested FWP bring the Nevada Creek exchange and Conservation Easement purchase before the “bulldog” committee because the exchange is very intricate and it illustrates the fact that land transactions are becoming more detailed. FWP is using Federal Forest Legacy money to purchase a conservation easement on land held by The Nature Conservancy that was once Plum Creek Timber land. The Forest Legacy money also purchases a conservation easement on forested portions of two ranches that surround those parcels, with the ranchers providing a match of 25 percent in donation. FWP will exchange the fee title value of the wildlife management area (WMA) for a conservation easement on non-forested portions of those two ranches. The two ranchers re-purchase the land from the Nature’s Conservancy at a greatly discounted rate due to the conservation easement as it drives the value down to about 50

percent of market value. The conservation easement does include access for a reasonable hunting season.

Representative Sinrud asked what the Nature Conservancy paid for the land. Ms. Smith said she has asked for that information but does not have it at this time.

Representative Sinrud asked if the land will be in a contract managed by BLM. Ms. Smith said that negotiations for the conservation easement are they will provide reasonable access in the hunting season, which will probably be managed through the Block Management Program at FWP.

Public Comment

Tom Schultz, DNRC testified that the department felt good about the discussions with the committee. Mr. Schultz's also mentioned that Director Hagener, FWP testified at the May meeting that the intent is not always just access. There are other reasons for purchasing conservation easements such as providing habitat for wildlife.

Senator Laible requested the “bulldog” committee continue to work on suggestions for a better management process and provide options to the legislature.

Ms. Smith said the Legislative Audit Division is in the process of scoping a conservation easement audit and she would relay Senator Laible’s concerns and any concerns of the committee regarding conservation easements to them.

Chairman Cobb assigned the “bulldog” committee the task of looking at conservation easements and policy regarding conservation easements.

Promoting Economic Success Seminar: Recommendation for LFC Action

Marilyn Daumiller, LFD provide a brief update. The seven participants from Montana will be attending a working session in Denver. The following topics are being offered for potential legislation: initiatives helping low income working families, financial education, helping families

achieve financial security, economic development, childhood care and education, and labor and workforce training. If there is any legislative action it would be available at the next meeting

Senator Williams provided a follow up on financial sustainability for low income people. She said the Governor is proposing for the next session a \$1.5 million pilot project using TANF money to try to find ways to help low income individuals buy homes and keep them away from predatory lending. The project will also do some workforce development and try to get young individuals into community colleges so they can get better paying jobs.

DNRC Appropriations Transfer

Barbara Smith, LFD provided a memo on the DNRC Appropriations Transfer. (Exhibit 32) Ms. Smith explained that the proposal is to transfer \$1.0 million general fund authority within the Water Resources Division and \$0.1 million with the Central Services Division of the DNRC from FY 2007 to FY 2006. This \$1.1 million is in addition to the \$4.5 million supplemental transfer that occurred in December 2005 and March 2006 for the same purpose for a total of \$5.7 million.

Fire Funding Options (HJR 10)

Barbara Smith, LFD provided a report on the Fire Funding Options to Reduce Cash Flow Issues in the Wildland Fire Program of DNRC. (Exhibit 33) The purpose of this report is to provide historical background information, current analyses, and options to reduce or alleviate the cash flow issues in the Forestry Division of the DNRC as it relates to wildland fire preparedness and suppression. DNRC is charged with providing wildland fire protection for state and private lands. By statute only owners of a classified forestland within the boundaries of the direct protection districts are assessed a forest fire protection fee. Current projections leave DNRC short on assessment funding for FY 2007 by \$152,000 and a projected shortage for the 2009 biennium of \$807,000.

Since suppression costs are not appropriated, a cash flow situation arises during an active wildland fire season. The current policy to pay fire suppression costs from the general fund ending balance gets the done. However, the process places the department with cash-flow issues,

potentially resulting in unanticipated impacts to two divisions. In conclusion, wildland fires are a given in Montana. What are not predictable are the location, severity and ultimate costs to the state. By proposing alternatives to assessments or suppression, the legislature can attempt to control the magnitude of the fiscal crisis fire season can produce.

Bob Harrington, Forestry Division Administrator, DNRC addressed the committee regarding the fire season. Mr. Harrington reported that meteorologists at the National Interagency Fire Centers and the Northern Rockies Coordination Center are reporting to expect a normal to above normal fire season. To DNRC this looks like 385 fires, about 16,000 acres burned, for a cost of about \$7 to \$10 million. Mr. Harrington also mentioned that they have access to more resources this summer thanks to the legislature and the administration supporting decision packages from the last session.

No action was taken on this issue. Chairman Cobb dismissed the bulldog committee.

MOTION: **Representative Callahan** moved to inform the Governor that the committee does not raise any issues of statutory compliance with the proposed DNRC appropriations transfer.
VOTE: Motion passed unanimously.

MOTION: **Representative Buzzas** moved to report to the Governor that the DOC appropriations transfer request does not meet the statutory criteria. The letter should include:

- The proposed transfer does not meet statutory criteria for approval, as the funding is unnecessary due to the availability of a biennial appropriation in the Secure Care Division.
- Statute requires that agencies submit a plan for reducing expenditures in the second year of the biennium to maintain expenditures within the appropriation provided by the legislature, and that the Governor require implementation of that plan. The Department of Corrections did not take its statutory obligations to provide this plan seriously for the following reasons:

- The Department of Corrections did not submit a realistic plan, referring to that statutory criterion as a “mathematical exercise” that was “neither desirable nor achievable”
- The Department of Corrections made no attempt to consider less onerous reductions, such as administrative efficiencies, in its plan

VOTE: Motion passed unanimously.

MOTION: Senator Ryan moved to report to the Governor that the DPHHS appropriations transfer request meets statutory criteria. The letter should include:

- The LFC has concerns about the proposed provider rate reductions and strongly recommends that a provider rate decrease be considered only as a last resort.
- The LFC requests that they be informed of the final supplemental appropriation transfer amount for DPHHS by July 15.
- Request that DPHHS inform the LFC of what actions it will take regarding some of the tobacco tax state special revenue appropriations in FY 2007.

VOTE: Motion passed.

19. Other Reports (Tape 7A-683)

Greg DeWitt, Senior Fiscal Analyst for the LFD presented the Budget Amendments (Exhibit 34). He informed the committee that LFD staff has reviewed the amendments and raises no concerns with amendments meeting statutory criteria.

Clayton Schenck, LFD presented the Operating Plan Changes and Program Transfers (Exhibit 35) and the Operating Plan Changes of a Time Sensitive Nature. (Exhibit 36) He explained that Office of Budget and Program Planning has 6 operating plan changes and 4 program transfers that meet statutory criteria. LFD staff has reviewed the proposed changes and raise no concerns.

Required Reports

This report (Exhibit 37) was included in the LFC notebook but was not formally presented.

Revised Legislative Branch Pay and Classification Plan

In response to a question from **Representative Sinrud** regarding the unfunded liabilities owed to individuals for termination pay, Mr. Schenck said that when individuals terminate they are entitled to pay out of sick leave and leave balances. Most agencies deal with them through savings elsewhere and are paid within their budget. He pointed out that the Legislative Branch has a number of individuals approaching retirement and it could put a strain on the budget.

Representative Sinrud suggested setting money aside in the upcoming budget for those unfunded liabilities.

With concurrence of the committee, Mr. Schenck said he would meet with the Branch directors to come up with a proposal for the Legislative Branch that can be used as a model.

Chairman Cobb requested staff provide options for alternatives to using vacancy savings to fund personal services.

MOTION: **Senator Ryan** moved to approve the Revised Legislative Branch Pay and Classification Plan and to include the adjustment for the director. **VOTE:** Motion passed.

DOR Update on New Auditor FTE/Results Attained (Tape 8A-204)

Dan Bucks, Director, DOR addressed the committee regarding the decision package from the last session. Mr. Bucks said the department hired 6 auditors, 1 attorney and a support person. Mr. Bucks provided a handout on Compliance Package Collections by Month Fiscal Year 2006 and Fiscal Year 2007. (Exhibit 38) He said that the department's target was \$1.1 million in the first year and they are at \$1.6 million now. The department promised \$2.3 million next year and is confident of being able to continue to achieve those results.

Senator Ryan asked Mr. Bucks to explain the spreadsheet on the PPL Decision Analysis. (Exhibit 39)

Mr. Bucks explained that the spreadsheet shows information by county and the total taxes collected through the county treasurer, which includes the state's portion. There are two issues in the PPL case. One is the valuation issue which is quantified and the other is the equalization issue which is not quantified. PPL was contending that even though they operated an unregulated market they should be valued like a regulated utility. The spreadsheet also shows data on the valuation that STAB ruled on.

Senator Cobb requested LFD staff to look at all new initiatives for the 2007 biennium. Report to the LFC in October whether staff were hired, did they achieve their objectives, was the initiative fully initiated, and if not, why.

Adjournment

Meeting adjourned at 3:20 p.m.

Senator Cobb, Chairman

Diane McDuffie, Committee Secretary