



Select Committee on Corrections Facility Capacity and System Development

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68th Montana Legislature

SENATE MEMBERS

JOHN ESP
RYAN LYNCH
KEITH REGIER
SHELLEY VANCE

HOUSE MEMBERS

JOHN FITZPATRICK
PAUL GREEN
DONAVON HAWK
BILL MERCER
PAUL TUSS

COMMITTEE STAFF

KATY CALLON, Fiscal Analyst
WALKER HOPKINS, Fiscal Analyst
RACHEL WEISS, Research Analyst
GRACE GIBNEY, Clerk

MINUTES LOG

September 12, 2023
Room 172
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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MEMBERS PRESENT:

Sen. John Esp, Chair (R)
Sen. Ryan Lynch (D)
Sen. Shelley Vance (R)
Sen. Keith Regier (R)

Rep. John Fitzpatrick (R)
Rep. Paul Green (R)
Rep. Donovan Hawk (D)

MONTANA LEGISLATIVE SERVICES DIVISION STAFF: SUSAN BYORTH FOX, EXECUTIVE DIRECTOR • SONJA NOWAKOWSKI, DIRECTOR, OFFICE OF RESEARCH AND POLICY ANALYSIS • TODD EVERTS, DIRECTOR, LEGAL SERVICES OFFICE • DALE GOW, CIO, OFFICE OF LEGISLATIVE INFORMATION SERVICES • JOE KOLMAN, DIRECTOR, LEGISLATIVE ENVIRONMENTAL POLICY OFFICE • ANGIE CARTER, FINANCIAL SERVICES MANAGER

MEMBERS EXCUSED:

Rep. Bill Mercer (R)
Rep. Paul Tuss (D)

MEMBERS ABSENT:

STAFF PRESENT:

Katy Callon, Fiscal Analyst
Walker Hopkins, Fiscal Analyst
Grace Gibney, Secretary

AGENDA ([Attachment 1](#))

VISITORS' LIST ([Attachment 2](#))

COMMITTEE ACTION

CALL TO ORDER/ROLL CALL

07:59:27 Sen. John Esp called the meeting to order.

07:59:53 Secretary took roll.

08:00:29 Sen. John Esp announced staff and committee member introductions.

08:05:15 Sen. John Esp called for a motion to accept committee rules.

Vote:

08:05:38 Rep. Donovan Hawk made a motion to accept proxy voting.

08:05:46 Carried unanimously by voice vote.

ELECTION OF OFFICERS:

08:06:35 Motion to nominate Senator Esp as chairman by Sen. Keith Regier.

Vote:

08:07:04 Motion carried unanimously by voice vote.

08:07:13 Rep. Bill Mercer joined the meeting.

08:07:53 Rep. Paul Green joined the meeting.

08:08:26 Sen. Keith Regier made a note that a correction should be made to the committee rules. 5 members creates a quorum instead of 4 stated in the rules.

08:09:01 Motion to nominate Rep. John Fitzpatrick as vice chair by Sen. Ryan Lynch.

Vote:

08:09:09 Motion carried unanimously by voice vote.

HB 5 SELECT COMMITTEE OVERVIEW:

08:11:13 Katy Callon, Fiscal Analyst, (LFD) gave an overview of HB 5, Section 2, Subsection 4. Explained how the committee is compiled, expectations and reports expected from the committee.

HB 5 & HB 817 OVERVIEW OF APPROPRIATIONS FOR MONTANA STATE PRISON INFRASTRUCTURE & OTHER CORRECTIONS FACILITIES:

08:15:10 Katy Callon, Fiscal Analyst, (LFD) gave an overview of all projects carried out by the Department of Corrections and associated costs.

08:24:43 Sen. Keith Regier asked if Unit D is kept under maximum security.

08:24:53 Rep. John Fitzpatrick confirmed that this cell block is primarily used for elderly inmates and inmates with disabilities, so they are kept separate from the general prison population.

08:25:07 Sen. Keith Regier commented that maximum security had specific needs and if this information would be provided in one of these groups.

08:25:17 Katy Callon, Fiscal Analyst, (LFD) replied that the Multipurpose Programs Building was meant to have high set security.

08:26:35 Sen. Ryan Lynch asked about the bed number that is expected to be installed in Unit D.

08:27:12 Katy Callon, Fiscal Analyst, (LFD) responded that staff would reach out to the Department of Corrections to retrieve this information for the committee.

08:30:35 Rep. Bill Mercer asked about expended funds concerning provider rates. Because this wasn't part of the governor's executive budget asked if there was a summary done on this budget.

08:30:54 Katy Callon, Fiscal Analyst, (LFD) responded that there is not a summary done on this. Explained that this was added in House Appropriations Committee, but information can be retrieved from the Department of Corrections.

08:31:25 Walker Hopkins, Fiscal Analyst, (LFD) added additional comments that the \$7.2 million figure is just for FY 2025. The committee could view this as the first year of 7-year contract that has operation, construction and maintenance built into the cost. \$50 million dollars will be the total for the new sexual offender's unit over 7 years.

08:32:25 Rep. Bill Mercer clarified that funds were only appropriated in FY 2025.

08:32:45 Walker Hopkins, Fiscal Analyst, (LFD) responded that this is correct.

08:34:04 Katy Callon, Fiscal Analyst, (LFD) made additional comments on HB 817 and additional funding added for workforce housing.

- 08:35:47 Rep. John Fitzpatrick asked if Board of Investments could give an update concerning the prison in Powell County.
- 08:38:30 Jason Harlow, Senior Budget Analyst, Office of Budget, and Program Planning, (OBPP) clarified for the committee that the \$7.2 million funds will be going into the department's base budget moving forward after FY 2025.

HB 2 – DEPARTMENT OF CORRECTIONS 2025 BIENNIUM OPERATING BUDGET HIGHLIGHTS:

- 08:39:17 Walker Hopkins, Fiscal Analyst, (LFD) gave an overview of the HB 2 budget for the Department of Corrections and how it was affected by the 2023 session.
- 08:43:20 Rep. John Fitzpatrick asked what the four division are currently in the Department of Corrections.
- 08:43:29 Walker Hopkins, Fiscal Analyst, (LFD) explained that the four divisions are divided into the Directors Office/ Centralized Services Division, Public Safety Division, Rehabilitation and Programs Division and Board of Pardons and Parole. Added that the budget for DOC is driven by the population of inmates and the cost to house inmates. The cost to house inmates has increased due to higher provider rates.

Recess:

- 08:46:12 Reconvened at 09:10:40

UPDATE ON STATUS OF HB 5 & 817 MSP PROJECTS, DEPARTMENT OF ADMINISTRATION, ARCHITECTURE & ENGINEERING DIVISION:

- 09:11:22 Walker Hopkins, Fiscal Analyst, (LFD) updated the committee on estimated number of additional capacity hat was contained in HB 5, HB 817 and HB2.
- 09:13:43 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA)

Update on Status of HB 5 & 817 Montana State Prison (MSP) Projects, Department of Administration, Architecture & Engineering Division:

- 09:13:45 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) gave an update on Montana State Prison (MSP) projects involving HB 5 and HB 817 funding. Announced that an architectural / engineering firm has been selected. DLF Group and Sletten Construction are both under contract for these projects.
- 09:18:00 Sen. Keith Regier asked why only one construction company applied to take on the project.
- 09:18:13 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that they had hoped for broader competition, however due to the size of the project they had expected more out of state companies to apply due to the required performance and payment requirements outlined in statute.

- 09:19:25 Sen. Keith Regier asked if Sletten Construction and DLR Group are Montana based companies.
- 09:19:38 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) confirmed that Sletten Construction's home office is in Great Falls, MT. They also have a sizable out of state operation based in Nevada. The DLR Group is not a Montana based company. Explained that part of the request for qualifications for A&E projects be that a substantial part of their team be represented locally. The DLR group also has extensive experience in designing correctional environments. Went on to discuss projects across the state. Pine Hills, Eastmont, Warm Springs, MSP, and the Women's Prison.
- 09:25:02 Sen. John Esp asked if pre-engineered modular units are being considered for these projects.
- 09:25:24 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that modularity is something that A&E would like to take advantage of it possible however it is early to determine how these details will come together.
- 09:26:05 Sen. Ryan Lynch asked if the \$18 million figure is an estimate for Unit D renovations.
- 9:26:25 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) explained that during the 2023 session, A&E had proposed a plan to demolish and replace Unit D however an alternate plan was arranged to renovate. Their team was able to estimate by square footage cost to determine the \$18 million number.
- 09:27:05 Rep. Paul Green asked why the Hardin prison facility is not being utilized by the state.
- 09:27:40 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) explained that their group has looked at this location for a couple different opportunities. Explained that the lines of sight and how the building is constructed are problematic to utilizing the space.
- 09:28:47 Rep. Paul Green explained that the facility is currently being used by the Bureau of Indian Affairs (BIA) as a correctional facility. Asked why it is being used federally but cannot be utilized on the state level.
- 09:29:47 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that he would be willing to send the committee a compilation of reports that would expand on this issue.

- 09:30:17 Rep. Bill Mercer asked for an estimate on potential capacity based on what was appropriated for the Unit D project.
- 09:30:35 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that he does not have specific numbers and would need to ask the Department of Corrections and confirm details with Sletten Construction and DLR.
- 09:33:15 Rep. Bill Mercer asked if these numbers could be clarified before the next December meeting.
- 09:33:35 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that he expects their team to have fully developed a phasing plan.
- 09:35:12 Rep. Bill Mercer asked what is needed to accommodate the current prisoner population and what is expected in the future.
- 09:36:28 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that the next report contains projections throughout the state.
- 09:37:24 Rep. Bill Mercer asked about section 27 of HB 5 and the \$7.1 million dollar appropriation for a sex offender treatment facility created by a vendor outside of Department of Corrections.
- 09:37:58 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) replied that A&E does not get involved in leased facilities. This depends on how the proposals are structured.
- 09:39:15 Rep. John Fitzpatrick asked for an update on the Unit F water line and when it is expected to be under contract
- 09:39:30 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) responded that this is currently underway. There is a bid for the first phase on the project and the A&E team is working on creating a design to add via change order. The project is expected to be completed by early spring 2024.

CORRECTIONS STRATEGIC MASTER PLANNING REPORT OVERVIEW:

- 09:41:06 Brian Gootkin, Director, Department of Corrections, (DOC) thanked the committee for support during the 2023 session.
- 09:42:18 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) gave an update on the effort to expand pre-release beds, sex offender treatment center,
- 09:45:44 Rep Bill Mercer asked for more information on the notice of intent to award on the sex offender treatment center.

- 09:45:51 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) replied that this a type of procurement under state law and policy.
- 09:46:31 Rep. Bill Mercer asked if the department has already picked a vendor.
- 09:46:34 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) confirmed that they are in the procurement process. They have not issued a notice of intent but are actively having conversations around ability and capacity.
- 09:46:53 Rep. Bill Mercer asked if there has been an RFP.
- 09: 47:00 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) confirmed that because of the type of beds they do not intend under state law to issue a full RFP process. Confirmed that they will complete the process best identified by State Procurement Bureau.
- 09:47:50 Misty Ann Giles, Director, Department of Administration, (DOA) explained the various ways to do procurement under state procurement authority. An agency can use sole source, notice of intent to award, RFP, RFI and emergency authorities to accomplish this. In addition, each agency has their own exceptions. With the expansion into the private arena and taking into consideration various providers the department has chosen to use a notice of intent.
- 09:49:19 Rep. Bill Mercer asked if the Procurement Bureau has done an analysis on the appropriateness of the option to use a notice of intent.
- 09:49:30 Misty Ann Giles, Director, Department of Administration, (DOA) replied that she cannot speak to this, however she can confirm with their team and return an answer to the committee.
- 09:50:13 Erica Loynd, FAIA Regional Leader, DLR Group, introduced colleagues.
- 09:52:51 Katy Callon, Fiscal Analyst, (LFD) gave a presentation to committee members on how to find the master strategic plan provided by DLR group and additional documents provided by the Department on the committee webpage.
- 09:54:33 Erica Loynd, FAIA Regional Leader, DLR Group, clarified the Phase 2 amendment report was created after the COVID-19 pandemic when their team was able to have access to the facilities. Gave an overview of the strategic master plan as relates to all state operated facilities.
- 10:01:10 Rep. Paul Green asked if the projected number of additional beds assessed during the 2020 study will be enough considering the rapid growth of the state and inmate population growth.
- 10:02:09 Erica Loynd, FAIA Regional Leader, DLR Group, expressed that this is part of the new assessment and will be part of their review of the facilities this fall.
- 10:02:40 Andrew Cupples, FAIA Justice & Civic Design Leader, DLR Group clarified that the report is based on the best practice that a facility is operating at 90% of their total capacity to allow for classification, maintenance, and peaking population.
- 10:03:43 Sen. Ryan Lynch asked if the state is using a sanction facility for parolees.

- 10:04:19 Andrew Cupples, FAIA Justice & Civic Design Leader, DLR Group confirmed that they were not always going to contract locations but being placed back in MSP or the Women's Prison.
- 10:05:22 Rep. Bill Mercer asked for a reconciliation of numbers in the executive summary. Would like clarification on projection.
- 10:06:55 Lori Coppenrath, Principal Planner, DLR Group explained the bed projection need explained in the summary estimates the need of roughly 831 additional spots by 2039.
- 10:09:01 Rep. Bill Mercer asked what rate of capacity gains.
- 10:09:13 Lori Coppenrath, Principal Planner, DLR Group explained this is based on multiple things not only by how many physical beds are in a facility. This includes restrooms, hall space, common areas, etc.
- 10:10:04 Rep. Bill Mercer asked what data the DLR group is relying on to come to the conclusion that Montana's criminal justice reinvestment issue is making a positive difference in the criminal justice system.
- 10:11:11 Erica Loynd, FAIA Regional Leader, DLR Group explained that work programs and support communities at MSP and Women's Prison is what this is referring to.
- 10:13:27 Andrew Cupples, FAIA Justice & Civic Design Leader, DLR Group commented on positive trends. The system is growing but not at the rate that it has historically.
- 10:14:07 Sen. John Esp asked if other things were assessed such as soft transition to communities and transition planning.
- 10:14:23 Erica Loynd, FAIA Regional Leader, DLR Group explained that these things are a part of interview with stakeholder groups. There was additional scope to do similar assessments to similar facilities throughout the state. At the time of the strategic master plan there were 18 facilities they were not able to visit due to funding.
- 10:14:57 Sen. John Esp asked if the DLR group has observed systems that do a good job of supporting inmates as they transition into society and if they have lower recidivism rates.
- 10:15:22 Erica Loynd, FAIA Regional Leader, DLR Group responded that this is how many states are focusing their work.
- 10:15:46 Sen. Ryan Lynch asked the DLR group when data is gathered for the committee in the future if their team could highlight first time new felons in DMSP system, percentage of defender and what crimes are driving this.
- 10:17:00 Rep. Bill Mercer asked if the 2008 report was used in the projections for secured custody beds in 2025
- 10:18:09 Erica Loynd, FAIA Regional Leader, DLR Group responded that their team was aware of the report and the projections, but they started from the beginning and did not use this as part of the analysis.

- 10:18:33 Lori Coppenrath, Principal Planner, DLR Group confirmed that this was not a part of the scope.
- 10:18:44 Sen. Keith Regier asked about the claim that MDOC is reducing its population so that new capacity facilities are not required in the future. Asked if this statement is a contradiction to the projections in the provided reports.
- 10:19:18 Lori Coppenrath, Principal Planner, DLR Group explained that the projections are based on historical data adjusted with Montana Criminal Justice assumptions. This does not take into account any potential future programs or services only the ones that have been implemented to that point. As Montana grows in their services and support this will potentially help mitigate growth over time.
- 10:20:08 Sen. Keith Regier asked if new capacity could be required over time.
- 10:20:14 Lori Coppenrath, Principal Planner, DLR Group confirmed that this is correct due to changing laws and policies. At the time of projections, it was assumed that Montana would be continuing to implement programs and reentry initiatives that would reduce the population.
- 10:20:50 Sen. John Esp asked if the provided reports have been helpful to the Department of Correction and in what ways.
- 10:21:12 Brian Gootkin, Director, Department of Corrections, (DOC) explained that the reports are helpful but updated data is needed.
- 10:22:14 Rep. Bill Mercer asked if DOC data reported to the legislature was considered by DLR group concerning jail holds.
- 10:22:50 Erica Loynd, FAIA Regional Leader, DLR Group responded that this data was not used.
- 10:23:46 Andrew Cupples, FAIA Justice & Civic Design Leader, DLR Group added that in the executive summary makes it clear that the system has been operating at maximum capacity based on the beds available at the time of assessment.
- 10:24:19 Russ Katherman, Administrator, Architecture & Engineering Division, (DOA) made comments on HB 5 appropriation efforts to update data. Gave caution to the committee that the data provided needs to be updated.

RECESS:

10:25:23 Reconvened at 10:39:30

MSP HISTORY OVERVIEW HIGHLIGHTS:

10:39:51 Rachel Weiss, (LSD) gave an overview and history of the Montana State Prison. Presented reports relating to prison population and reducing recidivism. Discussed Department of Corrections timeline.

CORRECTIONS DATA DASHBOARD OVERVIEW:

- 10:44:16 Walker Hopkins, Fiscal Analyst, (LFD) gave an overview of daily dashboards updated by the Department of Corrections. Current capacity and offender population.
- 10:49:09 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) explained that the department would be happy to come back to the committee with more information on their classification system, bed types, how inmates are classified.
- 10:50:09 Rep. Bill Mercer made additional comments on criminal history data requested by the committee of the Department of Corrections.
- 10:51:10 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) explained the variables that can go into how inmates are classified. Many factors determine a prisoner's risk and safety level in the facility.
- 10:52:15 Rep. Donovan Hawk asked if a current list of rehabilitation programs, mental health services and future programs the department is planning to implement could be provided.
- 10:52:26 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) confirmed that this information can be sent to the committee.
- 10:52:47 Brian Gootkin, Director, Department of Corrections, (DOC) made additional comments on the number of additional beds needed. Assured the committee that the executive team meets regularly to discuss the trending issue of jail holds.
- 10:54:35 Rep. Bill Mercer asked if there is anything that the department is legally mandated to accomplish that the committee should understand or be aware of.
- 10:55:29 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) explained that the department is currently under an agreement to make ADA updates to facilities including the Unit D renovation. Physical infrastructure issues will be addressed with new build.
- 10:56:48 Sen. Ryan Lynch asked for more information about mental health issues within the prison system.
- 10:57:23 Cynthia Wolken, Deputy Director, Department of Corrections, (DOC) shared with the committee the departments policy goals to expand rehabilitation programs.
- 10:59:15 Rep. John Fitzpatrick asked if the Department of Corrections could compile data on all facilities, identify the design capacity and census. Made comments on jail holds and asked if data could be compiled based on number of jail holds by county. Would like to see number of convictions, triggering offences, drug data, and staffing analysis for Montana State Prison.
- 10:03:37 Walker Hopkins, Fiscal Analysis, (LFD) presented Department of Corrections current dashboard analyzing staff and overall workforce.
- 11:05:44 Sen. Ryan Lynch asked for data on design capacity, operational capacity, risk level of current offenders, price per day per bed, average length of stay and significant policy changes that have shifted numbers within the system.

11:07:15 Brian Gootkin, Director, Department of Corrections, (DOC) made comments on forensic beds at the state hospital and how this effects the MSP system. Spoke about staffing analysis and the work done by recruitment and retention team.

PUBLIC COMMENT:

11:09:00 Sen. John Esp called for public comment. None was heard.

COMMITTEE WORK SESSION:

11:10:13 Katy Callon, Fiscal Analyst, (LFD) gave an overview of the committee's goals, expectations, and study outcomes.

11:12:45 Sen. John Esp made comments on committee goals and focus on establishing an overall framework and implementation plan for long term facility needs and immediate improvements to the Department of Corrections.

11:14:05 Rep. Bill Mercer would like more understanding of the Department's interaction with DLR Group and need for updated plans and data relating to prison capacity

11:16:30 Rep. Paul Green expressed that he would like to research the reasons why the Hardin prison facility cannot be used and if there are modifications that can be worked with. Would like to schedule a tour of the facility for the committee.

11:18:32 Sen. Keith Regier would like to see a priority list from the Department on current projects such as water supply/water lines and a timeline on when these could be completed.

11:19:49 Rep. John Fitzpatrick pointed out that the Department currently has a priority list of projects described as long term and short-term projects currently being worked on. Everything appropriated in HB 817 is first.

11:21:30 Sen. John Esp would like to have a report each meeting from Board of Investments progress of proposed new housing units within range of the prison, potentially a report from the contractor.

11:24:40 Rep. John Fitzpatrick expressed that he would like to hear from Core Civic on prison capacity and contracted facilities. More resources/conversation on treatment programs.

11:26:05 Sen. Shelly Vance made comments on local detention facilities making additional beds available.

11:27:24 Sen. Ryan Lynch would like to have a better understanding of capacity of various courts such as veterans' courts, drug courts, family court, multi-disciplinary courts etc. Return rates and risk levels associated.

11:29:01 Rep. Bill Mercer would like to see the contractor come in with the Department to discuss the workplan during the next meeting.

11:30:46 Katy Callon, Fiscal Analyst, (LFD) made announcement about future Billings meeting in April 2024.

ADJOURNMENT:

11:31:56 Sen. John Esp adjourned the meeting.