

MINUTES OF THE MEETING
FINANCE AND CLAIMS COMMITTEE
MONTANA STATE SENATE

March 19, 1979

The twentieth meeting of the Senate Finance and Claims Committee was called to order by Chairman Matt Himsel, Senator, on the above date at 8:06 a.m.

ROLL CALL: All members present except Senator Fasbender.

CONSIDERATION OF HOUSE BILL 317: Rep. Yardley said this is supplemental appropriations for the Long Range Building Program, and that the bill had been heard in the LRB Committee. He handed in exhibit 1 -- attached.

No further proponents, no opponents, questions from the Committee as, follows:

Senator Smith: Are there any members of the LRB Committee here? Have you carefully scrutinized this supplemental? Would like to have them build something just once and not come in for a supplemental. He mentioned several projects where this had happened. Discussion was held on the merit of these various additions to the additional amount of the appropriation.

Senator Aklestad: On the new housing units for the prison, this was found to be the most logical? Rep. Yardley: Yes, and it had several other satisfactory characteristics to it.

Senator Aklestad: Why not use the same lagoon? Phil Hauck, Architect, Department of Administration, said when this was built the state department of engineers recognized that we would have to add to it. With the developing population we are adding 2 cells, putting in a bigger water reserve and a new sewer line. We had allocated around \$50,000 for this work. In bidding we are \$30,000 short - this is just increasing the size of the present lagoons to take care of the new housing units.

Senator Aklestad: I thought they said in here that they would not need more lagoons unless we went beyond the present population.

Mr. Hauck: This addition was included in that statement. It is 4 cells now, and 2 more are being added. Beyond that we would have problems.

Senator Story: This was \$800,000 originally and had \$216,000 additional added by the full Committee? Rep. Bardanouye: It was estimated earlier by the budget office. When the bids came in it was the amendment necessary to meet the bids.

Senator Himsel: There was \$216,000 added to it to make the tunnel service around the campus. This was added to the \$800,000 - it was an additional thing.

Senator Story: Did the LRB approve it or was there disagreement? Rep. Yardley: There was no disagreement. When it was approved it was taken off the priority list. The original \$300,000 for

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Interuniversity M.P.A. Budget Allocations

| | <u>1980</u> | <u>1981</u> | <u>Total</u> |
|----------------|---------------|---------------|---------------|
| M.S.U. | | | |
| Personnel | \$10,153 | \$10,181 | \$20,334 |
| Operations | <u>5,840</u> | <u>5,840</u> | <u>11,680</u> |
| | \$15,993 | \$16,021 | \$32,014 |
| U.M. | | | |
| Personnel | \$10,154 | \$10,180 | \$20,334 |
| Operations | <u>5,840</u> | <u>5,840</u> | <u>11,680</u> |
| | \$15,994 | \$16,020 | \$32,014 |
| Total Biennium | | | |
| Personnel | \$20,307 | \$20,361 | \$40,668 |
| Operations | <u>11,680</u> | <u>11,680</u> | <u>23,360</u> |
| | \$31,987 | \$32,041 | \$64,028 |

*Attachments

9 fees

if they don't qualify it has to be made up. Eastmont could not qualify because they were considered an institution.

Senator Smith: Was it checked out to see that they did not get the \$400,000 plus money? Rep. Bardanouye: They can't spend it without a corresponding statement to do so.

Senator Himsl: I get the impression that the money for the vo-tech etc., you are reimbursed, but if you don't spend the money you can't get it.

Rep. Bardanouye: On the appeals board, line 20. They seem to think it is critical. They told us they would have a lot more appeals in because of the appraisal. We told them to go ahead, take it out of their budget, and we would take care of them next year.

Transportation for moving prisoners around was felt to be inadequate. They do not feel the budget is large enough to handle all the moving.

Rep. Yardley: Line 22 - the engineers are in despair. This money covers the expenses for a very serious flood situation in Montana. It is a controversial item in the House which generated a lot of argument. The government is given \$750,000 by law to be spent. Last winter was the worst winter in Montana, and two counties, Blaine and Wibaux, are two of them that are in trouble. They accumulated a lot of snow removal bills. They levied 2 mills and it is all used up. This is the first time we had two winters back to back that were this severe. I do not know what obligation will be against the \$750,000. At the time of the presentation in the House, over \$200,000 of firm commitments were made against this money. It takes the counties several months to present the bill. The state government reviews the claims under the match grants, so it will not be known what the obligations are. If there is severe high water we could be in trouble. I hope we are not forced to use it, that Montana will not have that much bad luck. This amount should, hopefully, cover all the liabilities of the counties that have levied the 2 mills and have some money left over in the disaster fund.

SBAS: There was additional money put into the accounting system to cover up-grading.

Department of Justice: Coal Tax Defense - preparation of the coal tax defense case, hiring of consultants and legal assistance is what this money is for.

Law Enforcement Academy: Last summer MSU told the law academy to pick up their bags and move, since they had use for the classrooms and they needed them. Several years ago they had more classrooms; the dormitory is now filled up. Gallatin County officials offered them a room at the fairgrounds. It was a very valuable offer because of the university complex and they would not have to buy land. The Attorney General's office has worked out a lease agreement. This money was needed over and above what was needed to combine with the facility. Mr. Greely came to the Finance Committee with this situation, and asked if he should go ahead. We told him we would hope to look favorably upon it.

for renovating the hospital at Galen was also there. Now it is \$100,000 for both. Renovating for geriatric care is much less expensive. These figures now work out so that with the change at the university there is \$45,000 difference, but this added up in the total of the priority list - adding in one place and losing in another.

Senator Aklestad: Does it include the lecture hall? Rep. Yardley: There is \$800,000 for it.

Senator Thiessen: It seems that you can't build within the budget. Why? Mr. Hauck: It is a matter of degree - in the course of the biennium most of the contracts have gone up. We base everything on estimates until we bid. A lot of factors that influence the change. Inflation is one of the toughest. To include inflation in the bids, or to give the contractor a little flexibility. We put alternate bids out to be able to award whatever - depending on the bids. It is to the advantage of the State to put extra brick on the building at Pine Hills. Over a period of time it would be a big savings to the State. On the criticism of not having enough money in the original bid, we have only 5 out of over 200 bids that we have had to request more money on. It is hard to estimate that close.

Senator Smith: After the experience at Glendive, I suppose the 440 beds will end up with 300 - like the nursing home at Glendive that ended up with 40 beds.

Mr. Hauck: These are firm bids.

Senator Thiessen: The alternate on the lecture hall - if you don't do it now, you can't do it because it is the basement. Rep. Bardanouye This was not provided for in the last session. This hall is a casualty - it died in the House about 3 o'clock in the morning.

DISPOSITION OF HOUSE BILL 317: Motion by Senator Thiessen that House Bill 317 Be Concurred In. Voted and passed.

CONSIDERATION OF HOUSE BILL 416: Rep. Yardley was requested by Rep. Bardanouye to explain House Bill 416. This was a supplemental on the Institutions. He explained the bill and also explained the process of getting Twin Bridges into a position to either do something or to dispose of it. He said he understood copies of the appraisal would be available shortly. In answer to a question from Senator Himsel, Rep. Yardley said some money had been spent there for utility and for some repairs; and in answer to a question from Senator Stimatz he said a copy should be available of the appraisal from the Department of Institutions. He said they are upset that the appraisal is for only about 1/2 million dollars. Some say the land alone should be worth that much. The appraisal firm should be able to amortize this facility according to others in other states.

Department of Institutions:

Discussion was held on vo-tech money being used in the institutions, and having to make up this amount which was not reimbursable.

Senator Himsel explained that while vo-tech money is reimbursable,

air control and go through the hearing procedure or go ahead and do a study. The ambient air control study cannot be enforced. The legislative committee felt they bit off more than they could have chewed. They could have adopted the federal and had no study. They could have had it adopted by now with a lot less money and then asked the legislature to do what they wanted to do. We did not take out all of it, we just took out \$50,000. I asked the witness from the Department of Health what part of the study related to pollutants not covered by EPA.

Senator Lockrem: When you get down to the distinction - it is all just one big ball of wax.

Rep. Marks: This has nothing to do with the Governor's decision on the Stauffer Chemical - there the radioactive material was in basements, used to pave streets, etc.

Senator Himsel: I think we are confused about what we have heard as to the object of this appropriation.

Rep. Bardanouye: Forget about the radioactivity - that was J.D.'s campaign for last year - the court rules that Montana has no air standards because they were illegally adopted, we are compelled to have new air standards, to make a firm research in order to adopt them legally. Also, there are some differences between Rep. Marks and myself. The federal air standards were turned down in the House. Forget about the federal air standards - they have nothing to do with this bill. This bill has to do with setting up air standards in Montana. We have no standards now.

Senator Himsel: I understand the \$100,000 is for research and development of an air standard law.

Rep. Marks: It will cost \$147,000 for an ambient air control study to recommend a standard. Rep. Bardanouye is not correct for an EPA standard. At the time the options were given, one of them was that we could adopt the EPA standards and go through the Administrative Procedures Act to adopt them. They chose not to.

Rep. Bardanouye: That was not done.

Senator Lockrem: If it was so simple to adopt the EPA then they would have only had to adopt by reference, etc. What rationale did they use to change this?

Rep. Waldron: I was chairman of that particular subcommittee that handled this question. No matter what you do you have to follow EPA law regardless of what you adopt, or you will end up in the Supreme Court. They will say - go back and do it the way you are supposed to. The Health Department said if we are going to have to go through the EPA anyway we might as well do it right the first time. It went through the Governor's office. If we adopt the particulate standard, then the federal standards are too high and can hurt some of the industries. If we swallow the EPA standards in Missoula they will have to close down the Hoerner-Waldorf because there is too much particulate in the air. The other problem

Judiciary - district courts, 122,000 - this will pay for the new judges until July 1.

Rep. Yardley went through the remainder of the bill explaining what each section was doing, and how much it involved.

Questions from the Committee as follows:

Senator Himsl said he would comment on the narrative. Should line 3 on page 12 be called to the attention of the Committee? Rep. Bardanouye said this was language that was put in by the subcommittee on education. Judy Rippingale answered that the subcommittee on education put it in so that the \$23,029,433 is the total of House Bill 145 plus this supplemental. Then, if you go down to the tuition and fees they expect to collect - this is what the supplemental provides for, in going back over all the funds available - if MSU should come up with more money into the fees and tuition it could come back to the legislature to offset the money that was given to them.

Senator Himsl: The only way to exceed that then, would be to come up with more student fees and tuition from a spring quarter enrollment. On line 21, an additional \$132,000 to the general fund appropriated to the department and reappropriated in the fiscal year '79 - what money are they talking about there?

Rep. Bardanouye: There was \$132,000 in the first fiscal year that was not used so we are giving them permission to use it this year. The money was left over on the first fiscal year. We transferred it from the first fiscal year.

Senator Himsl: Do they need a special authorization to do this? I thought they were allowed by law to do this. Rep. Bardanouye: You can reach forward and bring it back in the first year, but you can't reach back into the first year from the second year.

Senator Himsl: Are you sure that is correct? Maybe some one from the budget office can give us more information on this. John Fitzpatrick, OBPP, said they can't go from the first year and into the second year, but you can go the other way around. Rep. Bardanouye said the principle of this was that in the second year they could come back into the legislature if they run short.

Senator Lockrem: This money that is put into the Department of Health - is that the \$1 million we put into the air control study? Senator Story deferred the question to Rep. Marks who said the subcommittee had decided they could get by with \$50,000 and the other \$50,000 was pumped in by the House. The money that was pumped in was from the first year to the second. This is for on-going education, and that was the reason for the transfer.

Senator Lockrem: But was that money for the air control study? Rep. Marks: No. That was a court decision of 1978. It applied the air control standards they had at the refinery in Billings. The court said all you had was a set of agency regulations which were a guideline. They said you could not enforce it. They advised the board that it had a couple of choices. To adopt the federal ambient

Rep. Bardanouve: There was a lot of publicity in the paper - Montana air standards were decreed illegal.

Senator Thomas: Is it possible to get someone here from the Department of Health and Senator Brown?

Rep. Marks: Rep. Bardanouve is only partly right. If the Department had adopted the federal levels they would be Montana's standards now.

Senator Himsel said he would hold the bill and get testimony on it from the Department of Health. Perhaps this would clear up some of the confusion.

Rep. Marks: In regard to the \$750,000 appropriation for the Governor's emergency fund, he felt there was a great deal of misunderstanding. The only part left would be to get the bills together. The main thing now would be a flood, and that would happen in June and could come out of the next year. Before the Governor could ask for this money there are a lot of things that would happen - the counties would have to levy up to two mills, and it does not appear to me there is any way to get the bills to the state before the next biennium.

John Fitzpatrick said there is \$750,000 by statute for disaster. This money has been expended for snow removal. The money in this bill is for expenses above and beyond that \$750,000, and the money does not fund anything but the counties. It cannot be used for any state services - it is only a grant fund for the counties. We do not know how many disaster funds are to come out of this money. There has been about \$200,000 already granted. If the state is lucky and nothing further happens, the money will revert to the state at the end of the fiscal year. If something should happen, the money should be there. You can cut the money or you can raise it. If you cut it you are taking a calculated risk. If you cut the money, there is a disaster, and the money is not there, then you people are the ones who will answer the questions. I am sure that Mr. Bursett will tell you that the state must pay the bills for the year in which they are obligated. This is a '79 obligation and has to come out of this year's budget.

Senator Himsel: The Committee is well aware of its responsibilities. I think you people, when you passed this bill, have confused the issue by using the same figure twice. If there had been a slight difference in the amount it could have been sorted out easier.

Rep. Bardanouve: With the \$750,000 in each figure - if the disaster fund and also the additional appropriation were all spent, it would be \$1 1/2 million.

Senator Smith: I would like to ask the budget department to give me a summary of where the money has been spent and where you anticipate spending it.

Mr. Fitzpatrick: I do not have the schedule with me, but can get it for you. We are already into one flood this year, and we could be having to help there - that is the flood at Denton. There is also

is that the money has all been spent. It does not make sense to be vindictive to the Health Department because they did something which some members of this committee do not agree with. This only dealt with ambient air studies.

Rep. Bardanouye: The decision was made before we came here.

John Fitzpatrick, OBPP. First, the fiscal analyst did not bring in a recommendation contrary to the \$100,000 request. There was no statement that this money was excessive or incorrect. The department is being legislated against for not setting a standard. The state has always set standards of its own. The Department of Health was being consistent with the Montana Policies. This is telling them that they should have legislated a new set of rules for the state.

Senator Lockrem: What is the money? There are three different items adding up to nearly \$300,000. Because they had some of the money from before they only needed \$100,000 in cash. There is air control, radiation studies and audit fees.

Senator Story: What did not come out in any way in the subcommittee hearings was that this could in any way jeopardize the Hoerner-Waldorf in Missoula. There may have been a misunderstanding on my part, but I was led to believe that some of this money has not been spent. The \$50,000 is money that will be used if we pass the bill, but not if we don't pass it.

Rep. Bardanouye: It is a contract. This will pay off the last of what they have to pay to the contractor.

Senator Story: To continue, part of this money goes to apply to standards that are not called for by a federal government standard, and which could jeopardize ASARCO if adopted. We are not trying to put people out of business in the state. I feel adoption of standards that are not required by the federal government should not be stricter on the state level where it will hurt industry.

Rep. Bardanouye: One standard may hit one and another standard hit another.

Senator Smith: I read an article where they were going to make a study of cars running down the road to see how much dust it put in the air. Is this money going to be used for that?

Rep. Marks: This does study the particulates

Senator Smith: It disturbs me that they cannot come in and say where the money is spent or how they are going to use it.

Senator Thiessen: This concerns a court case. Where can we get the conclusions on it?

Rep. Marks: Senator Brown knows more about this than any person in this room.

way of imposing regulations has been to impose emission regulations at the source. Some of the questions raised were:

(1) What should be the ambient standards? Some of the goals wet were terribly restrictive. I am not sure some of the industries could meet some of the demands. They were more strict than the federal.

(2) The bigger question of why the Health Department go into it - what does the ambient air mean? Is it something to be used for enforcement or a number they will decree the emission standards to do? That is really what the whole process is designed to solve.

Senator Aklestad: If it was stricter, why couldn't they just adopt the EPA standards? Steve Brown: The Board of Health can still do that. They did adopt some in 1967, but a lot of them had not been adopted. EPA does not have a standard on some of the things that they even admit are harmful - fluorides for one.

Senator Aklestad: Have we set standards now? Senator Brown: No. A hearing schedule is being set up now. The Board of Health is required to have hearings on it.

Rep. Marks: There was a bill in the House that died on second reading - but the Board of Health still has the option of adopting these standards.

Senator Aklestad: I thought the EPA standards were not enough. Someone now says they are more severe. In the subcommittee on the testimony we got, the Board of Health actually thought they wanted standards more severe.

Senator Brown: They should not be telling you this - they would be prejudging the action. The state does not have any ambient air standards. The standards, as originally adopted, were much more stringent than EPA.

Rep. Waldron: The ambient air standards for particulates are stricter than the current goals of the Department. If the EPA standards are adopted we will have trouble in Missoula.

Rep. Bardanouye: We don't know, and can't control what the Federal Government comes out with.

Senator Thiessen: What were the conclusions with Cenex?

Senator Brown: The problem of enforcing ambient concentrations. It deals with whether or not they can be measured by a device. How can you say that Cenex is responsible for spreading these pollutants around? It becomes very difficult to prove. EPA prefers to concentrate on the emission level. There are cars, furnaces, etc., putting pollutants into the air, and to say it is all from one source is rather difficult.

Senator Thiessen: Was it the Department of Health that decided the 1967 rulings were not adequate and decided to do something?

high water at Miles City which could go anywhere yet.

Senator Stimatz: This is county facilities, county roads - that sort of thing - no private property.

Senator Stimatz: In regard to the law enforcement academy, I thought they had been given a building in Bozeman to use on Main Street. Rep. Bardanouye: No. Are you referring to the T.V building on Main? The Gallatin County Commission gave the law academy the right to build facilities on the Gallatin County Fairgrounds.

Discussion was held on the law academy, possibilities of having it at Dillon, close to a campus where it would be used more, at the Fairgrounds in Bozeman, etc.

Senator Thiessen questioned the enrollment at Western. It is showing an increase, and he thought they were decreasing. Rep. Bardanouye said the enrollment is higher than the legislature had projected.

Senator Lockrem: There was a reversion on the previous year. It is almost a push on the supplemental - there are some serious questions about the raise. There was a huge escalation per year for utilities, etc. This was a substantial raise. Rep. Bardanouye: This concerns me also. I have concerns about there being no other alternative. \$107,000 is a lot of money. I was a bitter opponent of that large a commitment.

Senator Lockrem: I questioned in the subcommittee whether we knew what we were paying for with this \$107,000.

Senator Steve Brown was introduced by Rep. Marks on the problems with the Health and Environmental Sciences, and the report to having spent money on air control standards in Montana. He was asked if he could explain the question as to what the purpose of the study is.

Senator Hims1 explained that this is the supplemental request - it came in at \$50,000 and had been increased to \$100,000.

Senator S. Brown said there are two parts to air control standards. Ambient standards - general outdoor atmosphere as to how much pollution can occur without affecting health; and (2) emission standards - placed on the source. He then went on to say that when the original study was made and the report was given it stated certain goals and said it would be nice to reach these goals. Now the debate is whether or not this statement is enforceable.

Senator Brown continued by saying after the injunction he had decided to do research on the matter. The Board of Health had intended this was not an act, but goals that might be achieved at some time. At no time did they say we could take a favorable action on an injunction. The debate came to a climax with the Cenex refinery and the Department. Based on that contention, the people on the Board of Health became concerned. They were ordered to do something more, and undertook the study of what the standards would mean in Montana. Ambient air controls are not enforceable through court action for injury. Their

Senator Etchart: Senator Thomas and I were on the institutions subcommittee. We are very familiar with what the bill did two years ago. This is working well and does not cost any more - maybe a lot less. The kids are wearing what they get. We have run into these inventories in all the institutions. We think in this clothing area, where you are trying to help the children, this is a good bill.

Senator Thomas: It is difficult to procure bids from places like Hennessy's, etc.

Mr. Glen: You would not know what you needed prior to purchase. We had talked to some of the stores. We did try to get an open contract with an open purchasing system. They were not interested. They said they were not aware of what was purchased until the purchase was made, and it was hard to project needs. We did get a discount, but there was only \$20 in six months.

Senator Thomas: This doesn't answer our question of why so many bib overalls in a size 54. Isn't it better to go to a purchase order and get what the kids will wear? The kids not only get something they will wear, but also get the experience of choosing something within a price limit. Your main concern seems to be that it just gums up your system.

Mr. Glen: We believe in the concept - we believe that with the right information we can go through our process and do this.

Senator Himsel: I can see that this might have some therapeutic value at Mountain View, but with the lower level of function at Boulder, I can't see it as very significant there.

Senator Thomas: It is difficult to sit down and take the measurements of a mongoloid child for example. They have a difficult body size quite often. They can take the child to the store and the alterations can then be done to have the garments fit the child. It would be very difficult to write them on an order form.

Rep. Lund: The comments from purchasing has been so negative you would think we were going to open up a Pandora's box. Robel Outfit provided much of this two years ago. A lot of the boxes wound up in the commodes. Let us have the privilege to do this for some of the kids - not just buy things to throw away or to store.

The hearing was completed, and the chairman announced there would be a meeting Thursday morning at 8 a.m. on House Bill 556, and a work session tomorrow morning.

The meeting adjourned.

Senator Brown: Also industry. A number of insurances were involved in the case. There is no agreement with the interpretation made.

Discussion between Senators Story and Brown was held on whether the federal standards were stiffer and whether they would be in effect and override lesser standards set by the state. Senator Brown said that if state standards are set then Washington will often listen to area problems. Senator Story seemed to feel we could get stiffer in an area but not less stiff. There was also discussion by several committee members on where the money would go and what it would be used for.

Senator Himsl: I read this as a supplemental operation. In that case, this commitment has been made, and we are picking up the tab.

In answer to a question on the hearings, Mike Roach, DNR, said that if they were to adopt the EPA standards they would still have to have hearings and lay the base for the Board of Health to adopt.

CONSIDERATION OF HOUSE BILL 874: Rep. Yardley explained the bill. He said this is an appropriation committee bill. The original bill was Rep. Lund's bill, and he would ask him to explain it.

Rep. Lund: The reason for the proposed legislation is the quantities of clothing which are piled up and not worn at the institutions. There are stacks of size 54 bib overalls for example, or a stack of coats all one size and all one color. This type of legislation was used at Mountain View school last year and not only done effectively, but saved the state money. He said the girls were allowed to go to Hennessy's and shop for clothing. There was a price limit on the clothing, it was supervised, and it was done in conjunction with an educational program.

At Swan River they have to buy their own clothing since it is specialized for working in the forest area. It helps them to look nice, and the clothing is worn. It worked out so well at Mountain View that we thought it should be done at the other institutions, and that is the reason for the bill.

There were no further proponents for the bill, and the Chairman called for opponents.

Mr. Luther Glen, Department of Administration, Purchasing Division: The department is opposed because it is contrary to competitive bids, and we want to continue with that program. This would be one or two this year, but a lot of the institutions next year. We would like the flexibility to spend our funds without any guideline to cover this. We could get various sizes and colors if the problem of homework is done at the institutions. Any similar amount of time could solve their problems without doing this.

Rep. Yardley: On closing comments, I would like to think there is a therapeutic value in this. Mountain View has a contract with Hennessy's. They have a very limited amount to spend, but is advantageous to the education of the group.