

MINUTES OF THE MEETING
FINANCE AND CLAIMS COMMITTEE
MONTANA STATE SENATE

March 11, 1983

The 9th meeting of the Senate Finance and Claims Committee met on the above date, room 108 of the State Capitol. Senator Himsl, Chairman, called the meeting to order at 8:10 a.m.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 247: Representative Ryan, District 49, said this is a simple short little bill to correct a problem to do with an error in bookkeeping in the court house where they lost money in school equalization funds. This would give money to OPI to reimburse Petroleum County. The money is theirs and went back into the general fund and they need the money real bad, it is a little county.

There were no further proponents, no opponents, and Senator Himsl asked if there were questions from the committee.

SENATOR AKLESTAD: I guess I can't understand it, but can't this be done without legislation? Ryan: They have given them some money but it is illegal to do it without legislation and they are afraid it could get them in trouble if they gave them all of it. The amount was bigger than it is now.

SENATOR HIMSL: Run that through again. The county made an error? Ryan: There was an election and a new bookkeeper put it in the wrong column.

SENATOR HIMSL: Does anyone understand why the county equalization fund should revert to the state general fund? Ryan: I have some more stuff on it, but the House committee kept the information.

SENATOR DOVER: Senator Dover explained that with some accounts and certain type of transactions he could see how it would revert.

SENATOR HIMSL: They way they entered it, it indicated they had more money than they really had and it went back to the state that they had too much money.

SENATOR JACOBSON: This money will not be coming out of the general fund, but out of OPI then? Ryan: State equalization fund.

REPRESENTATIVE RYAN: In closing said he would just urge a do pass on the bill.

DISPOSITION OF HOUSE BILL 247: Senator Story moved that the bill do pass. Voted, approved unanimously, Senator Manning to carry the bill.

CONSIDERATION OF HOUSE BILL 156: Representative Pavlovich as chief sponsor of the bill said he would not go into a lot of witnesses, etc. that everyone on the committee understood what the silicotics benefit bill is and that it is basically the same as last year but would increase benefits by \$25.

REPRESENTATIVE MCBRIDE spoke as a proponent of the bill. She said she had done some reviewing and especially into the inequities of the bill where widows prior to 1974 receive only $\frac{1}{2}$ of the benefits. Those after 1974 receive the whole benefit, and this did not seem to make any sense. I went through some of the information the workman's comp has too, and found 25% of these widows live on less than \$300 a month. You are not dealing with women here who have a whole lot of money. I would hope you would pass the bill.

LORI ZINK, AFL-CIO, said she was speaking for Jim Murry that they favored the bill and gave written testimony, attached as exhibit 1.

There were no further proponents, no opponents, and Senator Himsl asked if the committee had questions.

SENATOR KEATING: The fiscal note has to be in error? Pavlovich: it is. It was made for a \$400 figure.

SENATOR REGAN: Why was the limitation removed? Should there not be an income limitation? It was removed from this bill and previously a widow income in excess of \$6800 could not qualify. Perhaps we should increase the limitation, but certainly there should be one.

REPRESENTATIVE MCBRIDE: I guess I had a concern about the limitation in comparing this with any other program that was comparable.

SENATOR REGAN: Would \$8,000 be satisfactory? McBride: Only 4 or 5 people that would have qualified for it, not a large number of people would qualify. I don't think either Bob or I would have any trouble with \$8,000.

SENATOR OCHSNER: As long as they don't remarry. Line 13-- page 3. McBride: This bill was amended in the House. Neither one of us could get ahold of the real language put into the bill. Realizing the constraints on our budget, I am not sure either Bob or I would have any concerns if this were changed.

There were no further questions from the committee, and Representative Ryan said he had no closing remarks. Senator Himsl declared the hearing closed on House Bill 156

CONSIDERATION OF HOUSE BILL 548: Representative Marks said that House Bill 548 I sponsored along with a number of others at the request of the Legislative Finance Committee. It is to tighten up and clarify the budget amendment process. The reason it was necessary is because we felt there was rather loose control on the budget amendment process. A number of years ago it was given to the Legislative Finance Committee to review and at that time the Legislative Finance Committee had virtual power over budget amendments. In the case of Governor Judge versus the Legislature, we lost. Since that time they have felt it has not been working as well as it should from a legislative prospective. The budget amendments in the past 3 years have had 10's of millions of dollars added to the budget. That is not to say it was not correct. It has been frustrating to those of us sitting on those committees. We spend a lot of time looking and many times the money has been spent before we get a chance to look at it. I am not here to say it was not all projects that are worth while, but I think we should have better control over it. This would let us see and comment on it before it was approved. The Legislative Finance Committee had an attorney analyze the budget amendment laws. That attorney recommended against any litigation. They recommended that because of the vagueness etc. that we would not get a quick enough finding. We were advised we revise the law. We could then clear up the question of additional services, budget amendment, etc, we would re-draft for clarification and less ambiguity in interpretation. I think Mr. Lewis has spent many hours in the finance committee defending his interpretation. There is a difference of opinion. I think it is a gross waste of time to argue and debate over interpretation when it could be spelled out better and can be defined easier. The finance committee and fiscal analyst does not get the document in time for review. This does not give the finance committee more power, just tightens up the provisions.

There were no further proponents for House Bill 548 and the chairman asked for opponents.

DAVE LEWIS, Director, OBPP, said there is no way we can foresee all the emergencies. To make adjustments in a 2 year period is a necessity for good government. They cannot make any adjustments under general fund. Just other monies. The Legislative Finance committee was set up with delegated authority to basically make appropriation type decisions and was struck down by the Supreme Court. Within the appropriation act, it was an attempt to define everything. The problem is since you cannot see what will happen, you have to make decisions and we have wound up having these internal emergencies. Many times the subcommittees will say go ahead, and do it by a budget amendment.

Mr. Lewis passed out a sheet pointing out what the bill requires in different sections, attached as exhibit 2. He pointed out the difficulty in interpretation and said I run the risk that if one of three could go to court and at that point I would be in trouble. If this bill is the intent of

the Legislature, then simply remove the authority you have given us to make budget amendments. I think the bill goes to far in attempting to set up a series of "tests" during the interim period. I think this bill would make it extremely risky for me to make any decision on a budget amendment.

JACK NOBLE, deputy finance director, University System, said he would also speak as an agent for approval authority for the Board of Regents. We would have many of the same problems that Mr. Lewis has spoken to. The Board of Regents meet approximately once a month, they do approve all budget amendments that are appropriated in the budget account. The problem is that the budget does exceed \$100 million. At the years end if we go over by even \$1 we need a budget amendment. Currently, the Board of Regents let the fiscal auditor have 2%. In lieu of this, I think the Regents would have to live in Helena for the last 6 months to approve all budget amendments. An amendment to insert "or its designated representative" might help. We would have many of the same problems with definition.

MONA JAMISON, Legal Counsel for Governor Schwinden said she would testify on her concerns with this bill. She said in line 21, page 10 it says "in excess of the legislation.. which includes "valid" budget amendment. However, the insert of the word "valid" places a burden on the executive branch in approving the budget amendments making it virtually impossible to ever approve it. It changes the scope of section 9. What can happen is the approving authority can be subject to a fine of from \$50 to \$500 and imprisonment for 30 days to 6 months. If we think of what would place him or the Department representative --page 10, Section B, 17-8-103, he can go to jail for any appropriation that is spent in excess of a "valid" budget amendment. What is a valid budget amendment? What is the criteria? Section 3, page 5 (b) line 19 -- it has to be necessary. Each one of us may have a different interpretation of what is necessary. (c), lines 21 and 22 goes into its validity. Is it reasonable? Perhaps another available alternative might not be one the Legislature would approve of as a whole. Page 6, line 9 "makes no ascertainable present or future committment for increased general fund support." What is ascertainable? It may be reasonable that it is sitting in a bill in Congress. To someone else, it may not be. On page 4, most of the requirements that go to the valididy of the budget amendment. It makes it possible for someone to go to jail. Line 11, ascertainable committment -- unless an emergency, -line 22 - 25 shows how objective they really are, and line 24 epitomizes the vagueness because it says "reasonably should have had" knowledge. That is an extremely subjective term. It presents a maze of uncertainty when you sit down to go

through the requests. What happens is on complaints of the approving authority he can go to court, be fined, or jailed. Whether or not you meet the criteria and whether or not it meets the "standard" of a standing committee could give a person a fear of acting on any budget amendment. If you are going to bring criminal action before the court, the person should know by reading the law whether he will be violating it or not. Page 9, lines 13 through 19--"Any budget amendment that is not certified by the approving authority"etc--can be voided. Certain "conditions" have not been met and therefore not a validly approved budget amendment. By this time all or part of the budget amendment has been spent, and what does he do?

Page 12, line 12, any standing committee of the legislature can bring the complaints. Would you like "any" committee to speak for you? As a legislator you can go out and bring this complaint before the county attorney. As a legislator you may disagree, the committee would have the authority to actually bring the complaint. It is also stated that the Legislature by joint resolution could bring that complaint. This at least recognizes that each legislator has a vote. At least, by Joint Resolution, it would be the majority but with the inclusion of standing committee it raises the constitutional question. The Legislative Finance Committee is not given any more authority. The question is legally, whether a committee can bring a suit. What are the effects?

This reaction to any kind of problems that have come up in relationship to budget amendments is too great a response to anything that has occurred. I would say these kind of sanctions are too severe. Representative Marks has said he is not here today to say anything was done wrong.

If it were me, I would not approve a budget amendment unless it constituted a great and clear emergency under this bill. I don't think I would take the chance. To put this approving authority on the executive and the University system will definitely impede good smooth government.

There were no further proponents, and Senator Himsl asked the committee if there were questions.

SENATOR SMITH: I am Chairman of the Finance Committee and to Mr. Lewis's concern that the bill goes too far, I guess I would ask if some of the instances in the budget amendment in the past maybe the whole process hasn't been too loose. Lewis: I would really not admit to that. There is a good case to be made for each argument we have made. The review has certainly, if anything, did tend to restrict any of the operations we may be tempted to do. We realize that anything we do, we have to defend.

SENATOR SMITH: Won't you admit in the past the particular amendment has not followed the criteria of the law. It was not approved and brought before anyone before spent. Lewis:

I don't know if we have violated the laws since I don't know what the law means.

SENATOR SMITH to Mona Jamison: In regard to your remark that possibly anybody or any agency could take Mr. Lewis to court because of a budget amendment. I am sure you realize the Legislative Finance Committee that does not have an attorney to take anyone to court, would be reluctant. Does anyone honestly think anyone on the Finance Committee would take any one to court? Jamison: I think there would be reluctance. As a lawyer, it does not diminish any of the concern I have.

SENATOR KEATING to Mona Jamison: Did you give this same testimony to the House Committee? Jamison: No. I just briefly testified on this.

SENATOR KEATING: Did you give testimony in opposition, Mr Lewis? Lewis: Before the Finance Committee a couple of times and in the Appropriation committee. We had two votes when done.

SENATOR KEATING: Representative Marks, on page 12 where dealing with action may be taken, etc. in Section 9 it says action can be brought by any taxpayer. Don't you think that is getting a bit broad to leave it open to all these people that somebody might want to take a whack at someone to take them to court? Marks: I am not sure any citizen would be aware as to what shenanigans Mr. Lewis might pull.

SENATOR HAFHEY: I would like to ask Mr. Lewis to answer to something Finance Committee went through. As we prepared our discussion and the draft of this bill, etc., it is to my memory, reported to the committee that you did not have a lot of problem with the way the bill was drafted, etc. One question was the one Senator Keating asked. It was raised often by Senator Van Valkenburg. Another question that was raised was if it would not prevent the state government to go on when a budget amendment had to be done in a timely manner. It is my recollection that you did not have any grave concerns. Lewis: We were given a copy of the bill discussed in the Finance problems. We discussed in writing about 25 or 30 problems. Some of these were corrected. We did not see the bill again until it was introduced in the House. We were never asked again.

SENATOR HAFHEY: This is a very good presentation. What's the reason that this particular testimony was not presented to the House Appropriations Committee? Jamison: We gave testimony in the House Appropriations Committee on other concerns with the bill, some of which were taken care of. We have to look at a lot of bills and after receiving only 2 votes in the Appropriations Committee I took another look

at the bill. At that particular time I did not feel it was that important to build up. I concentrated in the House Testimony on what I thought was constitutional and some of the language has been taken out in response to that testimony.

SENATOR HAFFEY: I guess the most telling point is when you say that this bill should prevent budget amendments from ever being approved. I can't imagine it would not have been the thrust at the House Appropriations. Jamison: Some has been taken out that would not have. As one attorney looking at a lot of bills, I wish I had given this in the House. I apologize. I would hope the presentation I gave in the House was as important on the issues I touched, as what I have given here today on these.

SENATOR BOYLAN: Would the committee on Consumers Council be affected by this bill also? Jamison: Yes. They would be subject to these particular provisions on page 12. In section 1 the definition of agency defines the scope of this particular bill.

SENATOR AKLESTAD: This statement. The individual taxpayer filing a suit against state government. It was brought out in testimony during the year that an individual right now has the authority, this just hones it in on budget amendments. I have a question to Mr. Lewis: As it stands right now the Legislative Finance Committee looks after the fact? Lewis: Yes.

SENATOR AKLESTAD: With that in light, one of the main thrusts would allow the Legislative Analyst to review before the fact? Lewis: Yes.

SENATOR AKLESTAD: If problems, then they would procede into the legal aspects. The budget amendment would go to the Finance Committee and then their interpretation would go to you? Lewis: Yes.

SENATOR AKLESTAD: Don't you think it right for the Finance Committee and LFA to look at this before anything is done?

MR. LEWIS: My intent is to tell you I am not going to approve any budget amendments if this bill goes through in its present form, and I want this very clear to the legislature. As long as the bill is in its present form I will have to take my attorney's advice and I will not make any budget amendments.

SENATOR HIMSL: Miss Jamison, do you have a comment? Jamison: In answer to a question asked by Senator Keating on taxpayers being allowed to sue. A taxpayer has had the right under common law. Now with over 800,000 people not many people follow the budget office, but this broadens the scope.

SENATOR HIMSL: Where in the law is the provision for the Separation of Powers? The executive amendment has the authority to make appropriation of unanticipated expenditures. Jamison: It is in the Appropriation Act. I have looked for other places. It is stated in the Legislative Finance Committee, there is not law from the courts.

SENATOR HIMSL: This in effect, jeopardizes the authority to make budget amendments? Jamison: Yes.

SENATOR VAN VALKENBURG to Mona Jamison: The present law allows this action to be brought by a taxpayer for criminal action. No expansion for that suit. Jamison: What is expanded is the scope of the action. An expenditure in excess of an appropriation. The standing requirements have not changed. What has changed is the scope of the action.

SENATOR VAN VALKENBURG: Is there any way in which this bill could be amended so that you could support the bill? Jamison: If the scope of action were to remain the same but the existing parties, a resolution of the Legislature and the Attorney General. If the language on the validation on page 10 were taken out, but the sanction was the same as before, so that the only way was expended beyond the appropriation was the only crime.

SENATOR REGAN: I would like to follow up on what Senator Van Valkenburg asked. I was one of the few who did sign the bill or vote for it. I took the bill up and visited with Mona about it. I would like to suggest we get a subcommittee to work with her. At least, we might look at that.

SENATOR AKLESTAD: Most of the budget amendments even if before the fact. Some arise that are blatant abuse of the budget amendments. I would ask Mona Jamison--What would be the deterrent to unnecessary budget amendments? What would stop Mr. Lewis or anyone else from going on as before? With your amendment, it pulls everything out. I guess that under the separation of powers in the constitution there is no problem with the Legislature and Executive discussing budget amendments, but at the point where the Legislature could impose sanctions there would be a problem at the present time. Mr. Lewis, if you want to get the entire Legislature involved are you willing to wait 2 years before getting a budget approved? Lewis: The bill as written now leaves us no choice. On the advice of council we simply would not approve many.

MONA JAMISON: I don't think that would be our first option. Budget amendments are a necessary and vital part of the smooth operation of government. The way this bill is written, there would be very little action on budget amendments.

SENATOR SMITH: House Bill 500. According to reading this budget process and reading the law before you, you should have raised that objection to House Bill 500. (He read from the session laws of '81 the boiler language in House Bill 500 and part of Section 4.)

SENATOR BOYLAN: Last time there was a change of Administration. We found quite a few employees of government and the director was changed. Here we have a big deficit. How are we going to correct some of these things without the change of Administration and the legal language here, etc.

SENATOR KEATING: Page 5, line 3, "All budget amendments shall itemize planned expenditures by fiscal year." That is part of section 2 which deals with "no budget amendment may be approved" and (a) through (f) and then this thing is kind of dangling down there. Isn't it supposed to apply to all of them instead of just suggest (f)?

SENATOR HIMSL: I think the suggestion to put this to a subcommittee was very well put. There is dynamite in this thing now and if it would cripple the government it is going to have to be looked at.

SENATOR KEATING: I would withdraw my question.

SENATOR MARKS: This alludes to, if a budget amendment is processed, you have to show it here. It may be placed in the wrong section.

SENATOR HIMSL: That can be looked at in the subcommittee, do you have any closing remarks, Representative Marks?

REPRESENTATIVE MARKS: I appreciate the limited testimony of the opposition. I think every agency director was there complaining about how they would be in jail. I am a little amused when this bill was worked on, we contracted with a lawyer, one that used to work in the same office. He had prepared material for this bill with consultation with that office. No attempt to preclude any budget amendments, we just want to tighten it up. Mr. Lewis indicates that the budget amendment is working. Sure, it is working, but no stopping anything. The first chance the Legislature gets to look at it it is after the fact. Most of the complaints have been just that they don't get it to us so that we can look at it. If you want to give your money away, fine, but if you don't you have to fine-tune the budget amendments so that it will work. What reasonable person is going to send someone to prison if it is done properly? I'm not saying Mr. Lewis did not act in good faith. Only a difference of opinion. On page 5 line 22 "no other alternative available" the Governor's witness wants to put "reasonable" in here and in another place says "reasonable" is an unreasonable term. I think the

message here is that it would be vetoed. If you want some control, I think this is the most over reaction to any bill that I have ever seen. It is no sense sitting on the Finance Committee and arguing over what has already been done.

Senator Himsl declared the hearing on House Bill 548 closed and the subcommittee on this bill would be Senators Etchart, Regan and Van Valkenburg.

CONSIDERATION OF HOUSE BILL 136: Representative Bardanouve, chief sponsor of the bill said this is a fairly small bill and the office of BPP asked me to put it in. It would free up some money so that the Legislature could use it in an easier manner. Presently we hold the money in the account and as the budget office is the one that makes the transferring and doles the money -- it does not give us a net increase in general fund, but makes the money more available.

JANDEE MAY, OBPP, Monies left in the motor vehicle account is deposited at the end of the biennium. It would allow the application of that money to the Justice Department. There is \$369,000 this biennium. In '85, \$1.3 million as a balance. If this bill were to pass it would let the money be used up front. We would deposit it and then have to replace it with \$360,000 in Drivers License Account. It does not create any general fund. It is simply a cleaner way of accounting methods. If the bill is passed, and the appropriation made to the Justice Department it will put the money up front. If the bill is passed and no appropriation made we will be defeating the issue.

There were no further proponents, no opponents, and Senator Himsl asked if there were questions from the committee.

SENATOR KEATING: What are the source of these funds? May: Motor Vehicle Registration, licenses and permits, are about 95% of the revenue.

SENATOR REGAN: This is sort of in opposition to what we generally do. What happens if the funds exceed the appropriation? Can they by budget amendment, spend them? May: The funds at Motor Vehicle Administrator has this concern. What if projected revenue and licenses fall off and the money is not there. They propose that they could, but--

SENATOR REGAN: What happens if it goes the other way? May: That difference would simply stay in the account.

SENATOR REGAN: What difference? Why are we doing it? May: In '79 there was a surplus starting to build in the account and 3 or 4 other programs were funded out of this and then more expenditures than revenue and they dropped the programs back.

Finance and Claims
March 11, 1983
Page 11

We would propose that once again we could utilize those funds in the Department of Justice.

SENATOR HIMSL: These funds now go to general fund and are appropriated? May: No. They go to the earmarked fund and are used for motor vehicle, administration and license plates.

SENATOR HIMSL: They are earmarked and appropriated for that agency. If more, they go to the general fund. May: This would propose that the balance would stay in the account.

SENATOR HIMSL: It would earmark the surplus as their appropriation.

SENATOR THOMAS: We are giving them more? May: No. It is just a wash. They would utilize it all. It is usually the reason behind the earmarking.

REPRESENTATIVE BARDANOUVE: These funds are relatively stable. There is not a great drop off of vehicles in Montana. There is a gradual increase, it is not a fund that goes up and down.

SENATOR HIMSL: What is the surplus now? May: At the end of '83, \$369,000. As to balance, if it were just allowed to accumulate for 2 years, it would be \$1.3 million at the end of the '85 biennium.

SENATOR HIMSL: The net effect is to encourage them to spend it. May: It would be appropriated to the Justice Department.

SENATOR AKLESTAD: I am not getting an understanding of how it would not affect the general fund. If the balance of \$369,000 under the bill as it stands now, you would be able to carry it into the next biennium and it would reduce the general fund amount the Department is asking for? We just appropriate it now rather than waiting for it to accumulate until 1985. May: The \$369 if allowed would develop into \$884,000 in '84. Income exceeding expenditures by that amount. We now project \$3 million net revenue in '84, \$2½ million in expenditures appropriated in subcommittee.

SENATOR HIMSL: Are you familiar with the fiscal note on that? Is it right? May: Yes.

SENATOR DOVER: Why not just put it in the general fund and forget dinging around? May: It is cleaner this way. If in an earmarked fund, it is a cleaner method of accounting.

SENATOR DOVER: Why earmarked? May: Earmarked so that income coming in can be used for related purposes.

REPRESENTATIVE BARDANOUVE: If it flows into the general fund, then we would have to calculate it and appropriate it. This was done when we did not have a way to calculate and track.

SENATOR DOVER: It is an earmarked account, but our committee sits there and toys around with spending it. May: It would look good on paper, you would have a cleaner record to look at.

SENATOR DOVER: The \$369,000 balance goes to the general fund and then we appropriate where ever. What effect to leave it? It seems you are keeping this out of the general fund. May: A time delay. You would have to appropriate it.

SENATOR HAFFEY: Could you put in one statement what the need is of this bill? May: Because it is cleaner. You attempt to bring in the money and spend it on related programs.

SENATOR HIMSL: It stays in there and does not go into general fund? May: There is always a cash flow surplus. If there was a major increase, then yes, it would sit there and be appropriated in the coming biennium.

REPRESENTATIVE BARDANOUVE: It sits there and accumulates. I doubt if it would show up in the biennium. It would show up in the following biennium. If carried over it would show up in the 85 biennium, and be available for use in the 87 biennium.

SENATOR HIMSL: But the subcommittee has appropriated the earmarked fund to the level that they think is right. Now the surplus would stay in and be used for the next time.

SENATOR KEATING: This is an earmarked account and serves the expenditures from that account. Have we appropriated all of the funds that will be earned in this earmarked account or have we spent less? May: Less.

SENATOR KEATING: The balance goes to the general fund for other uses. Under the bill we increase the number of accounts so that more expenditures so that more money coming in and based on appropriation for this biennium for additional expenditures would there be a balance at the end of '85? May: If you pass this?

SENATOR KEATING: If those are appropriations and expended from this earmarked fund, would we have a balance at the end of '85? May: Yes. Keating: You would? May: You appropriate funds for the three and only those three are receiving it.

SENATOR KEATING: But under this bill you would be expanding the number of programs--expanding by one. May: Yes. One.

SENATOR KEATING: On approval and passage and the other expenditures could be made in '83 and '84? May: You appropriated money for them from general fund.

SENATOR KEATING: I think I understand that as monies are appropriated they will be expended in the biennium collected instead of the next one, but I am trying to figure out if more programs to spend up to the revenues derived from the source. But at that point I don't see any reason for seeing a balance in the earmarked account when it could go into the general fund.

SENATOR DOVER: At the end of next biennium the balance which would continue in the revenue account, or if it does not pass, go into the general fund. The advantage of this is that the revolving fund can be spent through the revolving account through the biennium. Why not utilize it now and save the general fund that much money. If we do that, I can see it. May: That is what we are proposing is to go back into it. You would have \$1.3 million to offset it in the general fund. If we do this we can have it to spend now.

SENATOR THOMAS: Don't you have the potential of expanding the services of the Department of Justice? May: No. It is just a matter of using this instead of using 100% general fund.

SENATOR THOMAS: Expand the pool of money? May: No.

SENATOR ETCHART: What you are really doing is moving the spending forward? May: It allows the spending of the money in the '83 biennium instead of the '85 biennium.

SENATOR DOVER: If this \$369,000 balance were now changed, would any money go to general fund? If this bill passes will the remainder go to general fund? May: Because the bill is effective upon passage and approval, it would not deposit but be maintained and utilized in '84 and '85.

SENATOR ETCHART: Could there be an impact on revenues from the funds that the state invests? We have \$140 million of state money invested. May: A very slight impact. General Funds are also invested.

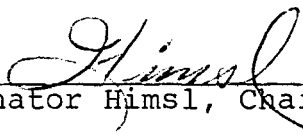
SENATOR DOVER: Mr. Bardanouve, we are going to change this? Take forensic and put it back to be used in the earmarked funds? The \$369,000 carry over you can use the next time. You could say we are increasing about \$400,000 a year. I can see where right now \$1.3 million to put in the general fund. In the next biennium you will not have this. You will only have \$1 million, you would not have the balance. I wonder if it would not be better to change the bill. Put it back in the general fund and you would have the same type

Finance and Claims
March 11, 1983
Page 14

of thing. We always get into trouble when we spend something and then don't have it the next year. May: You are saying you may have to back off of earmarked?

SENATOR DOVER: We would help the general fund \$300,000 and \$9,000 later. It would help the general fund more than if all were in the revenue account. May: I see what you are saying.

REPRESENTATIVE BARDANOUVE said he had no further closing remarks. Senator Himsl declared the hearing closed, and the meeting was adjourned subject to the call of the chair.



Senator Himsl, Chairman

Late testimony on House Bill 548 was handed in 3/14 and asked to be attached to the minutes. The testimony is attached, from League of Women Voters, Joy Bruck.

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/11/83

NAME	PRESENT	ABSENT	EXCUSED
Senator Etchart, VC	✓		
Senator Dover	✓		
Senator Keating	✓		
Senator Smith	✓		
Senator Thomas	✓		
Senator Van Valkenburg	✓		
Senator Stimatz	✓		
Senator Story	✓		
Senator Ochsner	✓		
Senator Haffey	✓		
Senator Jacobson	✓		
Senator Regan	✓		
Senator Lane	✓		
Senator Aklestad	✓		
Senator Hammond	✓		
Senator Tveit	✓		
Senator Boylan	✓		
Senator Himsl, Chairman	✓		

441
3/11



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 156 BEFORE THE SENATE FINANCE AND CLAIMS COMMITTEE MARCH 11, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO. We support House Bill 156, which provides for a small increase in payments to silicosis victims and surviving spouses and eliminates the income limitation. We would prefer the original increase which the bill provided of increasing the payments from \$200 per month to \$400 per month. However, we still support the modest increase as amended, from \$200 per month to \$225 per month.

As you know, the silicosis law was enacted to provide benefits to silicosis victims who contracted the disease prior to the 1959 enactment of the Occupational Disease law.

To qualify, claimants had to have worked a specified number of hours where silicon dioxide was present, have lived in Montana for at least ten years, and be totally disabled with earnings of less than \$150 per month. A physician on the Occupational Disease Act Examining Board must examine each claimant and submit a written report for qualification.

In December of 1982, there were only 210 active claimants, as compared to 771 when the program began in 1961. The number of claimants is decreasing each year, and will continue to do so because the claimants are slowly and painfully dying.

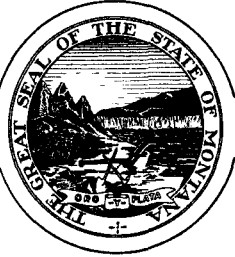
Among the current claimants are 87 widows, whose husbands died since July 1, 1974, at which time widows became eligible to receive silicosis benefits after the death of the victim. Widows whose spouses died before July 1, 1974 receive only half of the benefit. There are 185 of these "second class" widows and this bill provides these widows with full benefits.

Silicosis is a painful, totally disabling, incurable disease that is contracted through no fault of the victims. These victims and thier spouses should not be forgotten by Montanans. This small increase cannot change their suffering, but it may help them survive financially. Although the bill now provides a much smaller increase than we had hoped for, even a small increase is of some assistance.

We urge your support of House Bill 156.

Thank you.

462
OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING



TED SCHWINDEN, GOVERNOR

CAPITOL BUILDING

STATE OF MONTANA

(406) 449-3616

HELENA, MONTANA 59620

TESTIMONY ON HOUSE BILL 548

Budget amendments cannot be approved:

- (a) unless funds were not available for legislative consideration.
- (b) if there is any ascertainable commitment for any present or future increased general fund support.
- (c) for special earmarked funds, except in case of an emergency.
- (d) unless additional services are provided.
- (e) for any matter of which the requesting agency had knowledge or reasonably should have had knowledge during session.

The approving authority then must certify:

- (a) specific additional services will be provided.
- (b) the services are necessary.
- (c) the agency has no reasonable alternative available to provide the additional services.
- (d) there is no ascertainable present or future commitment for increased general fund support.
- (e) an emergency exists to justify the expenditure of earmarked funds.

Either the Attorney General, the Legislature, or the Legislative Finance Committee may at any time go to court to determine whether an amendment meets the criteria above. This action could be taken some time after the approving authority has approved the amendment.

Given the nature of the restrictions and certifications required, the court could very well hold that one or more of the criteria had not been complied with. Terms such as "ascertainable commitment", "reasonably should have had knowledge" and "reasonable alternative" are open to almost any judicial interpretation.

If there was any time lag at all in the challenge the funds could have been expended. In this case any taxpayer could bring an action against the approving authority and get him fined, sentenced to jail, or removed from office.

DAVE 3:BB/1

testimony
3/11/83

HB 548

Budget Amendments

Due to an oversight on our part, we arrived at the Senate hearing on HB 548 late, and we were unable to testify as a proponent as we did at the House hearing. We hope you will accept a written statement from us now.

The League of Women Voters has spent the past four years studying state government financing, and we now have a position on which we can take action. One area we reviewed during our study was the budget amendment process. We concluded from our study that the process is needed, particularly when there is a 21-month span between regular sessions, but we also recognized the opportunities for abuse of the process and the need for the Legislature to be kept currently informed of budget amendments. Our members therefore agreed that there is a need for strong statutory guidelines and more legislative oversight of the process. This bill certainly seems to meet our concerns.

At first, we, too, questioned whether Section 9a & 9b, page 11 & 12 overstepped the 1975 Supreme Court decision dealing with unlawful delegation of powers to a committee of the Legislature....it is such a fine line, and we opposed legislation that would have allowed this to occur. However, we did not interpret this section as fitting into this mold. The only part of the bill we had some reservations about was the penalty section. We do believe that there should be recourse and discipline for violations of the provisions, but were surprised at the degree of severity.

Again, thank you for accepting this late...we do support HB 548, and hope you will give it a "do pass".

Joy Bruck

League of Women Voters of Montana

STANDING COMMITTEE REPORT

March 11,

19 83

MR. **President**

We, your committee on *Finance & Claims Committee*

having had under consideration **House**

Bill No. **247**

Ryan (D. Manning)

Respectfully report as follows: That **House**

Bill No. **247**

BE CONCURRED IN

~~DO PASS~~