

MINUTES OF THE MEETING
GENERAL GOVERNMENT AND HIGHWAYS SUBCOMMITTEE
MONTANA STATE
JOINT SUBCOMMITTEE

January 8, 1985

The meeting of the General Government and Highways Subcommittee was called to order by Chairman Quilici on January 8, 1985 at 8:30 a.m. in Room 437 of the State Capitol building.

ROLL CALL: All members were present. Also present were Don Witmer and Cliff Roessner from the LFA office.

Cliff Roessner left to get materials, Exhibit No. 1 and No. 2, for the meeting. In his absence, Chairman Quilici explained procedures for future meetings. He explained that all the chairpersons for the Appropriations Subcommittee would meet once a week to keep informed of the Subcommittees budgets.

DEPARTMENT OF JUSTICE--SUPPLEMENTALS

Mike Greely, Attorney General, had two supplementals to discuss with the Subcommittee. He introduced the Head of the Indian Jurisdiction Project for the last two years, Chris Tweeten. Exhibit No. 3 was passed out to explain what the Indian Jurisdiction Project had done the last two years. Chris Tweeten then discussed the purposes of the Project and some of the major cases (1;A;101). No decision has been made on the Crow Tribe v. Montana case. Chairman Quilici asked how much money had been expended on the Crow case. Tweeten did not have the exact figures for the case, but would try to get them. Tweeten also explained other cases shown on Exhibit No. 3. Senator Stimatz asked how the Tribal Courts were organized. Clay Smith explained that they are set up by ordinances adopted by the tribe in the late 1970's (1;A;310). Bob Kuchenbrod discussed the amounts of the requested adjustments on Exhibit No. 4. Chairman Quilici wanted to take executive action the following day if possible.

The second supplemental is on the Highway Patrol. Bob Kuchenbrod explained the amounts asked for on Exhibit No. 5 (1;A;530). Colonel R. W. Landon explained some options if the agency doesn't get the funds needed (1;B;34). The best option was to lay off 69 officers, which is 33 percent of the work force, starting February 1 until the new biennium year. The funds are being asked for out of the Highway earmarked fund, which is the State's Special Revenue Fund. Senator Gage wanted to know which programs had to be forgone when they took \$181,000 out of the General Fund. Colonel Landon said most of the money was suppose to be used for needed equipment. He also let the committee know that there was a personal appeal in the Highway Patrol for the sergeants, lieutenants, and captains. It is a salary appeal that began in May of 1983. It is possible that they may come in for a modification in February or March.

GENERAL GOVERNMENT AND HIGHWAYS

January 8, 1985

Page 2

SUPREME COURT--SUPPLEMENTALS

Supreme Court had a request for pay plan funds and for an additional half-time FTE they wish to add. Mike Abley explained the request (1;B;141). There is a tremendous amount of work to do that requires money to continue pay for the secretary, about \$5,000. The other request is for salaries of the District Judges, Justices, Clerk of the Courts, and Supreme Court Operators. Lee Jellison clarified that it's not a half-time FTE though, because they are only increasing it for half a year, so it will be a .25 FTE increase. A memo was made to have papers used for testimony be given to LFAs before the meeting. This will enable committee members to study them.

SECRETARY OF STATE--SUPPLEMENTALS

Secretary of State had a supplemental request for data processing overrun costs. Larry Akey presented the reasons (1;B;269). He explained that wrong estimates were made before the machine was actually up and running. More work is being done than anticipated.

Senator Stimatz was excused for a doctor's appointment.

The high cost of running a computer system was discussed. The benefit to the state with computer projects is the benefit to the people because things go much faster. Chairman Quilici asked why there was a cost overrun of about \$185,000 and they were only asking for around \$85,000. The agency plans to absorb the cost through operating efficiency.

ADJOURN: The meeting was adjourned at 11:15 because of a Full Appropriations meeting.


Joe Quilici, Chairman

km

DAILY ROLL CALL

General Government and Highways SUB COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/8/85

[illegible]

1/8/85
Exhibit #1

HOUSE BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1985; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Time Limits. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

Section 2. Governor's power to reduce appropriations. In the event of a shortfall in revenue, the governor may reduce any appropriation in this act by not more than 15%.

Section 3. Totals not appropriations. The totals shown in this act are for informational purposes only and are not appropriations.

Section 4. Appropriations. The following money is appropriated, subject to the terms and conditions of this act, for the fiscal year ending June 30, 1985:

<u>AGENCY</u>	<u>AMOUNT</u>	<u>FUND</u>
SUPREME COURT		
District Judges Pay Plan Costs	\$ 46,830	General
Supreme Court Operation Costs	18,779	General
SECRETARY OF STATE		
D.P.Cost Overrun	85,000	General
STATE AUDITOR		
Employee Retirement	73,154	General
OFFICE OF PUBLIC INSTRUCTION		
Match for Federal School Lunch Funds	2,750	General
Distribution to Schools	35,563	General
Vocational Education	40,414	General
DEPART OF JUSTICE		
Indian Legal Jurisdiction Efforts	217,000	General
	537,752	
DEPART OF PUBLIC SERVICE REGULATION		
Additional Costs of MPC Pipeline Case	5,767	General
	5,767	Federal & Other Special Rev
Participation in MDU Docket	20,000	General

<u>AGENCY</u>	<u>AMOUNT</u>	<u>FUNDING</u>
STATE LIBRARY		
Crabtree Decision Penalties	\$ 44,144	General
DEPART OF STATE LANDS		
Fire Suppression Costs	3,999,089	General
DEPART OF LIVESTOCK		
Rabies Investigations	8,000	General
Successful Classification Appeal	14,366	General
DEPART OF COMMERCE		
Burlington Northern Legal Costs	289,144	General
Hard Rock Mining Operating Costs	30,804	General
DEPART OF MILITARY AFFAIRS		
Disaster and Emergency Pay Plan Costs	10,000	General
DEPART OF SOCIAL AND REHABILITATION SERVICES		
Additional AFDC & Medicaid Costs	2,532,711	General
	2,225,101	Federal & Other Special Rev
MMIS Procurement Costs	113,860	General
	1,024,740	Federal & Other Special Rev
<p>The department is authorized the use of all remaining contingency fund monies for the purpose of reducing the amount required for supplemental funding.</p>		
DEPART OF LABOR AND INDUSTRY		
Successful Classification Appeals	19,475	General
Shortage in Federal Funds	18,500	General
Silicosis Benefits	49,700	General
	<hr/>	
TOTALS	\$ 7,675,050	General
	\$ 3,255,608	Federal and Other Special Rev

Section 5. Effective Date. This act is effective on passage and approval.

1/8/85 2
Exhibit #2

HOUSE BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1985, WHICH INCREASES WOULD USUALLY BE MADE BY BUDGET AMENDMENT AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Time Limits. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

Section 2. Governor's power to reduce appropriations. In the event of a shortfall in revenue, the governor may reduce any appropriation in this act by not more than 15%.

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Section 4. Appropriations. The following money is appropriated, subject to the terms and conditions of this act, for the fiscal year ending June 30, 1985:

<u>AGENCY AND PROGRAM</u>	<u>AMOUNT</u>	<u>FUND</u>
HIGHWAY TRAFFIC SAFETY		
Traffic Safety	\$ 94,650	Federal & Other Special Rev
DEPART OF JUSTICE		
Highway Patrol	489,752	State Special Revenue
	54,500	Federal & Other Special Rev
Criminal Investigation	63,853	Federal & Other Special Rev
Forensic Science	4,949	Federal & Other Special Rev
MONTANA ARTS COUNCIL		
Promotion of the Arts	6,255	Federal & Other Special Rev
MONTANA STATE LIBRARY		
Library Development	204,231	Federal & Other Special Rev
ADVISORY COUNCIL FOR VO-EDUCATION		
Administration	8,772	Federal & Other Special Rev

<u>AGENCY AND PROGRAM</u>	<u>AMOUNT</u>	<u>FUND</u>
MONTANA HISTORICAL SOCIETY		
Library	10,000	Federal & Other Special Rev
Museum	25,924	Federal & Other Special Rev
Magazine	25,000	Proprietary
Education	10,000	Federal & Other Special Rev
FIRE SERVICES TRAINING SCHOOL		
Fire Services Training	14,000	Federal & Other Special Rev
DEPART OF FISH, WILDLIFE & PARKS		
Enforcement	70,000	State Special Revenue
Wildlife	19,000	State Special Revenue
Field Services	50,000	State Special Revenue
<p>The department is authorized to carry forward a loan from the license account to the parks acquisition account because of an anticipated cash short fall. This loan extension will expire on June 30, 1986.</p>		
DEPART OF HEALTH & ENVIRONMENTAL SCIENCES		
Director's Office	1,282	Federal & Other Special Rev
Management Services	163,294	State Special Revenue
Health Services	955,000	Federal & Other Special Rev
<p>The cap for the preventative health block grant in HB 447 of \$607,264 is increased by \$1,282.</p>		
DEPART OF STATE LANDS		
Central Management	25,000	Proprietary
DEPART OF LIVESTOCK		
Centralized Services	17,961	State Special Revenue
DEPART OF NATURAL RESOURCES & CONSERVATION		
Conservation Districts	3,600	Federal & Other Special Rev
Energy Planning	29,602	Federal & Other Special Rev
DEPART OF ADMINISTRATION		
Central Stores	1,000,000	Proprietary
Mail and Distribution	33,705	Proprietary
Investments	30,500	Proprietary
DEPART OF AGRICULTURE		
Environmental Management	37,312	Federal & Other Special Rev
Plant Industry	6,317	Federal & Other Special Rev

<u>AGENCY AND PROGRAM</u>	<u>AMOUNT</u>	<u>FUND</u>
DEPART OF INSTITUTIONS		
Mental Health	2,000	Federal & Other Special Rev
PINE HILL SCHOOL		
Care and Custody	1,500	Federal & Other Special Rev
DEPART OF COMMERCE		
Housing	826,347	Federal & Other Special Rev
Bonding Authority	150,000	Proprietary
DEPART OF SOCIAL AND		
REHABILITATION SERVICES		
D.D. Advisory Council	46,874	Federal & Other Special Rev
Vocational Rehabilitation	340,000	Federal & Other Special Rev
Visual Services	60,000	Federal & Other Special Rev
Social Services	670,713	Federal & Other Special Rev
Assistance Payment	925,574	Federal & Other Special Rev
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TOTALS	\$ 810,007	State Special Rev
	\$ 4,403,255	Federal & Other Special Rev
	\$ 1,264,205	Proprietary

Section 5. Effective Date. This act is effective on passage and approval.

January, 1985 3

1/8/85

Exhibit #3

STATE
OF
MONTANA

**ATTORNEY GENERAL
MIKE GREELY**

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620
TELEPHONE (406) 444-2026

Indian Jurisdiction Project-Significant Cases

I. Mineral production and taxation

Crow Tribe v. Montana--Challenge to the imposition of coal severance tax and gross proceeds from coal tax on coal produced on the Crow Reservation and coal owned by the Crow Tribe on the Crow ceded area or "ceded strip," an area of land outside the Crow Reservation between its northern boundary and the Yellowstone River. The Tribe seeks an injunction preventing collection of the taxes and return of some \$90 million in taxes collected since 1975. The case was tried for two and one-half weeks in federal district court in Billings in January, 1984, and was submitted to the Court for decision following oral arguments on July 30, 1984.

Blackfeet Tribe v. Montana--Challenge to the imposition of oil and gas production taxes to oil and gas produced on the Blackfeet Reservation. Ninth Circuit Court of Appeals held that 1924 Indian Mineral Leasing Act, 25 U.S.C. § 398, does not authorize state taxation of minerals produced on Indian reservations under leases entered after 1938. In addition to the State's interest in these tax revenues, the case is of considerable significance to counties which receive substantial revenue from the taxes. It also establishes unfavorable precedent on one of our major defenses in Crow Tribe. Montana's petition for certiorari was filed in the United States Supreme Court July 2, 1984, and was granted by the Court October 1, 1984. Oral argument is set for January 15, 1985.

Montana v. Clark--involves the definition of the terms "Indian reservation" and "Indian lands" in the federal Surface Mining Control and Reclamation Act. At issue is roughly \$5 million in federal abandoned mine reclamation funds. Case is also significant precedent for Crow Tribe. Case is before the Court of Appeals for the D.C. Circuit in Washington, D.C. The Court has ruled against Montana's position in this case and a petition for rehearing is being prepared.

II. Water Rights

Northern Cheyenne Tribe v. Adsit--On July 3, 1983, U.S. Supreme Court ruled in this case that federal law allowed the states to join federal and Indian water

rights in a comprehensive stream adjudication. The Court did not rule on two questions in the case: 1) Whether the Montana Constitution's disclaimer of right, title and interest in Indian lands and recognition of the plenary power of Congress over Indian matters deprived the state courts of jurisdiction to adjudicate Indian water rights; and 2) whether Montana's SB 76 adjudication is a "general stream adjudication." On remand, the Ninth Circuit Court of Appeals held that these issues should be decided in state court.

State ex rel. Greely v. Water Court--A petition asking the Supreme Court of Montana to exercise its supervisory control over the Water Court to decide the two issues left unresolved in Adsit. The Court accepted jurisdiction in December, 1984, and will hear arguments on the merits this spring.

Confederated Salish & Kootenai Tribes v. Montana--This case asserts that all water within the boundaries of the Flathead Reservation is encumbered by the Tribes' federal reserved water right, and that none can therefore be appropriated or administered under state law. It is currently stayed in federal district court in Missoula pending settlement negotiations.

Blackfeet Tribe v. Clark and State of Montana--This case seeks injunctive relief against both the federal government and the State of Montana to prevent either from doing anything with regard to the Blackfeet Tribe's federal reserved water rights. The State's motion for summary judgment and the United States' motion to dismiss have been briefed and argued in federal district court in Great Falls. The Blackfeet Tribe has moved the federal district court to enjoin the Montana Supreme Court's actions in State ex rel. Greely. A hearing will be scheduled within the next month.

III. Miscellaneous

National Farmers Union Insurance et al. v. Crow Tribe--The State is not a party to this case but has filed amicus curiae briefs in support of the insurance company, which is the carrier for Lodge Grass School District. The issue in the case is whether the district, which is located on fee land on the Crow Reservation but organized and operating under State law, may properly be sued in tribal court for personal injuries occurring on the district's property. The Ninth Circuit Court of Appeals held that there was no federal court jurisdiction to determine this issue. The

State's briefs have asked the Supreme Court to overturn this ruling. The issue is significant to the State as an entity as well as to the individuals who reside on the seven Montana reservations. If the Ninth Circuit's holding is upheld, a tribal court will be able to determine its own jurisdiction without federal court review.

1/8/85

Exhibit #4

The Supreme Court of Montana
ROOM 315 - JUSTICE BUILDING
HELENA, MONTANA 59620
TELEPHONE (406) 449-2621

MICHAEL ABLEY
COURT ADMINISTRATOR

October 29, 1984

Honorable Fred VanValkenburg
Chairman Interim Finance Committee
Montana State Senate
1208 9th Avenue
Helena, Montana 59601

Dear Senator VanValkenburg:

I have been instructed by the Montana Supreme Court to inform you of a problem with which it is faced and of the Courts intended solution. The Court is now in its peak season and as well as trying to keep current with the normal amount of business coming before it, the Justices are concluding all matters in which Chief Justice Haswell and Justice Shea are involved. As we have indicated previously, lack of sufficient secretarial staff has been a real problem for sometime and is even more so now. The four secretarial FTE's available to the Justices and their clerks are just not sufficient to handle the load and a bottle-neck has developed.

To alleviate the situation temporarily, the Court plans to make one of our part-time secretarial positions full-time by using funds taken primarily from our travel budget. These funds should be adequate through December, and it is our intention to request supplemental funds and authority from the 1985 Legislature to continue this position. As a permanent solution the Court has included a request for additional secretarial positions in its proposed biennium budget.

The Court at this time has vacant positions in another program area and legally could transfer them into the Supreme Court operations budget. However, the positions were intended for the Water Rights Adjudication project and the Court feels such a transfer would be inappropriate. Our preference is to handle the problem in a more forthright and permanent manner.

Hon. Fred VanValkenburg

Oct 29, 1984

Page Two

We are aware that we will be exceeding the number of appropriated FTE's by 1/2 an FTE, however the Court feels the circumstances warrant the action. Those who have matters before the Court are entitled to have them resolved as expeditiously as possible, and delays resulting from lack of secretarial support are unjustifiable.

If you or the committee wish any further information or wish me to appear before the committee I will be happy to cooperate in any way possible.

Sincerely,

Michael Abley
Court Administrator

MA/nmj

MONTANA SUPREME COURT
SUPPLEMENTAL APPROPRIATION REQUEST

JUDICIARY
ELECTED OFFICIALS SALARY DEFICIT

<u>FTE</u>	<u>Position</u>	<u>Actual</u> <u>HB 847</u>	<u>FY 85</u> <u>Appropriated</u> <u>HB 447</u>	<u>Deficit</u>
<u>Supreme Court Operations</u>				
1.00	Chief Justice	50,151	48,204	1,947
6.00	Justices at \$48,923/FY85	293,538	282,138	11,400
1.00	Clerk of Court	31,404	30,185	1,219
8.00	Total Salaries	375,093	360,527	14,566
	Benefits	48,912	47,013	1,899
	Insurance	9,600	7,680	1,920
	Total (SCO)	<u>433,605</u>	<u>415,220</u>	<u>18,385</u>
<u>District Court operations</u>				
34.00	Judges at \$47,693/FY85	1,621,562	1,558,594	62,968
	Benefits	195,236	187,655	7,581
	Insurance	40,800	32,640	8,160
	Total (DCO)	<u>1,857,598</u>	<u>1,778,889</u>	<u>78,709</u>
	Total Judiciary Deficit			<u>97,094</u>

SUPREME COURT OPERATIONS
LEGAL SECRETARY

<u>FTE</u>	<u>Position</u>	<u>FY85</u>
.50	Legal Secretary	
	Salary	8,128
	Benefits	1,060
	Insurance	600
	Subtotal	<u>\$9,788</u>
	Total 1/2 FY	<u>\$4,894</u>
<u>Supreme Court Operations</u>		
	Salaries	18,385
	Secretary	4,894
	Less Pay Plan	(4,500)
	Total (SCO)	<u>\$18,779</u>
<u>District Court Operations</u>		
	Salaries	78,709
	Less Pay Plan	(31,879)
	Total (DCO)	<u>\$46,830</u>

STATE
OF
MONTANA

DEPARTMENT OF JUSTICE

CENTRAL SERVICES DIVISION

Justice Building, 215 North Sanders, Helena, Montana 59620 (406) 444-3800

1/8/85 5
Exhibit #5

TO: Legislative, Judicial, Administrative, Sub-Committee

FROM: Bob Kuchenbrod, ~~Administrator~~^{DO}
Central Services Division

SUBJECT: Supplemental Request - Department of Justice
\$489,752 Highway State Special Fund

DATE: January 7, 1984

The pay plan (House Bill 902), and the appropriations for personal services costs in House Bill 447, were not sufficient to fully fund all authorized FTE's during the biennium. The Legislature recognized this problem and authorized state agencies to make program transfers of up to five percent of the total agency budget where funds were available to offset pay plan costs and also authorized the transfer of unexpended agency appropriation balances in the first year of the biennium to the second year as another means of resolving pay plan deficits.

These proposals will not assist in resolving the problem of inadequate funding of the pay plan for the Highway Patrol Program. The Patrol is unique in its funding structure with funds from the Highway State Special Account supporting the personal services and general funds supporting the operating expenses and equipment. Since the transfer of funds between accounts is not authorized, any savings in operating expenses (general fund) cannot be transferred to personal services (Highway State Special Funds).

This request is to seek legislative authorization of \$489,752 of Highway State Special Funds to the Department of Justice for the purpose of funding the personal services portion of the Highway Patrol Division.

enclosure

enp

L. J. [unclear]

19 August 1983

Senator Fred Van Valkenburg, Chairman
Legislative Finance Committee
State Capitol
Helena, Montana 59620

Dear Fred:

I am concerned about the level of funding for personal services in the Highway Patrol Program.

As you know, the pay plan (House Bill 903), and the appropriations for personal services costs in House Bill 447 are not sufficient to fully fund all authorized FTE's during the biennium. The Legislature recognized this problem and authorized state agencies to make program transfers of up to 5 percent of the total agency budget where funds are available to offset pay plan costs and also authorized the transfer of unexpended agency appropriation balances in the first year of the biennium to the second year as another means of resolving pay plan deficits. In addition, the budget director has encouraged state agencies to hold vacant positions open at least four weeks beyond any sick leave or vacation pay out as another means of making up some deficit.

These proposals will not assist in resolving the problem of inadequate funding of the pay plan for the Highway Patrol Program. The Patrol is unique in its funding structure with funds from the Highway Earmarked Revenue Account supporting personal services and general funds supporting operating expenses and equipment. Since the transfer of funds between accounts is not authorized any savings in operating expenses (general fund) cannot be transferred to personal services (HERA). In addition, we do not anticipate that there will be any unexpended personal services funds in FY84 which could be transferred to FY85 to help offset the personal services deficit in FY85.

The projected deficit for personal services in the Highway Patrol Program due to underfunding is \$237,400 in FY84 and \$421,000 in FY85. This is the equivalent of 3.7 percent and 6.5 percent vacancy savings

19 August 1983

respectively. The Highway Patrol uniformed officers have a historical vacancy savings of less than 1 percent. These projected vacancy savings could mean a yearly reduction of 10 patrolmen in FY84 and 24 patrolmen in FY85. Such a reduction would be devastating to the Patrol. I am confident it was not the intent of the Legislature to place such a burden on the Highway Patrol.

During the legislative session my office advised both the Office of Budget and Program Planning and the Legislative Fiscal Analyst of this potential problem. We suggested that if an adequate level of pay plan funding was not provided for the Highway Patrol the Department of Justice would anticipate requesting supplemental appropriations to make up the pay plan deficit.

This letter is to notify the Legislative Finance Committee, the Legislative Fiscal Analyst and the Office of Budget and Program Planning of the ongoing problem of pay plan funding for the Highway Patrol. We are not requesting specific Committee action at this time, however, we would be pleased to work with the LFC and the OBPP to try to find some alternative solution to the problem.

Very truly yours,

MIKE GREELY
Attorney General

cc: Mr. Dave Lewis
Mrs. Judy Rippingale
Colonel Robert Landon

GENERAL GOVERNMENT & HIGHWAYS SUB COMMITTEE

DATE 1 8 85

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.