

MINUTES OF THE MEETING
APPROPRIATIONS COMMITTEE
49TH LEGISLATURE SPECIAL SESSION III
HOUSE OF REPRESENTATIVES

June 23, 1986

The meeting of the Appropriations Committee was called to order by Chairman Bardanoue on Monday, June 23, 1986 at 8:00 a.m. in Room 104 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Swift who had been previously excused.

(Tape 11:A:000)

CONSIDERATION OF HB 24: AN ACT REDUCING THE APPROPRIATION FOR A VOLUNTARY GENETICS PROGRAM.

CONSIDERATION OF HB 25: AN ACT REDUCING THE APPROPRIATION FOR REVIEW OF SUBDIVISIONS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

CONSIDERATION OF HB 26: AN ACT REDUCING THE APPROPRIATION TO PROVIDE TRAINING FOR FAMILY PRACTICE RESIDENT PHYSICIANS.

Rep. Jan Brown, House District 46, sponsor of the above three bills, stated that these bills are merely bills to continue with the governor's 5% cuts. These particular cuts were not included in HB 500, i.e., HB 30 which is the reason separate bills were needed.

She said that HB 24 is the 5% reduction for 1987 for the genetics program at Shodair Hospital; HB 25 is the 5% reduction in the Subdivision Review Board; and HB 26 is the 5% reduction in the family practice resident physicians program. Rep. Brown said she had previously been informed that neither the genetics or the family practice program would be seriously damaged by these reductions. In order to avoid staff reductions in the subdivision review program, they now have three sanitarians and one support staffer. This reduction would have to come from their operations budget.

There were no further proponents or any opponents to offer testimony. Because there were no questions, Rep. Brown closed.

ACTION ON HB 24, 25 and 26: Rep. Moore moved that HB 24 DO PASS. The motion was seconded. Rep. Winslow said he is concerned we've increased people's taxes on health insurance and now are attempting to pull some of it out and place it back into the general fund. The question was called, and the motion CARRIED with Rep. Menahan, Rep. Winslow and Rep. Quilici voting no.

Rep. Moore moved that HB 25 DO PASS. The motion was seconded

and CARRIED unanimously on a voice vote.

Rep. Moore moved that HB 26 DO PASS. The motion was seconded by Rep. Hand and CARRIED unanimously on a voice vote.

CONSIDERATION OF HB 22: AN ACT APPROPRIATING FUNDS FOR LOW-INCOME HOME WEATHERIZATION FROM THE EXXON CORPORATION OVERCHARGE PAYMENT. (11:A:102)

Rep. Jack Sands, House District 90, sponsor of HB 22, stated that this bill would authorize appropriation of \$5 million for the weatherization program. He said this money came from a settlement from the Exxon Corporation involving overcharges. Montana's share was \$10 million after the money had been divided among several other states. Passage of this bill makes sense in terms of economical reasons, and it would also provide a number of jobs in the state.

PROPONENTS: Jim Morton, director of the District 11 Human Resource Council, (159) stated that at the present time, this state is funded without enough dollars to allow the weatherization of about 800 homes statewide. This bill will allow us to expand and add 1,000 homes. He said that HB 22 is not only important to the state, but it is especially important to low-income families.

Ken Weber, owner of Ken's Mobile Home Service in Missoula, (181) urged the committee to pass this bill. He commented that the program's workmanship is of good quality, and the economic impact would certainly be improved with this bill.

Sheila Rice, representing the Great Falls Gas Company, feels that conservation is the only long-term solution to the low-income energy problems. A copy of her written testimony was marked Exhibit 1 and attached.

Irvin Dellinger, Montana Building Material Dealers Association, voiced his support for the bill because it will help create jobs.

John Lar, Montana Power Company, wished to go on record in support of HB 22.

Sue Fifield, representing the Montana Low Income Coalition, (280) supports this measure and feels that weatherization is very important. She offered an amendment to the bill which would mandate that the high energy consumption houses be the first to be weatherized. (See Exhibit 2-A) By targeting these low-income houses, SRS would be helped in

the long run because they would be saving money on their LIEAP program for the actual payment of the bills. She also submitted a study done by the coalition on home energy which was marked as Exhibit 2.

Gene Pigeon, representing Montana-Dakota Utilities Company, (296) said he is in agreement with the concept of HB 22.

Rep. Quilici also stated his support for this bill.

OPPONENTS: Dave Hunter, director of the Office of Budget and Program Planning, (330) feels this bill is seven months' too early. This bill will take half of the overcharge money right off the top without any consideration as to whether or not it is a higher priority than spending the money in LIEAP, to spend it on energy conservation in schools, hospital or other public buildings. He thinks the proper way to deal with the Exxon overcharge money is to allow the executive branch to continue with the process of reviewing applications and to recommend priorities to the legislature in the next regular session. He further pointed out that on October 1st when the Gramm-Rudmann bill may or may not take effect, we may see a significant reduction in the low-income energy program. By waiting until January, we will know the effect of the Gramm-Rudmann bill, and we will know whether or not to add general fund money in order to keep people from being taken off the low-income energy assistance. In closing, he urged the committee to defeat the bill in order that priorities be set.

There being no further opponents, Chairman Bardanouve opened the meeting up to questioning.

Rep. Moore asked Mr. Hunter if he had any objection to lowering the allocation to \$3 million to enable the program to get started this summer. Mr. Hunt said he objected to even lowering it. He feels that the legislature ought to prioritize the money.

Rep. Bardanouve (435) asked Mr. Hunt what percentage they would recommend for the weatherization program. Mr. Hunt said he didn't know at this time.

Rep. Quilici felt that perhaps by implementing this program, it would help spread some of the LIEAP monies around. Mr. Hunt said that it had been their experiences with both programs to have gone exactly the opposite direction. Every year since they have had LIEAP, there has been more demand

for the money. In response to another of Rep. Quilici's questions, Mr. Hunter said he thought there was better knowledge that this program exists thus increasing the amount of applicants each year. He thinks that there will be an even greater demand for LIEAP next year.

In response to a question asked by Rep. Bardanouve, Mr. Morton said that they average about \$1,600 to weatherize each home. In response to another question, Mr. Morton said that the state's funding formula includes all the counties in the state.

Mr. Bardanouve (11-B:000) asked Mr. Hunter if it would be more acceptable if the committee allocated only 1/3 of the monies for this year. Mr. Hunter did indicate that it would be more acceptable.

There being no further questions, Rep. Sands closed. He said he opposes the amendment offered by the Montana Low-Income Coalition and opposes any reduction in the amount of money allocated for this program. Although he recognizes the problems that the Office of Budget and Program Planning is faced with, he thinks it will save the state money in the long run.

ACTION ON HB 22: Rep. Moore moved to amend HB 22 on line 12, following "1987" by striking "and the biennium ending June 30, 1989, \$5,000,000" and inserting, ", \$1,666,000". The motion was seconded by Rep. Quilici and discussed.

Rep. Spaeth (158) wanted to make it absolutely clear that by reducing the allocation by 1/3 and by reducing the time to one year, the legislature is in no way committed as part of the prioritization process to spend the rest of the \$5 million two years until the next biennium. Rep. Moore said he agreed with that statement.

The question was called, and the motion to amend CARRIED unanimously on a voice vote.

Rep. Moore further moved that HB 22 DO PASS AS AMENDED. The motion was seconded by Rep. Quilici and CARRIED with Rep. Hand and Rep. Spaeth dissenting.

CONSIDERATION OF HB 2: AN ACT APPROPRIATING MONEY FROM THE LEGISLATIVE COUNCIL MONTANA CODE ANNOTATED SPECIAL REVENUE FUND TO THE GENERAL FUND.

Rep. Ralph Eudaily, House District 60, (196) sponsor of HB 2, told the committee that this account has become self-sufficient over the past four years. He pointed out that the bill was requested by the Legislative Council.

There were no further proponents or any opponents. There were no questions, and Rep. Eudaily closed.

ACTION ON HB 2: Rep. Lory moved that HB 2 DO PASS. The motion was seconded by Rep. Moore and CARRIED on a voice vote.

CONSIDERATION OF HB 23: AN ACT APPROPRIATING COAL BOARD MONEY TO THE GENERAL FUND.

Rep. Bob Ream, House District 54, (280) and sponsor of this bill said the purpose of the bill is to appropriate coal board money to the general fund to help solve the current budget crisis. The bill was introduced at the request of the Coal Board to accomplish the transfer of \$680,000 for FY86 and \$1 million for FY87. It is Rep. Ream's feelings that most of the large construction projects in the impact area have been completed, and local governments have been adequately provided for at this point. Even though impact problems still exist, they are mostly in the social areas rather than the construction areas.

PROPOSERS: Hershel M. Robbins, chairman of the Montana Coal Board, testified as a proponent. A copy of his written testimony was marked Exhibit 3 and is attached.

There were no further proponents or opponents. There being no questions, Rep. Ream closed.

ACTION ON HB 23: Rep. Moore moved that HB 23 DO PASS. The motion was seconded by Rep. Quilici and CARRIED unanimously on a voice vote.

CONSIDERATION OF HB 10: AN ACT TRANSFERRING AND APPROPRIATING MONEY IN THE CAPITAL PROJECTS FUND TO THE LONG-RANGE BUILDING DEBT SERVICE FUND.

Rep. Hubert Abrams, House District 24, (454) and sponsor of HB 10 stated that this bill was introduced at the request of the Department of Administration. He said that Ellen Feaver, the department's director, would address the committee.

PROPOSERS: Ellen Feaver, director of the Department of Administration, told the committee that it is permissible to transfer these funds. She advised them that any legal technicalities had been previously checked out. A copy of a legal opinion was submitted herein marked Exhibit 4.

Rep. Thoft, chairman of the Long Range Planning Subcommittee, advised the committee that they had previously heard this bill and there was no opposition to it. The money involved here is \$1,100,000, but it will only net the general fund approximately \$4,900,000 because they will service the bond out of the reversion.

There were no further proponents or any opponents or any questions from the committee, and Rep. Abrams closed.

ACTION ON HB 10: Rep. Moore moved that HB 10 DO PASS. The motion was seconded by Rep. Miller, the question called, and the motion CARRIED unanimously on a voice vote.

CONSIDERATION OF HB 42: AN ACT GRANTING 5 DAYS OF LEAVE WITH PAY TO CERTAIN STATE EMPLOYEES WHOSE FISCAL YEAR 1987 COMPENSATION AND EMPLOYER CONTRIBUTION FOR GROUP BENEFITS CONTINUE AT 1986 LEVELS.

(Tape 12:A:000)

Rep. Earl Lory, House District 59, sponsor of HB 42, stated that this bill is based on the idea that HB 31 (the pay freeze bill) passes. He feels the bill has some merits in that it may provide some mediation between the unions and the governor.

There were no proponents nor any opponents, and Chairman Bardanouve opened the meeting up for questions.

Rep. Bardanouve (031) sees problems with the bill in that it will hit institutions very hard. He said that some positions need to be manned around-the-clock, and passage of this bill will have a very significant impact in those areas. Chairman Bardanouve requested a financial report showing how a very tight institution's budget would be able to handle this.

Ellen Feaver, director of the Department of Administration, said the Department of Institutions estimated the cost to be \$350,000 if they pay straight time, and \$500,000 if they pay overtime.


In response to a question by Rep. Bardanouve, Rep. Lory said the unions did not agree to endorse the bill at this time; however, they indicated that they would take this offer back to their people for discussion. Rep. Lory again explained that he had introduced the bill because he was concerned that 400 people might be laid off if HB 31 doesn't pass. This bill at least gives the state employees a little return and gives them some sort of bargaining unit.

Rep. Bardanouve asked how giving the employees one week off would have an affect on the state in terms of dollars. Rep. Lory said he didn't have any figures at this time.

Because many of the members felt there were too many unanswered questions with this bill, and because they wanted to know the fiscal impact of this legislation, the committee chose not to take action on this bill today.

Appropriations Committee
June 23, 1986
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ADJOURN: There being no further business, the meeting ad-
journed at 10:00 a.m.


REP. FRANCIS BARDANOUE, Chairman

DAILY ROLL CALL

APPROPRIATIONS

COMMITTEE

49th Legislature Special Session III

Date June 23, 1986

NAME	PRESENT	ABSENT	EXCUSED
BARDANOUE, Francis (Chairman)	✓		
DONALDSON, Gene (Vice Chairman)	✓		
BRADLEY, Dorothy	✓		
CONNELLY, Mary Ellen	✓		
ERNST, Gene	✓		
FRITZ, Harry SCHYE, Ted	✓		
HAND, Bill	✓		
LORY, Earl	✓		
MANUEL, Rex	✓		
MENAHAN, William	✓		
MILLER, Ron	✓		
MOORE, Jack	✓		
NATHE, Dennis	✓		
PECK, Ray	✓		
QUILICI, Joe	✓		
REHBERG, Dennis	✓		
SPAETH, Gary	✓		
SWIFT, Bernie			✓
THOFT, Bob	✓		
WINSLOW, Cal	✓		

STANDING COMMITTEE REPORT

June 23

19⁸⁶

Mr. Speaker: We, the committee on APPROPRIATIONS

report HB 26

☒ do pass ☐ be concurred in ☐ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. FRANCIS BARDANOUVE Chairman

**REDUCE 1987 BIENNIAL APPROP. FOR FAMILY PRACTICE RESIDENCY
TRAINING**

First White
reading copy ()
color

STANDING COMMITTEE REPORT

June 23

19 86

Mr. Speaker: We, the committee on APPROPRIATIONS

report HB 2

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. FRANCIS BARDANOUVE Chairman

APPROP. FROM MCA SP. REV. FUND TO GENERAL FUND

First

White

reading copy ()
color

STANDING COMMITTEE REPORT

June 23

1986

Mr. Speaker: We, the committee on APPROPRIATIONS

report HB 10

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. FRANCIS BARDANOUVE

Chairman

TRANSFER CAPITOL RENOVATION BALANCE TO DEBT SERVICE FUND

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STANDING COMMITTEE REPORT

June 23

19 86

Mr. Speaker: We, the committee on APPROPRIATIONS

report HE 22

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. FRANCIS BARDANOUVE

Chairman

**APPROPRIATING EXXON OVERCHARGE MONEY FOR LOW INCOME
HOME WEATHERIZATION**

Be Amended as Follows:

1. Line 12.

Following: "1987"

Strike: "and the biennium ending June 30, 1989, \$5,000,000"

Insert: ", \$1,666,000"

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color

STANDING COMMITTEE REPORT

June 23

19 36

Mr. Speaker: We, the committee on APPROPRIATIONS

report HB 23

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. FRANCIS BARDANOUVE Chairman

APPROPRIATION OF COAL BOARD MONEY TO THE GENERAL FUND

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STANDING COMMITTEE REPORT

June 23

19 86

APPROPRIATIONS

Mr. Speaker: We, the committee on

HB 24

report

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. FRANCIS BARDANOUVE

Chairman

REDUCE 1987 BIENNIUM APPROP. FOR VOLUNTARY GENETICS PROGRAM

FIRST

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reading copy ()
color

STANDING COMMITTEE REPORT

June 23

1986

Mr. Speaker: We, the committee on APPROPRIATIONS

report HB 25

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. FRANCIS BARDANOUVE Chairman

REDUCE 1987 BIENNIAL APPROP. FOR STATE SUBDIVISION REVIEW

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Exhibit 1
6-23-86
HB 22

KEY POINTS FROM TESTIMONY OF SHEILA RICE ON HOUSE BILL 22, TO ALLOCATE MONIES FROM THE "EXXON OVERCHARGE" TO WEATHERIZATION PROGRAMS

- * HB 22 WILL ENCOURAGE CONSERVATION, MAKE LIMITED LEAP DOLLARS STRETCH FURTHER, CREAT JOBS
- * CONSERVATION IS THE ONLY LONG TERM SOLUTION TO THE ENERGY PROBLEMS OF LOW INCOME FAMILIES
- * CONSERVATION WORKS. WITH HB 22, WEATHERIZATION EFFORTS WILL BE TARGETED TOWARD THE HIGHEST USERS OF FUEL
- * GREAT FALLS GAS IS WILLING TO SUPPLY THE CONSUMPTION INFORMATION NEEDED TO PRIORITIZE THE HOMES IN ORDER OF CONSUMPTION, AS ARE OTHER UTILITIES IN THE STATE
- * HB 22 PUTS THE EXXON OVERCHARGE TO WORK TODAY, BEFORE THE NEXT HEATING SEASON

Exhibit 2
6-23-86
HB 22

MONTANA LOW-INCOME COALITION

HOME ENERGY COSTS OF LOW-INCOME MONTANANS

PART II

Preliminary Study Results and Analysis

Prepared by:

Judith K. Robinson

With Assistance From:

John Peyton

Bill Joyce

September 14, 1985

Conclusion

It is clear that the majority of Montana Power customer LIEAP clients are well served by the program. Forty-five percent of the clients were actually overserved -- they received more than enough to cover their heating needs during the seven month period.

Only about nine percent, were underserved by an amount greater than 5% of their income. The rest, the other 46% had to pay for their heat anywhere from \$ 0-\$750, depending on their income.

For the purpose of this study, we very conservatively took only net bills greater than 5% of income as "problem bills." Consequently, a large family could have an income of \$15,000 and still be at or below 125% of poverty. Five percent of their income would be \$750. Nevertheless, this study would not include such net bills in the group with problems. This was done for two reasons: 1) the average heat bill of middle income people in Montana is estimated to be around 5% of their income. 2) It is certainly hoped that LIEAP funds would make it possible for poor people, with much less discretionary income, to pay a much smaller percentage of their income for heat, five percent was seen as an outside limit, beyond which a serious, hardship situation was deemed to exist. Indeed the average percentage of income paid for heat by MPC LIEAP clients is only three tenths of one percent.

Clearly, western Montana was well supplied with federal funds in 1984 and 1985 to pay for the program. SRS expects that federal funds will be reduced this coming season. Even if the pattern of overpayment this past year is not statewide, the amount of slack identified thus far certainly appears to be sufficient to cover the problem areas identified in the study and still allow for expected fund reductions.

It must be stressed that the shortfalls we have identified are frequently dramatic, severe, sometimes catastrophic situations. Since the numbers of people so affected are quite small, any number of solutions could be devised some with lower administrative costs than others. Some "band-aid " approaches might work. On the other hand, a reduction in federal money makes a good fit between need and benefit in the original allocation of benefits all the more imperative.

While we stress again the preliminary nature of these findings, most of them are so clear and strong that it would be surprising indeed if they were to be contradicted by the situations in the remainder of the state.

One further recommendation is in order here. We would urge that the utilities cooperate with SRS and the HRDC's in identifying early in the heating season unusually large bills of LIEAP clients. A program could and should be devised to work with clients on an emergency basis to rectify whatever unusual circumstances are creating inordinately high consumption. The combined resources of the company, the HRDC's (especially weatherization) and SRS should be brought to bear very quickly to prevent extraordinarily large bills from occurring. This is in everyone's interest.

We hope that the study, even at this point, will be of assistance to SRS in developing the best possible LIEAP program for Montana. We appreciate the opportunity to participate in the decision making process. We thank the many individuals and groups who have helped and who continue to help. Without the active cooperation of SRS and the fuel vendors, the study would not have been possible.

HOME ENERGY COSTS OF LOW-INCOME MONTANANS
AN ANALYSIS OF THE LIEAP PROGRAM IN MONTANA

Part II

Final Report

Prepared by:

Judith K. Robinson

With Computer work by:

John Peyton

For the

Montana Low-Income Coalition
Helena, Montana

March, 1986

Proposed Amendment to House Bill 22

Purpose: To require that weatherization funds be targeted to applicants with the lowest income and highest consumption.

Weatherization funds are currently available to low-income families under regular annual appropriations. The priority for such funds have not necessarily gone to the lowest-income families with the greatest need resulting in these families accumulating large arrearages which they have had difficulty paying. Therefore it is necessary to target additional weatherization funds such as the Exxon Overcharge payments such that the lowest income persons with the highest consumption are given first priority. By targeting these dwellings the following will be accomplished:

1. The poorest recipients of LIEAP will be served first which would coincide with the federal mandate for LIEAP -- to target the most aid to those most in need.
2. The poorest LIEAP recipients are most underserved regarding utility payments due largely to dilapidated housing. This would help to rectify this unfortunate situation.
3. There would be fewer arrearages in the spring if weatherization were targeted to the lowest of the low-income clients. Assisting this group first would be the most cost effective approach.
4. By targeting the lowest-income families first, SRS would benefit, as consumption would be reduced, and therefore less would be required for utility bills. Fewer persons would be contacting local offices for additional assistance to cover heating bills.

6-23-86
Rep. Ream
HB 23

TESTIMONY IN SUPPORT OF HOUSE BILL 23

PRESENTED BY HERSEL M. ROBBINS, CHAIRMAN, MONTANA COAL BOARD

FOR THE RECORD, MY NAME IS HERSEL ROBBINS, AND I AM A COUNTY COMMISSIONER FROM MUSSELSHELL COUNTY. I AM APPEARING HERE TODAY AS CHAIRMAN OF THE MONTANA COAL BOARD IN FULL SUPPORT OF HOUSE BILL 23 AS INTRODUCED BY REPRESENTATIVE BOB REAM. THIS BILL IS BEING INTRODUCED AT THE REQUEST OF THE MONTANA COAL BOARD AND IS THE RESULT OF A UNANIMOUSLY PASSED RESOLUTION TO TRANSFER COAL IMPACT FUNDS FROM THE COAL BOARD ACCOUNT TO THE STATE'S GENERAL FUND. THE COAL BOARD MEMBERS FEEL STRONGLY THAT IT IS NOW IN THE BEST INTERESTS OF ALL THE PEOPLE OF MONTANA THAT THE GENERAL FUND DEFICIT PROBLEM SHOULD BE ADDRESSED AT THIS TIME RATHER THAN FURTHER REVERTING FUNDS TO THE EDUCATIONAL TRUST FUND WITH ITS \$78 MILLION BALANCE. THE RESOLUTION WAS PRESENTED TO THE GOVERNOR'S OFFICE SO THAT HE MIGHT CONSIDER THE FUND TRANSFER IN HIS BUDGET PACKAGE AND GOVERNOR SCHWINDEN DID CHOOSE TO INCLUDE IT.

HOUSE BILL 23 SPECIFICALLY TRANSFERS A SUM OF \$680,000 FROM COAL BOARD FY '86 FUNDS AND ANOTHER \$1,000,000 FROM FY '87 FUNDS TO THE STATE GENERAL FUND.

LEST WE AS A BOARD BE BRANDED AS NOT SUPPORTING EDUCATION IN ITS TIME OF NEED, THIS ACTION WILL DIRECTLY BENEFIT EDUCATION NOW RATHER THAN REVERTING THE FUNDS TO THE TRUST.

OVER THE PAST TEN YEARS, THE COAL BOARD HAS AWARDED OVER \$31 MILLION FOR SCHOOL CONSTRUCTION PROJECTS THAT WERE NECESSARY AS A RESULT OF LARGE SCALE COAL DEVELOPMENT. DURING THIS SAME PERIOD, THE BOARD HAS ALSO REVERTED SOME \$6.2 MILLION TO THE EDUCATION TRUST FUND ACCOUNT ESTABLISHED TO BE DEDICATED TO EDUCATION AND FOREVER REMAIN INVIOATE AND SACRED TO THIS PURPOSE. THIS CERTAINLY DEMONSTRATES A PRO-EDUCATION STANCE, BUT TODAY THE NEED FOR THESE LARGE CONSTRUCTION PROJECTS HAS DIMINISHED AND THE GENERAL FUND DEFICIT TAKES PRECEDENT. AS REPORTED IN THE PRESS OVER THE PAST WEEKEND, THE COAL BOARD IS NOT ALONE IN ITS ASSESSMENT THAT A MAJORITY OF THE LARGE SCALE NEEDS IN THE IMPACT AREA HAVE BEEN MET. THE JUST RECENTLY COMPLETED COAL BOARD PERFORMANCE AUDIT STRONGLY POINTS OUT THAT VERY FACT AND FURTHER SUGGESTS THAT THE LEGISLATURE SHOULD SERIOUSLY CONSIDER REDEFINING THE BOARD'S FUTURE ROLE. WE HEARTELY AGREE WITH THIS ASSESSMENT.

WE, AS A BOARD, ARE PREPARED TO BEGIN THE PROCESS OF STUDYING THE OPTIONS AND WILL PRESENT APPROPRIATE LEGISLATIVE PROPOSALS THROUGH THE COAL TAX OVERSIGHT SUBCOMMITTEE TO ASSIST IN THIS TASK.

OUR STRONG SUPPORT OF HOUSE BILL 23 HERE TODAY SHOULD NOT BE INTERPRETED TO INFER THAT ALL THE PRESSING IMPACTS CAUSED BY COAL DEVELOPMENT HAVE BEEN MET. THIS IS A TEMPORARY PHENOMENON DUE TO A LULL IN COAL PRODUCTION CAUSED BY VARIOUS NATIONWIDE AND EVEN WORLDWIDE ECONOMIC FACTORS. THE AUDIT REPORT VERIFIES THIS WHEN IT POINTS OUT FOUR AREAS THAT THE COAL BOARD SHOULD CONCENTRATE ITS EFFORTS ON DURING THE SHORT TERM AND LIMITED FUNDING STAGE. THESE INCLUDE THE HUMAN SERVICE OR PEOPLE PROBLEM AREA: PLANNING STUDIES TO PREPARE FOR FUTURE IMPACTS, WHICH SURELY WILL COME AGAIN AS LONG AS THE RESOURCE IS AVAILABLE; WATER MONITORING PROJECTS TO STUDY THE LONG TERM EFFECTS OF COAL MINING ON OUR WATER SUPPLY; AND HIGHWAY AND ROAD CONSTRUCTION PROJECTS SPECIFICALLY IN THE COAL IMPACT AREA IN RELATIONSHIP TO FUNDING AVAILABLE.

WE ARE CONFIDENT THAT WE WILL BE ABLE TO MEET THE SHORT
TERM NEEDS WITH THE FUNDS AVAILABLE AND URGE THE PASSAGE OF
HOUSE BILL 23 TO ACCOMPLISH THE TRANSFER OF OUR IMPACT FUNDS
TO THE GENERAL FUND.

DORSEY & WHITNEY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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June 19, 1986

Ms. Ellen Feaver
Director-Department of Administration
State of Montana
Helena, Montana

Dear Ms. Feaver:

You have advised us that the Montana Legislature will consider legislation during the upcoming special session to appropriate monies currently held in a bond proceeds account for renovation of the state capitol building (the Renovation Account) to the sinking fund account (the Sinking Fund) for the payment of principal and interest on long-range building program bonds (the Bonds). You have requested our opinion concerning the legality of the proposed legislation.

In 1981, the Legislature authorized the issuance of \$5,000,000 principal amount of long-range building program bonds to finance renovations to the capitol building and \$31,550,505 principal amount of long-range building program bonds for various other state purposes. The bonds for the capitol and the bonds for the other state purposes (collectively, the 1981 Bonds) were all issued as a single series of bonds and all were issued as general obligations of the state. Pursuant to Section 17-5-422 the legislature appropriated monies from the capitol building land grant to the debt service account for the 1981 Bonds in an amount sufficient to pay that portion of the debt service attributable to the \$5,000,000 principal amount of 1981 Bonds issued to finance the capitol renovation (the Capitol Bonds). The appropriation was solely for the benefit of the State and was not enforceable by the bond holders. In 1983 the 1981 Bonds, along with all other outstanding long-range building program bonds, were refunded in advance of their maturity by the issuance of general obligation long-range building program refunding bonds (the 1983 Bonds).

6-23-86

HB 10

legal opinion

DORSEY & WHITNEY

Upon issuance of the Capitol Bonds, the proceeds were deposited in the Renovation Account pending disbursement to pay costs of the renovation. Prior to disbursement the bond proceeds were invested and the income therefrom was credited to the Renovation Account. At present, approximately \$1,700,000 of renovation costs have been paid from the Renovation Account and approximately \$4,800,000 remains in the Renovation Account, including investment income. Due to a variety of factors, construction of all the contemplated changes in the capitol building have been delayed and the Legislature, at the special session, will be requested to consider abandoning most of the remaining changes and appropriating the monies to the Sinking Fund.

Because the Capitol Bonds were originally issued as a single issue (the 1981 Bonds) and refunded as part of a larger single issue (the 1983 Bonds) and in neither instance separately identified, it is necessary to extrapolate the total principal remaining outstanding and the principal of and interest due thereon in each fiscal year from overall debt service schedules. You advise us that, according to your calculations approximately \$4,000,000 principal amount of the Capital Bonds currently remain outstanding.

In our opinion, as more fully described below, the Legislature may legally enact the proposed legislation. Our conclusion is based on our analysis of three separate legal considerations: (i) contractual obligations to the owners of the 1983 Bonds; (ii) Article VIII, Sections 8 and 11 of the Montana Constitution; and (iii) the Enabling Act.

1. Impairment of Contract. By virtue of state and federal constitutional requirements, the Legislature, generally, may not enact legislation to impair the obligations of its contracts. Any legislation relating to outstanding bonds must be scrutinized to insure it does not violate these requirements. We believe the proposed legislation does not. The bondholders had no explicit contractual right to have the proceeds of the bonds expended on the capitol. Moreover, since the Capitol Bonds are general obligations of the State and in no way secured by the capitol building, application of the proceeds to retirement of the Capitol Bonds instead of to capitol renovation will not impair bondholders' security. We understand that the legislation will terminate appropriation of funds in the land grant fund to payment of debt service on the Capitol Bonds. However, this appropriation was clearly

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stated as being for the benefit of the State and not enforceable by the bondholders. Accordingly, we do not believe its termination is in contravention of any obligations of the State to the bondholders.

2. State Constitutional Considerations.

a. Article VIII, Section 8 of the Montana Constitution provides:

No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

There has been some suggestion that since the act of applying the proceeds of the Capitol Bonds to payment of principal and interest on State debt will have the effect of reducing the deficit, Article VIII, Section 11 is violated. We disagree. No debt is being created by the proposed legislation. Debt is being retired.

b. Article VIII, Section 11, of the Montana Constitution provides:

All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 11 and its predecessor section in the 1889 Constitution have been the subject of but three Supreme Court decisions, none of which directly address the instant question. Discussion at the Constitutional Convention was limited, indicating that Section 11 was a carry-over from the 1889 Constitution and intended to assure accountability for funds and non-diversion.

We have concluded that Section 11 is not violated for two reasons. First we do not believe the application of unexpended proceeds of bonds to pay the principal and interest of the bonds is a purpose different from that for which the bonds were issued. Indeed it is common, both in statutory provisions and resolutions authorizing the issuance of bonds, that proceeds of the bonds not required or capable of being expended to finance the project for which the bonds are issued must be applied to pay principal and interest on the bonds.

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Second, even if the decision to terminate further renovations of the capitol and apply the surplus bond proceeds to payment of outstanding debt of the State is a different purpose we think the legislature may do so by amending the law authorizing the Capitol Bonds pursuant to a two-thirds vote. It is a general principal of constitutional law that each legislature is free to amend a statute unless foreclosed by contractual limitations or other constitutional provision. Nothing in Section 11 expressly prohibits or suggests the legislature may not amend the authorizing law, particularly if it does so by the same vote as was required to create the debt. If the authorizing law and debt had been authorized by a vote of the people or if in issuing the Capitol Bonds the State had created a different contractual obligation regarding the application of bond proceeds, our conclusion would be different. However, in the instant case the Legislature, which had complete authorization to authorize the debt and provide for its purpose, should be free by an equivalent act to provide for the application of bond proceeds not required for the intended purpose to repayment of State debt. While we do not believe that any of the cases interpreting Section 11 are particularly helpful, we do note that in one of the cases (Northwestern Bank v. Dickerman, 16 M.278, 40 P. 698) the Court approved a legislative enactment regarding proceeds of bonds which was passed after the bonds were issued.

3. Enabling Act. Under the Enabling Act, income from the Capitol land grant may only be used to pay for capitol building, including debt service on debt incurred therefor. Accordingly, once the proceeds of the Capitol Bonds have been credited to the Sinking Fund, land grant income may no longer be appropriated to pay debt service on the Capitol Bonds. Furthermore, to be assured that land grant income is not indirectly diverted to an unauthorized purpose, you should confirm that the amount of investment income in the Renovation Account to be transferred to the Sinking Fund does not exceed the principal and interest paid and payable on bonds (other than the Capitol Bonds) issued for buildings located at the capitol from the date of the Capitol Bonds through June 30, 1987.

While we do not think it is directly relevant to the validity of the proposed legislation, we believe that if the legislature declines to pass the proposed legislation or otherwise provide for the immediate expenditure of funds in the Renovation Account, that the funds should

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be invested at a yield no greater than the yield on the Capitol Bonds. We have serious doubts that the "arbitrage regulations" permit continued investment at an unlimited yield.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'W.A. Johnstone', with a long horizontal flourish extending to the right.

William A. Johnstone

WAJ:sjm

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APPROPRIATIONS

COMMITTEE

BILL NO. HB 2, 22, 23, 42

DATE June 23, 1986

SPONSOR _____

[illegible]

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

APPROPRIATIONS

COMMITTEE

BILL NO. HB-23DATE 6-23-86SPONSOR R Reame

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Henshel Robbins	Roundup	✓	
Mundo A. Campbell	Helena, MT	✓	
Susan K. Fifield	MSla., MT		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.