

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE & CLAIMS**

**Call to Order:** By Chair Judy Jacobson, on Friday, January 22, 1993, at 12:00 noon.

#### **ROLL CALL**

##### **Members Present:**

Sen. Judy Jacobson, Chair (D)  
Sen. Eve Franklin, Vice Chair (D)  
Sen. Gary Aklestad (R)  
Sen. Tom Beck (R)  
Sen. Don Bianchi (D)  
Sen. Chris Christiaens (D)  
Sen. Gerry Devlin (R)  
Sen. Gary Forrester (D)  
Sen. Harry Fritz (D)  
Sen. Ethel Harding (R)  
Sen. Bob Hockett (D)  
Sen. Greg Jergeson (D)  
Sen. Tom Keating (R)  
Sen. J.D. Lynch (D)  
Sen. Dennis Nathe (R)  
Sen. Chuck Swysgood (R)  
Sen. Eleanor Vaughn (D)  
Sen. Mignon Waterman (D)

**Members Excused:** None.

**Members Absent:** Senator Tveit, Senator Weeding.

**Staff Present:** Terry Cohea, Legislative Fiscal Analyst  
Lynn Staley, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: HB 77, HB 85  
Executive Action: HB 77, HB 85

#### **HEARING ON HOUSE BILL 77**

##### **Opening Statement by Sponsor:**

Representative Bardanouve, House District 16, sponsor,

stated HB 77 requests a supplemental appropriation of \$1,159,000 to fund the defense of three major complex cases in the Attorney General's office in the 1993 biennium. He distributed to the committee a Department of Justice supplemental fact sheet summarizing the cases and expenses incurred and projected during the biennium. (See Exhibit 1)

**Proponents' Testimony:**

Attorney General Joe Mazurek stated it is an important supplemental needed to fund special costs and expenses associated with three complex lawsuits involving the State of Montana. He stated Montana did not bring the lawsuits, but in these cases they are defending the state or have been forced into litigation. He stated if the Crow litigation is lost, there could be \$200 million appropriated from that fund. If the state is unsuccessful in the school funding case, there will be a significant impact on the general fund and on property taxes. HB 77 would pay for costs incurred in the defense of these lawsuits and he noted these cases must be defended vigorously.' He concluded HB 77 is important to the Department of Justice and needs to be acted on promptly.

**Questions From Committee Members and Responses:**

Senator Aklestad asked if the coal monies are in escrow. Attorney General Mazurek said it is over and above the money that is in escrow. This relates to approximately \$48 million that is not in escrow.

**Proponents' Testimony:**

Chris Tweeten, Chief Deputy State Attorney General, in answer to a question from Senator Hockett if the State is paying for both sides, said Exhibit 1 shows this information. He said with regard to the Crow case, it is in the neighborhood of \$200 million. The Department of Justice and Department of Interior are financing the Crow tribe and have provided funds for the plaintiff to hire nationally known firms. The state attorney general feels that in order to defend the case, the State of Montana needs to meet federal experts with experts of high caliber and that in order to defend the case, expenses have to be addressed.

**Questions From Committee Members and Responses:**

When questioned by Senator Nathe if it was felt the state would win this case when we lost the other case that went to court, Mr. Tweeten said it involves restitution of taxes already paid. He acknowledged the first case was lost, but this is a brand new issue.

Senator Jergeson said while we can't guarantee that the state will win the case, is there reasonable expectation that we

might be successful.

Mr. Tweeten said it is difficult to say; there is no precedent for it either way. The legal theories relied on by the tribe are not very strong but we have not been successful in convincing the courts. Regarding the water claims, he said we will be successful if they are litigated in reducing the amount of water the tribe might claim. Relative to the school funding case, there is no way to predict the outcome.

Senator Waterman questioned if the state should lose the case, how will it be determined if the suit will be appealed.

Mr. Tweeten said they will have to discuss with the agency about an appeal; it is difficult to say until they see what the decision is.

When asked by Senator Aklestad how long the Crow tribe case has been in litigation, Mr. Tweeten said since 1978. When noted by Senator Aklestad that the same grievance topics have been brought up, Mr. Tweeten said that is not exactly correct; the issues they are arguing now are different from the question litigated before.

Senator Keating said with regard to the school equalization litigation there is more than one suit. Mr. Tweeten said there are two suits that have been filed. He also noted in response to a question from Senator Keating if the Attorney General's office will have to get involved in the school cases, Mr. Tweeten said yes, as well as additional consultants being needed.

Senator Keating questioned if there is other litigation that is not known about at this time, Mr. Tweeten said they are not aware of any, but there is no way to predict that.

#### EXECUTIVE ACTION ON HOUSE BILL 77

**Motion/Vote:** Senator Nathe moved that HB 77 BE CONCURRED IN. The motion CARRIED with Senator Keating voting NO.

#### HEARING ON HOUSE BILL 85

##### Opening Statement by Sponsor:

Representative Bardanouve, House District 16, sponsor, said HB 85 authorizes construction of an honors college program building at the University of Montana with up to \$2 million of private funds donated by Mr. Ian Davidson. He indicated that at the present time the honors college is meeting in a small area. Passage of HB 85 will give them classrooms suitable for this type

of education. He advised the committee that at present, no building of this magnitude can be built on the campus without legislative authorization. There is also a law on how architects are hired to design the building. He said the proposed building would be designed by Ian Davidson's brother. He alluded to the fact that maintenance of the proposed building would cost about \$40,000 a year. Although it would not affect the general fund in this biennium, it will in the future. He concluded that it is a worthwhile project with money staying in Montana.

**Proponents' Testimony:**

Robert Kindrick, Provost, University of Montana, in supporting HB 85 said he would like to recognize Ian Davidson for the gift to the University of Montana, adding it will serve higher education well.

Patrick McClary, president of student government at the University of Montana, stated the building will be an attraction as far as non-traditional learning environments. He concluded that it will provide a nice learning environment for the honor student.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Fritz questioned how much space we are getting for \$1 million. Mr. Kindrick of the University of Montana said it will be approximately 10,000 square feet for the students.

Senator Aklestad asked if this would be the total cost of the building for 10,000 square feet. Representative Bardanouve said HB 85 provides building costs up to \$2 million. The original request from the Davidsons was for \$1 million but it may cost more, therefore they will finance up to \$2 million.

Senator Aklestad said one percent of the students will use this. Representative Bardanouve said there are about 350 enrollees in the total enrollment of honors classes. These students also pursue other courses. He indicated there are ten honors classes.

Senator Fritz said that is the number enrolled in the honors college, but honors classes are open to the entire student body.

Senator Aklestad questioned the title of HB 85 exempting the construction project from certain state procurement of service laws and page 2, lines 6 through 8 of the bill. Representative Bardanouve said the exemption is repealed by the end of the biennium so it will not continue.

When questioned by Senator Waterman regarding ongoing costs, Representative Bardanouve said it is \$40,000 each year. He also said that the dean recruits throughout the university professors to teach certain classes. They are full-time professors, and it is over and above their regular classes in which they receive a small fee for teaching additional honors classes.

Senator Swysgood said it is a remarkable gift that has been given but noted there are other building projects also that will probably not get approved. We have a deferred maintenance situation with not only the university buildings and physical plants but other state facilities. He said although there might not be costs associated in the beginning, it will be our responsibility to take care of it. He concluded he has a hard time regardless of the nature of the projects in justifying continued building when we can't take care of the ones that are currently in place.

Rep. Bardanouve said there has been much discussion relative to this. It was mentioned if the legislature refused to provide for maintenance that the Davidsons would try private sources to maintain and operate the building.

Senator Hockett said maybe this could be put in the administration building and there would only be a maintenance problem for one building.

Senator Jacobson said with all the tuition increases the students are getting, maybe a scholarship fund for the honors program might be more appropriate.

Senator Devlin said he would like President Dennison of the University of Montana to comment on this issue.

President Dennison said when people decide they want to provide support for the University, he talks to them and the Davidsons made the decision to fund an honors facility. President Dennison said he has been up front about the issue of costs with the Dennisons. When the proposal was discussed, it was noted that in the event the legislature decides not to provide the funding to support the academic building, funds will try to be raised. He concluded that he understands what is involved in raising the funds, but noted the undertaking is an important project on the campus. Regarding scholarship funds, President Dennison said there are not scholarship funds for all honor students.

Senator Beck stated that maintenance and operation costs should be obtained elsewhere because the money is not available from the legislature.

Closing by Sponsor:

Representative Bardanouve closed.

**EXECUTIVE ACTION ON HB 85**

**Motion:** Senator Franklin moved that HB 85 BE CONCURRED IN.


**Discussion:** Senator Aklestad questioned if the \$2 million of financing could include administrative and maintenance costs.

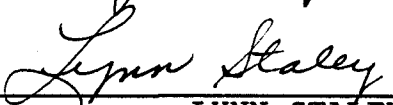
Senator Jacobson said they reserve the right to ask for maintenance. She questioned that it would make any difference because she felt the bill would sunset before maintenance money is asked for.

**Vote:** Senator Franklin's Be Concurred in motion CARRIED with Senators Aklestad, Harding and Swysgood voting NO.

**ADJOURNMENT**

**Adjournment:** 11:00 a.m.

  
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JUDY JACOBSON, Chair

  
\_\_\_\_\_  
LYNN STALEY, Secretary

JJ/ljs

# ROLL CALL

SENATE COMMITTEE FINANCE AND CLAIMS

DATE 1/22/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACOBSON	✓		
SENATOR FRANKLIN	✓		
SENATOR AKLESTAD	✓		
SENATOR BECK	✓		
SENATOR BIANCHI	✓		
SENATOR CHRISTIAENS	✓		
SENATOR DEVLIN	✓		
SENATOR FORRESTER	✓		
SENATOR FRITZ	✓		
SENATOR HARDING	✓		
SENATOR HOCKETT	✓		
SENATOR JERGESON	✓		
SENATOR KEATING	✓		
SENATOR LYNCH	✓		
SENATOR NATHE	✓		
SENATOR SWYSGOOD	✓		
SENATOR TVEIT		✓	
SENATOR VAUGHN	✓		
SENATOR WATERMAN	✓		
SENATOR WEEDING		✓	

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 22, 1993

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill No. 77 (first reading copy -- blue), respectfully report that House Bill No. 77 be concurred in.

Signed: Judy H. Jacobson  
Senator Judy H. Jacobson, Chair



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 22, 1993

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill No. 85 (first reading copy -- blue), respectfully report that House Bill No. 85 be concurred in.

Signed: Judy H. Jacobson  
Senator Judy H. Jacobson, Chair

Chris

HB 77  
DEPARTMENT OF JUSTICE SUPPLEMENTAL  
FACT SHEET

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 1

DATE 1/22/93

BILL NO. HB 77

This bill requests a supplemental appropriation in the amount of \$1,159,200, to fund the defense of three major complex cases in the 1993 biennium. A summary of the cases and the expenses incurred and projected for each during the biennium follows:

I. CROW TRIBE v. MONTANA-UNITED STATES DISTRICT COURT-BILLINGS DIVISION

AT RISK- Over \$200 million in principal and accumulated interest from coal tax collections from the Westmoreland Resources mine on the Crow ceded area immediately north of the Crow reservation.

EXPENDITURES REQUIRED-

Economic modelling-	\$250,000	Longbranch Research Associates
Coal Market research-	240,000	Fieldston Company
Effect of Rail Transportation Rates On Coal Prices-	212,000	Corporate Strategies
Survey of State Services to Crow Tribal Members-	15,000	Tompkins and Youngblood
Cost of State Services to Crow Tribal Members-	75,000	Galusha, Higgins & Galusha
Econometric model-	15,000	Paul Polzin
Outside Counsel	5,000	John Ross Anderson Brown firm

TOTAL \$812,000

II. SCHOOL FUNDING CASE-MONTANA FIRST JUDICIAL DISTRICT COURT, HELENA

AT RISK-This case is a challenge to the constitutionality of the school funding mechanism enacted by the 1991 legislature in response to the decision of the Montana Supreme Court invalidating the prior system.

## EXPENDITURES REQUIRED-

Expert Witnesses On  
Educational Issues- \$161,500

Various experts

Associate Counsel  
and Paralegal Services  
from Agency Legal  
Services Bureau- 75,000

Agency Legal Services  
Bureau

TOTAL \$236,500

### III. BLACKFEET WATER CASE-MONTANA WATER COURT

AT RISK-This case involves an attempt by the Attorney General to negotiate a settlement of the claims for federal reserved water rights of the Blackfeet Tribe. The tribe claims the first right to the use of all water arising on or flowing over reservation lands. If successfully pressed, this claim could displace substantial numbers of non-Indian rights, both on and off the reservation, in major watersheds which arise on or flow through the reservation such as the Milk River, St. Mary's river, and Cut Bank Creek.

## EXPENDITURES REQUIRED-

Engineering  
consultants- \$47,700

Boyle Engineering

Economic analysis- 50,000

Watts & Associates

Historical research- 4,000

Dr. Kent Richards

Agronomy- 4,000

Jim Sims

Soil Classification- 3,000

Hayden Ferguson

Other research and  
litigation costs- 2,000

TOTAL \$110,700

## Total Supplemental Request-

CROW COAL \$812,000

SCHOOL FUNDING 236,500

BLACKFEET WATER 110,700

TOTAL \$1,159,200

DATE 1/22/93

SENATE COMMITTEE ON F + Claims

BILLS BEING HEARD TODAY: HB 77, HB 85

Name	Representing	Bill No.	Check One	
			Support	Oppose
Joe MAZURK	AG	HB 77	✓	
Tom O'Connell	AE	HB 85		
Chris Tweeten	Attorney General's Office	HB 77	✓	
Bob Hunkrich	Provost / UM	HB 85	✓	
Sheela Stearns	UM	"	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY