MINUTES

MONTANA SENATE
53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By Senator Judy Jacobson, Chair, on December 8, 1993, at 8:30 a.m., Room 108.

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. Chuck Swysgood (R)
Sen. Daryl Toews (R)
Sen. Larry Tveit (R)
Sen. Eleanor Vaughn (D)
Sen. Mignon Waterman (D)
Sen. Cecil Weeding (D)

Members Excused: None.

Members Absent: None.

Staff Present: Clayton Schenck, Legislative Fiscal Analyst
Lynn Staley, Committee Secretary

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

Committee Business Summary:
Hearing: SB 38, SB 36, HB 4, HB 8, SB 39, SB 32
Executive Action: HB 14

HEARING ON SB 38

Opening Statement by Sponsor:

Senator Mike Halligan, Senator District 29, sponsor, said SB 38 would provide for ad hoc supplemental payments to retirees of state retirement systems, teachers' retirement system and the volunteer firefighters' retirement system, as well as providing a statutory appropriation for the supplemental payments.

Proponents' Testimony:

Art Whitney, Association of Montana Retired Public Employees, testified in support of SB 38 (Exhibit 1).

John DenHerder, President of Association of Montana Retired Public Employees, and President of the Public Employees Pension Security Coalition, testified in support of SB 38.

Tom Schneider, Montana Public Employees Association, testified in support of SB 38.

Phil Campbell, Montana Education Association, urged adoption of SB 38.

John Malee, representing Montana Federation of Teachers, indicated their support of SB 38.

Tom Foley, representing American Federation of State, County and Municipal Employees, testified in support of SB 38.

David Senn, Executive Director of Teachers' Retirement System, testifying in support of SB 38, presented an amendment (Exhibit 2) that would ensure the benefit payment will not be made unless the appropriation is there.

Lois Menzies, Director, Department of Administration, testified in support of SB 38. She presented a technical amendment (Exhibit 3). She said that during the interim they are committed to working with interested parties in order to come up with a more permanent solution to this adjustment requiring a different funding source, and not simply money coming from the general fund.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Beck questioned the effective date for SB 38 being July 1.

Senator Halligan said it is May 1, 1995 and there would not be actual reimbursement until 1996. He asked Leo Berry to comment on that.

Leo Berry, representing the Association of Retired Public Employees, said while the effective date is the end of 1994, the payment is not made for the increased retirement benefit until July 1995 which is in the next biennium. He concluded that amendments that have been proposed do not change the effectiveness of SB 38.

When questioned by Senator Aklestad relative to the payment that is not made being interest bearing, Senator Halligan said there is no interest.

Senator Jacobson asked if there would be a fiscal note relative to SB 38.

Dave Lewis, Budget Director, said he did not recall a request for a fiscal note. He indicated the impact is $4 million a year.

Senator Weeding questioned if passing SB 38 would mean $4 million being deferred until the next biennium.

Senator Halligan said under the Supreme Court decision, there is not an obligation to pay this biennium. If the Court doesn't reverse itself and SB 38 does not pass, then the legislature would have to come back and add $8 million to the budget. They are actually eliminating 1994's payment and delaying the '95 payment in order to be covered if the Court reverses itself.

Closing by Sponsor:

Senator Halligan closed.

HEARING ON SB 36

Opening Statement by Sponsor:

Senator Gary Aklestad, Senate District 6, sponsor, said SB 36 would eliminate the January 1995 $1.6 million pay increase for State employees. He noted SB 36 has nothing to do with employee insurance increases.

Proponents' Testimony:

None.

Opponents' Testimony:

Tom Schneider, Montana Public Employees Association, testified in opposition to SB 36. He noted that insurance is $20 each year of the biennium. He did not think money could be saved from people who are covered by collective bargaining contracts because the contracts would have to be fulfilled, so rather than $1.6 million saved, it would be approximately one-half of that amount. He concluded that the commitment was made to pay the 1.5 percent and he would like to see the bill Tabled.

Steve Johnson, Labor and Employee Relations Bureau, Department of Administration, testified in opposition to SB 36. He said most labor agreements incorporate legislative pay increase and if the pay increase is rescinded, unions representing employees will pursue a court remedy. If that were to happen, pay increases would only be rescinded for state workers not organized in collective bargaining units, which more than 40 percent of the state's work force falls into this category. He concluded that SB 36 would allow for disparate treatment of state employees and would place the state at a great competitive disadvantage.

Mike Dahlum, staff director, Montana Federation of State Employees, testified in opposition to SB 36, indicating that state employees are underpaid and the 1.5 percent increase should not be taken away from them.

Dennis Taylor, Department of Justice, testifying on behalf of Attorney General Joseph P. Mazurek, presented a letter in opposition to SB 36 (Exhibit 4).

Phil Campbell, representing Montana Education Association, testified in opposition to SB 36.

Kevin Keenan, a 23 year employee of state government and a Montana citizen, testifying in opposition, said although the small increase they received does not represent large amount of money, it was a symbolic gesture of support and to eliminate the raise would be enormously symbolic. He urged the committee not to make this change.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Senator Aklestad closed, saying the other 500,000 people in the state who are not included in the pay raise should be taken into consideration also.

EXECUTIVE ACTION ON HOUSE BILL 14

Motion: Senator Lynch moved that HB 14 BE CONCURRED IN.

Discussion: Senator Keating questioned the source of funding.

Senator Lynch said the source is fines and as he understood it, they are waiting for federal matching money. He said it is capping it at $500,000.

Senator Jacobson said anything over the $500,000 reverts to the general fund.

Senator Lynch said it applies only to those that are physically injured and not to personal property injuries.

Vote: Senator Lynch's motion that HB 14 BE CONCURRED IN CARRIED with Senators Hockett and Keating opposed.

HEARING ON HOUSE BILL 4

Opening Statement by Sponsor:

Representative Steve Benedict, House District 64, sponsor, said HB 4 would allow the use of inmate labor for construction of the dairy dormitory at the Montana State Prison.

Proponents' Testimony:

Sally Johnson, Deputy Director, Department of Corrections and Human Services, stated that HB 4 would contribute to the job training of inmates and assist them in completing the project at the dairy dormitory. It would reduce the cost of the project by approximately 40 percent and it would support legitimate corrections objections.

Mickey Gamble, Corrections Administrator, Department of Corrections and Human Services, testified in support of HB 4. He stressed that HB 4 is not an anti-union bill. They want to use inmate labor to have a sense of ownership of what is being done with the structure, which is on the prison grounds but more on the prison ranch.

Opponents' Testimony:

Senator J. D. Lynch, Senate District 35, said while he recognizes there are tough financial problems in the state, a situation such as this would set a bad precedent. He concluded that it is wrong to take away jobs from citizens in the area.

John Forkan, president of the Montana State Building and Construction Trades Council, testified in opposition to HB 4 (Exhibit 5).

Informational Testimony:

Because of time constraints for the committee, Chair Jacobson asked those presenting testimony to indicate their positions on HB 4 and HB 8 at the same time. She advised the committee member that the two bills would be voted on separately. With the committee's approval, Rep. Benedict presented HB 8 to the committee.

HEARING ON HOUSE BILL 8

Opening Statement by Sponsor:

Representative Steve Benedict, House District 64, sponsor, stated that HB 8 would allow for the use of Montana State prison staff to install and maintain the prison security fence and exempt the project from public bidding requirements. He noted that the bill also provides for onsite security as the fence is built.

Proponents' Testimony:

Mickey Gamble, Department of Corrections and Human Services, said HB 8 is different from HB 4 in that HB 8 deals with the use of staff, the majority of them being active craftsmen who are members of the craftsmen union. For the reason of public safety, they made a commitment to upgrade the security fence. He said they are the experts in the area of building the fence and is not something done on a regular basis by most people in the field. The possibility of getting a Montana contractor to do this job is very thin which he concluded is the reason they are asking for the use of their staff for construction and technical adjustments in the project.

Opponents' Testimony:

Carl Schweitzer, Montana Contractors Association, testifying in opposition to HB 4 and HB 8, said these bills set a bad precedent of using inmate labor for construction projects. He noted it is a $2.2 million project which is a substantial amount of work and that many contractors he represents don't do that volume within a year. The money from the project would have an impact on the local economy, and he concluded that the private sector should be allowed to do this work.

Bruce Morris, Missoula, Montana, representing the Montana State Council of Carpenters, testifying in opposition to HB 4 and HB 8, said the use of inmates for the construction of prison or state facilities is bad public policy. He noted the dollar savings to be realized by the state would have to be contrasted to the loss of construction business income, the loss of construction employment and loss of tax dollars as well as a lack of motivational skills.

Mike Dahlum, representing Montana Federation of State Employees, testified in opposition to HB 4 and HB 8.

Darrell Holzer, Montana State AFL-CIO, testifying in opposition to HB 4 and HB 8, said he would strongly suggest that when projects such as this are being discussed that the Department of Corrections and organized labor confer on them. He felt that better communications would lead to a meaningful agreement in benefitting Montana workers and contractors as well as giving the Corrections department an avenue to the apprenticeship training program.

Senator Gary Forrester testified as an opponent to HB 4 and HB 8.

Questions From Committee Members and Responses:

Senator Jacobson said regarding the fiscal notes discussing bonding for the projects described in HB 4 and HB 8, the Senate select budget committee assumed that general fund money would not be expended in this biennium for bond projects. She asked if the cost saving impact in this biennium would be zero.

Dave Lewis, Budget Director, said as far as he was aware, the Department of Administration would issue bonds in February. He said their interpretation of SB 5 indicates doing it in the most efficient manner possible which would mean making debt service payments on the normal schedules.

When questioned by Senator Jacobson if they would ignore the legislature's intent, Mr. Lewis said they disagree with the interpretation of the language.

Senator Weeding questioned if HB 8 would require additional staff.

Mr. Gamble said it could be accomplished with the current staff. He noted the technical part of the project is time consuming which is where their expertise is.

When asked by Senator Keating relative to use of staff, Mr. Gamble said it is their current maintenance staff.

Senator Jacobson asked what would happen if the dairy dorm was not constructed.

Mr. Gamble said they would continue to exist in an inadequate facility with maintenance problems.

When questioned by Senator Jacobson as to when the prison planned to achieve the 850 population which the Department of Corrections indicated during the last regular session, Mr. Gamble said the target is July 1994. He noted that they have not implemented HB 685 authority to its fullest extent but are now beginning to do so. They have recommended 45 people for early discharge.
In a question from Senator Jacobson relative to the effectiveness of implementing the program, Mr. Gamble said it is now beginning to be totally implemented in having to get out the rules.

Senator Hockett questioned if additional equipment purchases would be necessary.

Mr. Gamble said there would not be major expenditures. Their facility does the repairs and maintenance on a regular basis so they are well equipped relative to what has to be done.

When questioned by Senator Hockett if Montana contractors would get the job if it goes to private contractors or if they would be from out of state, Tom O'Connell, Architecture and Engineering Division, said the fence project would probably not go to an instate contractor because that expertise doesn't exist in Montana. The dairy dorm project likely could be done with instate contractors if it was done through public bidding.

Senator Jacobson questioned that no one in the state was qualified to do the fence project.

Mr. O'Connell said the repair on existing security systems of the fence has been completed by prison staff. There was difficulty getting security experts that had bid and completed work there to come back and service the systems that they installed. It is not local contractors that are providing these high technology security systems. The experts to repair the systems that have developed over the years are the prison staff.

Senator Beck questioned what the prison staff would give up on maintenance at the prison to construct the fence.

Mr. Gamble said nothing would be given up; they would continue maintaining as they presently do. The fence maintenance is already being done by the staff. He said their credibility is on the line. The actual labor of installing the fence is minimal; the technicalities are what is important. Their staff is craftsmen as well as union members and have the needed expertise.

Senator Beck questioned if the fence construction would proceed regardless of the passage of the bill.

Mr. Gamble said it is funded to be constructed, and he felt the credibility and commitment to the public is very important.

Senator Beck said regardless of passage of the legislation, it could be constructed with outside staff and not put a lot of stress on the prison staff to try to offset things. Mr. Gamble said that was correct.

Senator Aklestad asked Mr. Holzer with regard to the proposed budget cuts where they would propose to cut. Mr. Holzer said while they understand problems being faced by the state, they raise exceptions to proposals that make absolutely no sense.

Senator Fritz questioned if any consideration was given in these projects to putting government in competition with the private sector in order to drive the costs down and achieve the end result in the most efficient manner.

Mr. Gamble said it was not considered. He said, however, that they have apprenticeship programs in the institution.

Relative to HB 8, Senator Devlin questioned who currently does the fence maintenance.

Mr. Gamble said they currently do the maintenance but they have not been involved in upgrading the system.

Senator Devlin said two different aspects are being discussed; one is the construction of the fence and the other is the day to day maintenance.

Mr. Gamble said it is a combination of maintenance and installation. It will be tied in with an already existing system and will replace an antiquated system that no longer has replaceable parts.

Senator Devlin questioned who maintained the stock fence around the ranch.

Mr. Gamble said they have inmate laborers and staff that maintains the fences and the corrals around the livestock facilities.

Closing by Sponsor:

Rep. Benedict closed on HB 4 and HB 8. He noted with regard to HB 8, the total savings on the project would be approximately $65,000 that the prison staff could move into other areas requiring construction and where union labor could be used. He concluded the Department of Corrections should have the ability to get the job done the best way they can, and HB 4 is a tool they need to live within their budgets. With regard to HB 8, the savings would be about $125,000 over the life of the bonds. He noted the security and safety of the staff and inmates is at stake in this bill. To have outside contractors trespassing onto and from the prison poses a higher security risk than if the prison staff works on the fence.

HEARING ON SB 39

Opening Statement by Sponsor:

Senator Mignon Waterman, Senate District 22, sponsor, said SB 39 would bring Montana law into compliance with new federal laws enacted in August 1993 and would ensure in difficult economic times that medicaid be preserved for truly needy Montanans. The bill would prevent individuals from becoming eligible for medicaid long term care benefits by giving away or sheltering substantial assets, and would require the expanded recovery of medicaid expenditures from estates of deceased recipients. It also allows recovery of medicaid expenditures from recipient's property passing outside of the probate estate. The bill would require that Department of Social and Rehabilitation Services (SRS) place a lien on real property owned by certain medicaid recipients to preserve the property for later recovery of medicaid expenditures. She concluded there will be substantially greater long term savings as SB 39 is implemented which will be seen in the coming biennium. She added that she would be offering a couple amendments which SRS had no problem with.

Proponents' Testimony:

Peter Blouke, Director, Department of Social and Rehabilitation Services, presented testimony in support of SB 39 (Exhibit 6, Exhibit 7).

Rose Hughes, Executive Director, Montana Health Care Association, testified in support of SB 39 as the appropriate way to limit medicaid growth. She said it is an attempt to implement the program in an appropriate fashion that will not hurt people or be overly burdensome. Regarding liens on property, she felt if medicaid is known to not be the provider of long term care, even for those that are able to handle it themselves, people will plan for that. She added that she would like to have stricken the statement of intent, section 4 (c) in its entirety, page 5, line 22 through page 7, line 5.

Jim Smith, Montana Association for Rehabilitation, testified in support of SB 39, noting it gives people the incentive to plan for their own future. He concluded it is good legislation that is absolutely essential in getting to the serious business of reforming our medicaid program.

Charles Briggs, Montana Association of Area Agencies on Aging, testified in support of SB 39 as an important program for those most in need of receiving the service. He added they want to watch the development of the administrative rules regarding this to ensure that it will not hurt the particularly needy and that the exceptions be clearly delineated. He also mentioned the importance of developing a broad array of community based alternatives so people do not have to divest themselves of assets and go on medicaid.

Stuart Doggett, representing Montana Funeral Directors Association, said they do not have a problem with the concept of excess burial funds to SRS as mentioned in section 6 of SB 39. He offered an amendment to the committee for consideration (Exhibit 8).

Clyde Daily, representing State Insurance Department, testifying in support of SB 39, noted their department will present in the next session improvements to be made in long term care insurance to make it an affordable and reasonable product to enhance this type legislation. He said long term care insurance currently is not the product it could or should be which is the reason people are not buying it.

Opponents' Testimony:

Gary Hancock, disabled veteran, said many people on fixed incomes would lose their homes under SB 39 as they would have a lien against it.

Joe Moran, testified in opposition to the proposed medicare cuts. He added that cuts could be made in areas such as the Department of Transportation, Department of Military Affairs, privatization of liquor stores.

<u>Questions From Committee Members and Responses</u>:

Senator Lynch questioned the lien law relative to welfare recipients.

Nancy Ellery, Administrator of Medicaid Division, SRS, said the federal government in legislation passed last October gave them the ability to implement a lien law. She said the bill provides protection for the spouse, a child under age 21 or a disabled child in that the home will not be taken.

Greg Gould, legal counsel, SRS, said although he is not familiar with the prior lien law, this is more of a general lien law that applies to permanently institutionalized individuals and directed toward more long term care situations.

Senator Jacobson said the thrust is the intent to stop moving the assets away from the person so that the other heirs such as children who are not dependent children will not inherit. The lien law pertains to allowing the spouse to stay in the house but the children not inheriting the assets; those would go to the state.

Senator Lynch asked who would not have a lien put on them if they received medicaid aid in a nursing home and owned a home.

Mr. Gould said if they went to a nursing home and were expected to be discharged to return home, no lien could be imposed under this bill. If they were permanently institutionalized and not expected to return home and if their spouse was residing in the home, no lien could be imposed.

Senator Lynch asked if everyone other than those mentioned would have a lien imposed to take the property regardless of income.

Mr. Gould said yes, there is no income or resource test in that regard.

Senator Beck questioned if there is a look back period regarding the sale of the home.

Mr. Gould said there are provisions in SB 39 that relate to transfers of assets for less than fair market value. In that respect, new federal law requires the state to look back for a 36 month period from the date of transfer, but it only applies to transfers after August 10.

In regard to a question from Senator Beck regarding liability within the 36 month period, Mr. Gould said if there was a lien on the home and the lien was not paid on the sale, they would be liable. Notice would have been given at the time title was taken because the lien would have been recorded in the public records notifying that the lien was on the property, and they would have had an opportunity to insist that the lien be paid off out of the sale proceeds so they would be protected. If they took title and the lien had not been satisfied, then the property could be sold to satisfy that money. In the case of a transfer of assets, the only penalty in that case is that the person who transferred the assets would not be eligible for a period of time.

Senator Beck said the goal is to stop the shifting of assets, and he questioned whether a lien can be filed against the property.

Mr. Gould said they cannot go back and file a lien that has a priority date going back in time. The 36 month look-back period applies only to the transfer of assets provisions, which means that a person would be ineligible if they had transferred property during the previous 36 months.

Senator Jacobson said the other point to be made is that none of this happens unless medicaid is applied for.

In a question from Senator Christiaens, Mr. Gould said the lien provisions apply only to real property and not to personal property, china, et cetera. The transfer of assets provisions would apply to any kind of property if a transfer was made for less than fair market value.

In answer to Senator Christiaens regarding children receiving property, Mr. Gould said SB 39 does affect people attempting to give their property to their children and then having the public paying for their nursing home care. The department could not go back in time to create a lien, but the fair market provision comes into play with the transfer of assets rule. Initially the department would look at the transaction and provide appraisals or other forms of proving the property value. He added the person is entitled to a hearing on the determination and could present evidence that they received fair market value. If it were proven that it was less than fair market value, the result would be that the person would be medicaid ineligible for a period of time.

In questioning from Senator Beck, Mr. Gould advised that liens can be collected after death. He added SRS would not arbitrarily set market value; they would need a basis to determine that value.

In questioning from Senator Weeding regarding the nursing home, Mr. Gould said there is a provision in the bill and in federal law for an exception to the application of the various provisions in cases of undue hardship. Federal legislation that passes requires the Secretary of Health and Human Services to tell states what that means.

Ms. Ellery said since the law passed last August, they looked back to see what would have happened if the policies had been in place, and there were nine cases where the person would not have been eligible at all or was discouraged from applying. She noted that much of the discussion regarding liens has always been in federal law, and SB 39 expands it to give more flexibility to recovering more property. She concluded they are not trying to aggressively collect personal property items from people.

Closing by Sponsor:

Senator Waterman closed on SB 39, saying medicaid was enacted to aid poor people. She added if medicaid costs do not begin getting controlled, the services will not be available for needy Montanans.

HEARING ON SB 32

Opening Statement by Sponsor:

Senator Bob Brown, Senate District 42, co-sponsor, said SB 32 would provide financial incentives to state agencies and employees as well as nonemployees who save costs in and improve effectiveness of state government. He added the bill is at the request of the Department of Administration and the Office of Budget and Program Planning. The organization Montanans for Better Government also was involved in the drafting of the legislation. He presented amendments to the Chair that he would like considered by the committee, and also presented a fiscal note relative to SB 32 (Exhibit 9).

Senator Tom Towe, co-sponsor, said SB 32 is an incentive bill to save money. The reversion portion allows use of some of the money for personal services that may be saved by increasing salaries of those persons that have to pick up the difference for vacancies created by saving money. It allows carryover of savings in the second year of the biennium with a 30 percent benefit in future years, which is a critical part of SB 32. The bill increases the individual incentives and the persons to whom incentive awards can be made. If an employee can specifically determine a specific amount that is saved, after the money has been received, the employee will be eligible for a much larger award, ten percent of the first $100,000; five percent of the second $100,000, et cetera, which is a significant incentive. It is cut off at $17,000.

Proponents' Testimony:

Mark Cress, Administrator, State Personnel Division, testifying in support of SB 32 said a portion of the bill provides the current employee incentive awards program. Another portion of SB 32 deals with elimination of FTE and augments SB 71. Section 8 of SB 32 deals with the 30 percent carryover provision. The bill would expand the current employee incentive award program. He noted the current program has a limited number of participants, and they want to change that focus to involve more employees as they do their day to day jobs. SB 32 encourages state employees to focus on cost savings and services in their particular job they were hired to do. They are focusing on actual implemented cost savings or improvements rather than ideas or suggestions. Emphasis will be put on groups or teams of employees working cooperatively towards improvements and savings rather than one individual with an idea. The decisionmaking will be moved to the individual departments, which eliminates the current advisory council. He noted there will be opportunity for incremental gains. Amendments that will be offered deal with award eligibility under SB 32. The bill as drafted includes nonemployees. He felt a potential for a $17,000 incentive award available to anybody would place a burden on directors that have to administer SB 32 and is not practical, therefore the amendment would remove "nonemployee" from SB 32. Regarding an employee participating in a cost saving idea in more than one department, an amendment should be drafted that would deal explicitly with employees from other agencies.

Dan Gengler, Office of Budget and Program Planning, testified regarding the draft fiscal note (Exhibit 9). He noted the final copy of the fiscal note had been seen but not discussed with the Budget Director and may be different than the draft. He said the draft fiscal note concludes that the incentive award program and salary adjustment due to permanent reduction in FTE contain no adverse fiscal impact and are risk free from a fiscal perspective. The component of carrying forward administrative budget authority in the general appropriations act contains a potential fiscal impact insofar as agencies currently revert some amount of authority. To the extent they are allowed to retain and expend 30 percent of that amount, that would be a net increase in expenditures. As explained by the fiscal note, to the extent that agencies increase those reversion amounts, the impact is less, budget neutral or a net savings. There is no available information to determine how much agencies might increase their reversions but if the typical agency reverts approximately two percent in the administrative categories and spent three-fourths of their carry forward appropriation authority, their reversions would have to be increased from 2 percent to 2.6 percent for the impact to be budget neutral. If the reversions are increased beyond that point, there would be a net savings.

Robert G. Natelson, chairman of the civil organization Montanans for Better Government, also a professor of law at University of Montana School of Law. He noted he was not speaking for the

University of Montana or the law school. Mr. Natelson presented written testimony in support of SB 32 (Exhibit 10). He noted the concept is not a new idea and has been used in private law for sometime. A recurrent problem throughout the law is what can be done about the inherent conflict of interest when there is someone acting on behalf of another because their interests are not necessarily perfectly identical. He added the law has taken two ways to deal with that conflict of interest situation. One way would be to "ride herd very heavily on it" through bureaucratic or judicial review of the agent's conduct. Another way would be to change the rules in such a way to resolve the conflict of interest to make sure the person that is acting and the person for whom that person is acting are on the same side, that there is an identity of interest. SB 32 puts those that are the people's servants on the same side as the people, both the people in function as taxpayers and the people in their service as consumers of government services. He said that essentially none of his colleagues had ever heard of the public employee incentive plan that was adopted in 1982 until he brought it up. Since 1982 while there have been 701 suggestions under the plan, only 5 have come from the university system which should be the source of some of the most fruitful ideas. SB 32 takes the basic principles of the current program and principles of SB 71 and applies them more broadly. He said the bill makes incentives relevant at the agency level, the team level and the individual level. This bill would attempt to change incentives within government at all three levels. He concluded the measure would be good for the taxpayers and those public employees that want to better serve the taxpayers. He concluded by asking those that were present at the committee hearing supporting SB 32 to stand up and be acknowledged.

Senator Jacobson said as this issue is being addressed, the biggest area of concern in this legislative session because of the distribution of funds is in the human services and education areas. In the area of education, the largest percentage is kindergarten through 12, and she noted SB 32 does nothing for K through 12.

Mr. Natelson said SB 32 to his knowledge does not apply to local school agencies. However, it would apply to the Office of Public Instruction (OPI), and it could be expanded in the future to include local school districts. Even though K through 12 is a large part of the budget, it is not the majority of the total budget. To say that it does not include local school districts is correct, but that does not make it less of a good idea.

Senator Jacobson said while she is supportive of the idea, she is disappointed that it is not being expanded into areas which in her opinion could be fruitful.

Mr. Natelson said he would support expansion into K through 12 operations.

Tom Torgerson, Certified Public Accountant, Kalispell, Montana, said he gathered a group of businessmen to rewrite the employee incentive law. He said there was a desire to change the law so that the award would be in the employee's area of expertise. The amount given as an award should be increased to provide more incentive. The law was written specifically for employees with no incentive for the agency to get involved. Those areas were then improved. He added there was an employee survey done with the Department of Administration to get their views on the program. He concluded that only if the savings actually occur will the incentive award be paid out.

Walt Dupea, Big Fork, Montana, vice president of the TEAM organization, testified in support of the ideas in SB 32. He agreed adding an amendment relative to K through 12 could also be looked at with respect to this issue.

Walt Kero, Certified Public Accountant, Missoula, Montana, and a member of Montanans for Better Government, testified in support of SB 32. He felt that an important area in improving government is revamping the budgetary process, and SB 32 is a step toward that goal.

Betty Natelson, Montanans for Better Government, and a social worker, testifying in support of SB 32 said in order to get public employees as well as department heads to come up with money saving ideas, they have to be reinforced for doing it. Good ideas save money year after year by reinforcing people that what they already can do is important.

Wes Gibbs, farmer-rancher in central Montana, testified in support of SB 32 as providing good incentives to public employees and all taxpayers.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, testified in support of SB 32 and the efforts in that regard relative to cost saving measures in Montana that will reap benefits this year and in years to come. Those working in these areas on a daily basis are the ones that see the costs incurred and are aware where cuts can be made and what can be done differently.

Paul Newby, state chairman of State Tax Equity Action group, testified in support of SB 32 and hoped it could be expanded to schools.

John Rice, Missoula regional coordinator for Montanans for Better Government, testifying in support of SB 32, said it could be one of the most important pieces of legislation to come out of the special session.

Tom Neihart, United We stand, America, testified in support of SB 32 and indicated there should be incentives for nonemployees as well.

Dave Lewis, Office of Budget and Program Planning, testified in support of SB 32 and said he would answer any questions relative to the fiscal note.

Judy Bolton, a private citizen, testifying in support of SB 32 indicated a program such this should be available for private citizens as well as employees.

Opponents' Testimony:

None.

Informational Testimony:

Senator Jacobson said an important thing for the committee to remember is that employee incentives are not reinventing government; it has been done for years, and most people have been very supportive of employee incentive programs. She commended the sponsors for a bill to expand the incentive program, but noted it is not a brand new idea.

Questions From Committee Members and Responses:

Senator Fritz questioned how Mr. Natelson saw the program working in the university system and the units in the system relative to the budgeting process.

Mr. Natelson said in the current system, the actual mechanism for awards is remote. SB 32 would put it at the campus level, where the personnel are more approachable. He felt it should be brought down to the line supervisor who is in contact with individual employees which furthers the team approach. He mentioned that awards are not mandatory on the line administrator who could use discretion in making awards. The individual employee incentive awards are not limited to individuals, but could go to a team of people coming up with an idea.

When questioned by Senator Fritz relative to the budgeting process, Mr. Natelson said the payment of awards would be tied in with the budgeting process. He added the legislation abolishes the current incentive awards advisory council on the theory that the managers should be given the right to manage the incentive awards. He concluded that it would eliminate a layer of bureaucracy.

Senator Swysgood questioned the fiscal note relating to reversions, asking if there was a potential for budgets to grow beyond the point where they could become budget neutral.

Dave Lewis said the purpose of this is to encourage agencies to save money to be able to reinvest it. The proposals would be looked at from the perspective that they would need a money saving package to justify the use of the funds. He added that currently there is a total dis-incentive for an agency not to spend their entire budget. Some ability has to be built in the process for them to plan ahead and use some of the funds.

Senator Swysgood asked how to differentiate what is assumed to be a cost saving problem when the decisions are made on what the agencies should be getting.

Mr. Lewis said a good portion would be equipment which is zero based now. Most of the applications he could imagine would not add into the base.

Senator Waterman said we cannot tell the agencies they cannot spend the monies if they chose to invest the unexpended funds in FTE's.

Mr. Lewis said it is the intent to authorize that reappropriation which will be presented as a budget modification as an addition to the base. They would have to present a good case as to why it would save money and improve department operations.

When questioned by Senator Waterman relative to large awards being given to employees with already large salaries, Mr. Natelson said it is difficult to understand why a public employee is getting a raise because of productivity increases. However, if it was shown that the public employee saved the taxpayers a large amount of money with an innovative idea, the employee should be entitled for an award for the idea. He added that Montanans for Better Government have a public education package and are willing to defend awards that are given.

Senator Jergeson questioned relative to the fiscal note, how the savings to be achieved can be calculated.

Mr. Natelson suggested if SB 32 was implemented, it could be budgeted so as to treat it as a counterpart to expansion of budget balancing amendments in HB 2. Another idea would be to go to other cities and states that have similar programs and do a survey on savings.

When questioned by Senator Jergeson relative to the mechanics of SB 32, Mr. Natelson said in HB 2 passed during the regular 1993 session, there was budget balancing reductions in the bill that applied to all agencies with a few exceptions of generally one half of one percent. That could be increased to one percent and justified, which would be a means of establishing a number upfront.

Senator Jacobson said there was across the board cuts last regular session of five percent and in the conference committee another .5 percent was added. When an across the board cut is made, positions have to remain vacant to make up savings from those cuts.

Senator Jergeson questioned how a number could be derived that could be relied on to apply to calculations of what is a balanced budget.

Mr. Natelson said the amount of budget balancing reductions could be raised for agencies across the board, and another way would be to consult with other jurisdictions regarding the amount of savings generated in the first year of operation.

When asked by Senator Jergeson relative to the fiscal note having no dollar savings, Mr. Lewis said the present fiscal note is a draft. He felt the most conservative approach was to safely say we could save exactly what would be lost in the reduced reversions. He said he had no comfortable way of projecting savings. Savings would occur, however, but a year's worth of history should be obtained and then a number could be put on at that time.

Senator Jacobson said there has been estimated $10 million in reversions although that number might be on the high side. She questioned if this program might help meet that $10 million.

Mr. Lewis said they have estimated $10 million for the biennium, which they feel is a reasonable number. This might help them go above $10 million.

In a question from Senator Hockett, Senator Brown said there has been an employee incentive program in effect. The upper limitation on that was $3,000, but the participation in it was never great. SB 32 proposes to allow people coming up with good ideas as individuals an opportunity to share on a percentage basis the money generated from their good idea.

Senator Hockett said there are programs in place that do not require any type of savings; some of them are in union contracts, and he questioned if these would be taken out.

Senator Brown said SB 32 has an additional provision to provide up to $500 per employee incentive for ideas that cannot be proven to save money but which provide better service.

Mr. Natelson said he would like to clarify that the percentage awards are bonuses and not an add-on to base pay.

Senator Franklin questioned if Mr. Natelson would expect this piece of legislation to balance the budget in this special session.

Mr. Natelson said no, Montanans for Better Government put out an agenda of a number of items and they did not attach a dollar amount to this.

Senator Jacobson said there is concern that these are great ideas and is real feel good legislation that hopefully might help in the long run in the neighborhood of $1-$2 million, but she noted there was a $72 million dollar problem "crammed down our throat to solve it". The most important issues in the special session are higher education, human services and K through 12 funding for students, and this legislation will not mean a lot of money coming into Montana.

Mr. Natelson said it is his view that the state should undertake productivity gains; they should provide a similar level of services more efficiently. He said they recognize agencies have to take cuts, but simultaneously the agencies have to make operation changes to prevent the cuts from falling disproportionately upon the serviced consumers. He added they favored the proposal that the university system take a $12 million reduction if there could be a restructuring of how the university system was financed.

Closing by Sponsor:

Senator Brown closed on SB 32, agreeing that the bill is not a budget balancer but an attempt to rely heavily on public employees to make difficult decisions. SB 32 provides an incentive to public employees and agency directors to try to do a more efficient job of governing. Regarding extending this into school districts and local government, he felt a local school board or city council could provide some type of program now if they chose to do so, and it would not be wise to mandate on the state level with the Department of Administration. He added that this could be addressed in the next legislative session. He noted there are many different political philosophies that support the idea of SB 32. He concluded while it may not save substantial amounts of money at the present time, the cumulative effect of it will probably be good in saving money. The concept should result in better service, less taxes to the taxpayer and more opportunity for public employees.

Chair Jacobson asked Senator Brown if he was in favor of the proposed amendments.

Senator Brown said one amendment clarifies $17,000, which is clerical in nature. The other amendment which is clerical in nature tries to clarify who is being talked about relative to deans and university presidents. Another amendment deals with extending the amendment to people that do not work for state government. SB 32 would allow a nonstate employee to benefit up to $17,000 by a good idea. This would not limit the incentive to only state employees as the bill is proposed. There is concern in the Department of Administration that there could be a situation with the $17,000 incentive where there would be many people with ideas, and agency administrators would not want to be constantly burdened with the new responsibility.

Senator Brown felt strongly that because it is discretionary with the department head to make the award that there is real merit in bringing in the nonemployee. If there is a problem with abuse of this, it can later be dealt with. He felt the amendment dealing with that should be rejected.

ADJOURNMENT

Adjournment: 12:45 p.m.

Judy Jacobson
JUDY JACOBSON, Chair

Lynn Staley
LYNN STALEY, Secretary

JJ/LS

ROLL CALL

SENATE COMMITTEE FINANCE & CLAIMS DATE 12/8/93

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 SWYSGOOD	✓		
SENATOR TOEWS	✓		
SENATOR TVEIT	✓		
SENATOR VAUGHN	✓		
SENATOR WATERMAN	✓		
SENATOR WEEDING	✓		

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

December 8, 1993

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill No. 14 (third reading copy -- blue), respectfully report that House Bill No. 14 be concurred in.

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

M- Amd. Coord.
SB Sec. of Senate

Lynch
Senator Carrying Bill

91143SC.Sma

Art Whitney

AMRPE

Association of Montana Retired Public Employees

Post Office Box 4721
Helena, Montana
59604

A non-profit corporation of P.E.R.S. Retirees for P.E.R.S. Retirees

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 1
DATE 12/8/93
BILL NO. SB 38

AMRPE STATEMENT ON SENATE BILL 38

AMRPE supports SB 38 because this legislation is essential in order to maintain a 50-year commitment the state has made to its employees and to the employees of city and county governments, teachers and other school district employees. That commitment, made in the 1930s to the teachers and the 1940s to the rest of us, was that the state would supplement the pensions of persons retired in the TRS and PERS systems with some general fund monies. The mechanism chosen to do this was to exempt these pensions from state income tax. The intent was two-fold. First, was to offer an additional inducement for employees to stay with the state and local governments rather than accepting opportunities to go to higher paying federal jobs, which of course, also offered higher retirement benefits. Second, the income-tax-exemption method of giving this benefit was intended to be an inducement to employees in the PERS and TRS systems to continue to reside in Montana after retirement.

When the U.S. Supreme Court ordered, in the Davis decision, that states had to treat their own and federal retirees the same in regard to taxation, Montana decided to remove the tax exemption from its own retirees rather than extend it to the federal people. The 1991 session also decided they should continue to honor the long-term commitment made to their own retirees and that it was only the mechanism of the way the benefit was given that was wrong, not the benefit itself. So, when the session passed SB226, which subjected all retirees' pensions to state income tax, it also increased the PERS and TRS retirees' pensions by a general fund appropriation. This has been referred to as our "Make Whole" provision. It did not, however, make us whole on an individual basis. Those of us in tax brackets higher than 2-1/2 percent got back less than we paid and even those Montana residents who paid no income tax got a 2-1/2 percent payment. And, as the payment itself is also subject to state income tax, the end result is a further reduction in our overall pensions. SB 226 did not give the 2-1/2 percent increase to retirees residing outside of Montana. This was an effort to continue to entice retirees to remain in the state.

Federal retirees immediately challenged this legislation in court. The District Court decided last year that it was valid; however, late last month the Montana Supreme Court, in a split decision, reversed the district court' decision. Their decision seems to criticize mainly two points in its reversal. One is that

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SB 38

the make whole provision goes only to residents of Montana and the second is that the provision of a benefit is mixed up in the same legislation that subjects our pensions to taxation.

SB 38 corrects those two things. The supplemental pension benefit it will provide would go to all members of PERS and TRS regardless of where they reside, and it is a separate piece of legislation that does not refer to taxation.

SB 38 provides a supplemental benefit starting in 1995. Thus, we will miss our 1994 benefit payment. The primary reason for this is we are asking the supreme court to reconsider its decision as there are some points it did not seem to address. SB 38 is not effective until May 1995 so if the Supreme Court reverses itself, the 1995 legislature can repeal this bill. In addition, the next benefit payment to retirees would occur in July 1995. As a result, $8.1 million are freed for use in this biennium. Some critics of the "Make Whole" provision in SB 226 have brought up the fairness argument which was sometimes used against our original pension exemption from state income tax. They maintain that a state must treat all its retired citizens equally and thus any benefit a state gives its own retirees should be given to all. Our response to this is to ask why only our special retirement benefit should be singled out a being unfair. It is not at all unusual for employers to give special benefits to their own retirees that they are uniquely qualified to give. Many retirees from transportation companies have free travel passes. Telephone and other utility companies give reduced rates for their services to their own retirees for which we all pay. Health insurance companies frequently pay for all or part of their retirees' health insurance premiums. And, the federal government gives it retirees annual cost of living adjustments that are magnificent compared to the ad hoc increases we have received out of our own retirement fund.

Thus, the fairness issue now should not require that one employer, the State of Montana, treat all retirees equally when no other employers are required to do so. Instead, it should require that a commitment by the state to its retirees made a half century ago and reaffirmed in 1991, be fulfilled. SB 38 merely fulfills this commitment. We strongly urge its passage.

Amendments to Senate Bill No. 38
First Reading Copy

For the Committee on Senate Finance and Claims

Prepared by Sheri S. Heffelfinger
December 7, 1993

1. Page 2, line 12.
Following: "appropriated"
Insert: "pursuant to [section 1] and subsection (4) of this section"

2. Page 4, line 5.
Following: "appropriated"
Insert: "pursuant to [section 1] and subsection (4) of this section"

Amendments to Senate Bill No. 38
First Reading Copy

Requested by the Department of Administration

December 8, 1993

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 3
DATE 12/8/93
BILL NO. SB38

1. Page 1, line 19.
Strike: "May 15"
Insert: "June 1"

2. Page 3, line 11.
Strike: "May 15"
Insert: "June 1"

3. Page 7, line 5.
Strike: "May 1"
Insert: "June 1"
After: "1995"
Insert: "unless specifically superseded by legislation enacted prior to that date"

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

December 8, 1993

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 4
DATE 12/8/93
BILL NO. SB 36

Senator Judy Jacobson
Chair, Senate Finance and Claims Committee
Montana State Legislature
State Capitol
Helena, MT 59620

Re: Senate Bill 36

Dear Senator Jacobson:

I write in opposition to Senate Bill 36, a proposal to eliminate the January 1995 1.5% pay increase for state employees. This is obviously a difficult session for all of us and I well know the painful choices you and the other committee members are having to make.

However, at a time when cuts are being made across state government, and we are asking state employees to do more and more with less and less, we can ill afford to further erode morale and productivity by taking this small pittance away from our hardworking employees.

I have been proud to lead the Department of Justice these past 11 months and have found a corps of dedicated public servants who work hard to serve the people of Montana. But pats on the back only go so far, and these last few months--with rumors of further budget cuts and layoffs when resources already are strained--have placed an incredible amount of stress on dedicated state government workers. Morale is low, and the state ultimately pays a great price for that. If workers are valued and satisfied, they work harder and are more productive.

In short, with fewer people working harder, doing more with less, it is only fair that they be given adequate compensation. This one and one-half percent raise is a small amount, but it has great symbolic value--it lets our employees know that we appreciate them and we value their work.

I urge your defeat of Senate Bill 36 and thank you for considering my comments.

Sincerely,

Dennis M. Taylor

for JOSEPH P. MAZUREK
Attorney General

TELEPHONE: (406) 444-2026 FAX: (406) 444-3549

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HOUSE BILL #4

December 8, 1993

Senate Finance & Claims Committee

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 5
DATE 12/8/93
BILL NO. HB4

Madam Chairwoman, Committee Members, for the record, my name is John Forkan. I am President of the Montana State Building and Construction Trades Council. This Council is comprised of 27 affiliated construction unions, which represent over 3,000 construction workers in Montana. I am here today to urge you to oppose House Bill #4 for several reasons.

First of all, we are opposed to the concept of taking taxpayer financed construction projects away from the public sector of society and giving this work to prison inmates to perform for the purpose of expanding work experiences for inmates, or under the guise of saving money for the State, which we do not believe would be accomplished by this bill.

Projects of this nature are covered by State Law guaranteeing public bidding and prevailing wages for workers. This bill would exempt public bidding, bonding, contracts, workers' compensation coverage, and labor and wage requirements.

The sponsor of this bill has stated that this is just a "one-time" situation, which will save the State of Montana some money and give prison inmates at Montana State Prison something to do. I would take exception to this statement because it has been proven by the State that there is no such thing as a "one-time" situation when it comes to dealing with inmate labor.

In 1989, Montana construction workers were told that the State needed to use inmate labor to construct low security housing unit at the Prison. This was necessary because of an overcrowding problem and a shortage of money. Workers were told then that this would be a "one-time" situation and more construction work was planned at the Prison that would be put out to the public sector for bids.

Then, during the 1991 Legislative session, Montana construction workers and employers came to the Capitol to protest against House Bill #339, which would have authorized the use of inmate labor on construction and renovation work that would not have necessarily been limited to the Prison compound.

Again, during the 1993 Legislative session, held earlier this year, these same groups of people came here to protest against House Bill #675, which would have authorized the use of inmate labor to perform construction work at the Prison.

Now, eight months later, here we are again to protest against House Bill #4, which would give yet another construction project the authority to utilize inmate labor. If there is one thing that has

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been made very clear to the construction workers and employers in Montana, it is that there is no such thing as a "one-time" situation when it comes to the issue of using inmate labor. We also do not buy the assurances that more construction work is coming at the Prison and that will be put out to the public sector for bids. This is the follow-up project since the low security unit was constructed and it is clear to see what the objective of the State is in this instance.

The Montana State Building Trades Council is not arguing the fact that inmates need jobs and projects to keep them occupied. This is the reason that the Prison Industries Program was implemented. What we are saying is "Don't give our jobs to prison inmates"!!! It makes no sense to give public sector jobs to prison inmates when there are needy, law-abiding citizens in this State that need these jobs.

We are not crying "Wolf". We truly believe that if possible, the State would utilize prison inmates for a number of work-related issues once prison labor is authorized and accepted. In 1992, the State sent a bus load of prison inmates from the Prison at Deer Lodge to do remodel and renovation work at the Montana State Hospital Campus at Warm Springs. This attempt was halted after protests from various unions and also from workers employed at the Hospital itself.

I would like to take a couple minutes of this committee's valuable time and read a portion of a letter I received last year from Mr. Patrick Costello, who is the President of the Mohawk Valley Building and Construction Trades Council from Marcy, New York:

The Mohawk Valley Building Trades Council is located in the Utica-Rome area of Central New York. We have several large State Prisons in our area. While the original construction of these facilities was a blessing to our Council, what has evolved in the last year can only be described as a nightmare. I am referring to the ever-increasing policy of the New York State Corrections system of utilizing prison labor.

Every day from the Oneida Corrections Facility in Rome, New York, seven or eight vans containing six inmates each head out to different communities to do our work. These prison work crews have done projects that involve all types of Building Trades work. The use of prison labor has also been applied to large construction projects inside the prison. The average pay per hour for these prisoners while they perform our work is .67 per hour.

These same situations are occurring daily in other states all across our country. The practice of utilizing prison inmates to perform work for the State is being justified as a way to save the State money.

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There are several factors that have not been included in the so-called "cost savings" for the State. For instance, since Workers' Compensation would be exempted if this bill is successful, the State would ultimately be responsible for any work-related injuries to inmates that would occur on these construction projects. This could very well be a large figure since the majority of the prison inmates are not skilled workers. If these jobs are taken away from seasonal construction workers, what will the impact be to the State because of unemployment benefits that will have to be paid to unemployed construction workers? How much will the State loose because of taxes not being paid by public sector employers and workers on these "exempted" projects? It cannot be considered a cost savings for the State if all that happens is if a decrease in the cost of construction at the Prison causes an increase in the cost of other State-run operations.

What will be the next step? Take these construction-trained inmate work crews from Prison and have them construct bridges and roads in Montana? Just to save money of course! Then, if inmates can build the roads and bridges, why not let them maintain these facilities also? The State can then lay off all of the Highway Department workers and let inmate work crews perform this work at a fraction of the cost to the State. Then the State could set up half-way houses throughout the State for minimum security prisoners. This would not only ease up on the overcrowding situation at the Prison, but inmate work crews could be taken from the half-way houses and be utilized to perform services on such State owned properties as Job Service Centers, University and College Campuses, State buildings at the Capitol and so on. These examples are not as far-fetched as some of you might believe. I did not make this scenario up by myself. These instances actually take place in other states in this country right now. Montana would not be the first state to utilize the "Slave Labor" concept to save money for the operations of State government. This is not a "scare-tactic" protest. This is opposition based on what is taking place in other parts of our country right now. This is reality, and we need your help.

The bottom line in this issue, and one of the major concerns of workers is that once the use of prison inmate labor has been authorized, it grows and grows, it does not decrease or stop. This situation can continue to be an issue, or this Committee can do exactly what the Legislature has done on the two previous attempts to give jobs for honest, taxpaying, Montana workers to prison inmates, "Kill this Bill"!! I mentioned earlier, that the sponsor and supporters of this bill would like this Committee to believe that authorization to allow for inmate labor would only be used for this "one-time" situation. Montana construction workers and employers know full well that this "one-time" situation should more correctly be labeled "one-at-a time". Our jobs are on the line and the only place we have to go to voice our opposition is right here to your Committee members.

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Montana construction workers and employers would like the same due consideration from the State that is given to other areas of the public sector when dealing with prison inmate issues. Milk and dairy products produced from the State Prison dairy are not allowed to be placed into the market-place in Montana. They are taken to the state-line where they will not interfere with the dairy industry in Montana. Furniture and goods made under the Prison Industries Program are not allowed to be sold to private businesses in Montana.

I know that it has been stated here at the Capitol that this issue is just being opposed by a few of the construction unions from Southwest Montana, particularly the Butte area, but this Committee will hear opposition today from not only unions and union employers, but from the non-union sector of the construction industry also. I would hope that this fact alone would make an impression on this Committee. There are very few bills that come before this Legislature that find the union and non-union sectors of society in Montana on the same side of the issue, but this is one of them. That should tell this Committee right away that this is not a good bill for Montana. It is anti-worker, it is anti-employer, and it is bad for Montana in general.

These construction projects at Montana State Prison may not seem very large or substantial to some here in Helena, or other parts of the State, but they are very important to construction workers that

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are trying desperately to sustain and maintain homes, and need to feed their families and pay taxes to keep school districts functional and State government operational. These are very important jobs to seasonal workers that would rather be working than drawing unemployment compensation from the State. Please give Montana construction workers the same considerations as is given to the dairy and furniture industries in Montana, and do not allow prison inmate labor to take away the much needed, public sector construction jobs.

On behalf of hard-working Montana construction employers and workers, please vote "DO NOT PASS" on House Bill #4. Thank you for your time, consideration, and hopefully your support.

TESTIMONY OF THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
BEFORE THE SENATE FINANCE AND CLAIMS COMMITTEE

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 6
DATE 12/8/93
BILL NO. SB 39

December 8, 1993
SB39

The purpose of this act is to implement a long-term care policy for Montana Medicaid which reduces public assistance expenditures by diverting affluent citizens to privately financed care while simultaneously ensuring access for everyone to high quality home, community-based, and nursing home care. Numerous studies have documented the widespread practice of Medicaid estate planning, whereby affluent seniors retain attorneys to transfer or shelter their income and assets in order to qualify for Medicaid nursing home benefits. Given the ready availability of Medicaid benefits, relatively few seniors have been willing to pay out of pocket for care or to purchase private long-term care insurance. Recently however, President Clinton's budget, the Omnibus Budget Reconciliation Act of 1993, empowered state Medicaid programs for the first time to control the divestiture of assets effectively and to recover benefits paid to people with sheltered resources from their estates. Properly enforced, these measures will encourage financially able families to plan ahead, buy insurance, and pay privately for their long-term care needs.

Montana has a very generous Medicaid nursing home eligibility benefit. Consequently, very few seniors purchase private protection for the financial risk of long-term care and approximately 62 percent of nursing home residents end up on Medicaid by default. This problem has placed an enormous strain on state finances and threatens to adversely affect access to and quality of care if program eligibility has to be cut.

Montana can save one-half million dollars or more in the immediate biennium and substantially more per year in the long run by aggressively implementing and enforcing restrictions on asset transfers, imposing liens on sheltered property, and recovering benefits paid from recipient's estates. These savings derive from a combination of hard dollar recoveries and cost avoidance as seniors opt for private alternatives to public assistance dependency. This act addresses a long-term care financing problem and implements a solution for Montana. The provisions of the act are designed to target scarce public welfare resources to those who need them most while providing a stronger incentive for affluent seniors and their heirs to plan ahead, take care of themselves, and avoid reliance on public assistance. Montana is an excellent example of the Medicaid malaise. Nursing home care is a major contributor to the problem. It accounts for $84.6 million of the roughly $300 million Medicaid budget for Fiscal Year 1994. That is 28 percent of program resources to pay for just one service for approximately six percent of Medicaid recipients. The provisions of this act will have a dramatic impact on this situation.

The provisions of the act can be described in three basic categories. These major areas are eligibility, liens, and estate recoveries. While there are numerous provisions, some of which do not have nearly the impact of others, they must all be viewed as a whole and must all be implemented

EXHIBIT [illegible]
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SB 39

in substantially the same form as introduced. If the Department is to be successful in achieving the savings, it must be able to close, if not all, at least nearly every loophole to successful sheltering, divestiture or gaining of eligibility. If there are ten roads leading to gaining Medicaid payment of long-term care risks it does no good to close only five. While Federal law leaves a few very difficult routes, this act closes all of the practical ones.

The act empowers the Department to greatly restrict the sheltering and divestiture of assets through such means as establishing trusts and annuities, crafting joint tenancy and right to survivorship arrangements, or simply giving away substantial assets and then waiting for penalty periods to expire. The act also extends penalty periods for improper transfer of assets. The act does not cause denial of benefits to any citizen who truly does not have the means to pay for long term care.

The act contains numerous provisions related to establishment and placing of liens upon certain property of individuals who do qualify for assistance but have chosen to have Medicaid pay for their care and then pay it back through the eventual sale of the their assets. These liens do not harm the recipient's eligibility for coverage nor their access to care and do not impact their spouses ability to remain in the home in the community.

The third major area of provisions in the act is in the expansion of the Department's ability to recover from the estates of deceased recipients. Not only is there a broader range of estates from which to recover, but the average value of each estate will increase due to the previous provisions which prevent the recipient from disposing their assets prior to their death.

Most of the eligibility provisions of this act will be implemented by the Department's eligibility staff. The lien and estate recovery provisions will be implemented by a private contractor procured through competitive bid.

At a time when the Medicaid program faces budget reductions in other areas which impact the access and payment of care for low-income recipients, this act provides savings without impacting anyone except those who have the means to pay for their own care and their heirs. It is time those with the ability pay their own way do so. When nearly one-half of all Montanans below the poverty limit do not now qualify for Medicaid, it only makes sense that wealthier people and their heirs no longer use scarce public assistance dollars.

On behalf of the Department of Social and Rehabilitation Services I urge you to pass SB39. Thank you for the opportunity to provide these comments.

Submitted by:

Peter Blouke, Phd
Department of Social
and Rehabilitation Services

Peter Blouke

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 7
DATE 12/8/93
BILL NO. SB 39

Medicaid Long Term Care Eligibility & Recovery Reform

Estate planning to gain Medicaid long term care coverage was resulting in an ever increasing caseload. Methods of divesting and sheltering assets were allowed under federal law.

In August, 1993, Congress passed numerous provisions aimed at halting the practices. States were given the ability to close most loopholes and were mandated to track and recover assets of Medicaid recipients.

LTC, Inc. prepared a report detailing what actions Montana should take to maximize the savings from LTC reform. Its basic tenet is that those who have the assets to pay for their care should be required to do so, thereby preserving funds for those who can't.

The major keys to success are:

Tighten eligibility criteria as much as allowed and seek waivers to go even further.

Establish a strict asset tracking and recovery program, using liens, to not only save dollars outright but to discourage people from even relying on Medicaid.

Develop a comprehensive media program to educate all concerned that if they want to preserve their estate for their heirs, they must find an alternative to Medicaid to finance their LTC risk. By choosing not to do so, they may still qualify for Medicaid but will pay back all expenses from their estate.

How to achieve these goals:

Implement and enforce the new eligibility rules. Use one FTE to provide accurate, uniform advice to eligibility workers and clients.

Contract with a vendor to establish and operate an asset tracking and recovery program. This contractor would also design and execute the media program. Use one FTE in TPL Unit to manage the contract.

Total operating costs for biennium: $287,258 (Gen. Fund $133,861)
Total revenues and savings: $994,650 (Gen. Fund $290,173)
Net revenue: 707,392 ($156,312)

Requested amendment to SB 39

1. Page 17, line 19
   Following: "holds"
   Strike: "unused"

2. Page 17, line 22
   Following: "shall"
   Insert: ", after paying for the disposition and related expenses,"
   Following: "pay"
   Strike: "those:
   Insert: "all remaining"

SB32 DRAFT fiscal note

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0032, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act providing financial incentives to state agencies and employees and to non-employees who save costs in and improve effectiveness of state government.

ASSUMPTIONS:

1. Participation in the Employee Incentive Program would increase under the provisions of this bill due to: incentives applying to the employee's own work rather than to suggestions outside their normal work duties; awards based on actual results and achieved savings; the program focusing on cooperative efforts by groups or teams of employees; the maximum awards for achievements resulting in measurable cost savings are increased.
2. Participation under the existing Employee Incentive Awards proposal for calendar year 1991 resulted in 47 suggestions being submitted. 14 suggestions resulted in an award. 7 suggestions had specific estimates of cost savings that totaled to $1,190,275. $8,884 was paid out in awards to those 7 employees. The effect of SB 32 on the future level of participation and the resulting impact on cost savings may not be comparable.
3. Incentive awards would be paid from current level budgets and would be zero-based in the budget planning process.
4. The increase in base salary and associated increase in benefits for an employee or employees authorized under section 6 would be less, on an ongoing basis, than the salary and benefits for any FTE which is permanently eliminated under section 6. State costs for benefits tend to increase faster than salaries.
5. In determining the amount of carry-forward appropriations authority under section 8, OBPP policy would be to use all available nongeneral fund authority first.
6. In FY92, based on highly preliminary data, the amount of reversions (excluding the University System) in administrative expenditure categories (personal services, operating expenses, and equipment) from all fund sources is roughly $30 million. Approximately 95% of this amount appeared to have been reverted from three agencies which are primarily funded from nongeneral fund sources. The "average" agency appeared to revert approximately 2% of its budget for administrative expenses.
7. Particularly to the extent that carry-forward budget authority is from nongeneral fund sources, agencies would not expend 100% of carry-forward authority.

(continued on next page)

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 9
DATE 1/18/93
BILL NO. SB32

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BOB BROWN, PRIMARY SPONSOR DATE
Fiscal Note for SB0032, as introduced

EXHIBIT 7
12-8-93
SB 32

FISCAL IMPACT:

Incentive Award Program:
Increased participation would result in more incentive awards being paid to state employees and non-employees. Incentive awards would be paid within current level budgets which would not be included in the current level for subsequent biennia. It is anticipated that most of the incentive award payments, in total dollars, would be associated with documented cost savings resulting in a net reduction in expenditures. No data is available to support an estimate of how much participation will increase, how cost savings will be affected, or the number or level of incentive awards that will be granted.

Salary Adjustments Due to Permanent Reduction in FTE:
Since permanent reductions in FTE would result in associated amounts for benefits being reverted (only salary amounts may be used to increase base salaries of other employees), the likely impact would be long term savings for affected accounts. There is no data available to support an estimate of the number of FTE which might be permanently eliminated under this provision.

Carry-Forward of Administrative Budget Authority in the General Appropriations Act:
Since there is generally always some amount of reversion in administrative expenditure categories, allowing 30% of these amounts to be carried forward into subsequent fiscal years would increase expenditures, primarily from nongeneral fund sources, unless agencies have sufficient incentives to increase reversions. The possibility of retaining future budgetary flexibility may counterbalance the incentive inherent in the budget process for agencies to "use it or lose it", particularly at the end of the base fiscal year. If agencies spent 75% of carry-forward budget authority, the "average" agency would have to increase its reversions in administrative expenditures from 2% to 2.6% in order for the ability to carry-forward 30% of reverted budget authority to be budget neutral. There is no data available to support an estimate of the extent to which this provision would increase expenditures or reversions.

STATEMENT

BY

ROBERT G. NATELSON[1]

IN SUPPORT OF S.B. 32

S... F... FINANCE AND CLAIMS
EXHIBIT NO. 10
DATE 12/8/93
BILL NO. SB 32

Madame Chairwoman, Members of the Committee:

In my opinion, the political events of the past year offer us two central messages. First, people don't want any more taxes. Second -- and perhaps more important -- people want better performance from government.

When taxpayers ask legislators to "cut out the fat in government," public employees often respond that there is no fat -- and, indeed, that they need far more money than they have. Those who see themselves primarily as taxpayers and those who see themselves primarily as government workers are engaged in trench warfare on this issue. This warfare reflects a conflict of interest that is inherent in the current system.

Now, most people -- even most public employees -- acknowledge there is waste in government. But what folks unfamiliar with government sometimes don't understand is that, in the words of Osborne and Gaebler, "... waste in government does not come tied up in neat packages. It is marbled throughout our bureaucracies. It is embedded in the very way we do business."

Osborne and Gaebler add: "To melt the fat, we much change the basic incentives that drive our governments. We must turn bureaucratic institutions into entrepreneurial institutions, ... willing to do more with less, eager to absorb new ideas. Reinventing Government at 22-23.

The goal of changing the incentives in government generally should be to eliminate, to the extent humanly possible, inherent conflicts of interest between public employees and taxpayers and between public employees and service consumers. The idea is to enable public employees to build lucrative, exciting careers by improving efficiency and service rather than by protecting bureaucratic turf.

Woodrow Wilson once said:

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1. Professor of Law, University of Montana and Chairman, Montanans for Better Government. The opinions expressed are those of the author and not necessarily those of any other person or institution.

> When I look back on the processes of history, when I survey the genesis of America, I see this written over every page: that the nations are renewed from the bottom, not from the top; that the genius which springs up from the ranks of unknown men is the genius which renews youth and the energy of the people.

Wilson's observations on renewal from the bottom up are reflected in the experiences modern government reformers. In an April, 1992 speech in Washington, D.C., Virginia's Gov. Doug Wilder outlined the principles he used in 1990 to close a huge state budget deficit without either increasing taxes or cutting human services. Emphasizing the need for "bottom-up strategy, rather than a top-down controlling approach," and he continued:

> [W]e would provide maximum flexibility to the agency officials to determine where the budget reductions would be made. To give you a little example of that, we wanted to have what we call an incentive plan to save, and we said that we wanted each person to identify surplus, whether it was real estate, whether it was personal property, or whatever -- kind and description. And we said it's very difficult to get that kind of cooperation unless you do it at the bottom, because you know where it is, you know where the bones are, you know where the skeletons are. We had very little cooperation until we had to sweeten it a little bit by saying for whatever you give us, we'll give you one-half back for the next appropriation. And then it started coming forward. Amazing. But at the top I would never have been able to find that.

Governor Wilder was talking about incentives at the agency level, but his comments are equally valid at the level of the individual or working group. Properly-motivated teams make the incremental advances that slowly improve productivity; inspired individuals are responsible for the more dramatic, less common advances.

An example of the difference an <u>individual</u> can make is the saga of Kathleen Betts, a $14,000 a year Medicaid clerk who saved the Commonwealth of Massachusetts $510 million during its 1991 budget crisis. She identified how the federal government was underpaying Massachusetts. An example of the difference a <u>team</u> can make is the fact that Bett's superiors in her department were willing to fight for her idea and force the feds to pay.

Part of the secret of unleashing the entrepreneurial spirit in government is a change in overall attitude. The change in attitude fostered by the administration of Governor William Weld motivated Mrs. Betts more than the prospect of any reward. But in other cases, financial incentives can prove important. For

EXHIBIT 10
12-8-93
SB 32

example, Osborne and Gaebler point out that in Phoenix, Arizona, employees receive a percentage of any savings or earnings that result from their ideas, and that "Phoenix typically gets 1000 suggestions a year and saves $2 million annually by implementing them." Reinventing Government at 210.

To change the prevailing culture, one must do so on all three levels: agency, team, and individual. One reason the current employee incentive plan has failed is because while there are awards for individuals, agencies sometimes have no particular incentive to inform employees about the program or to implement the ideas it generates.

Senate Bill 32 is an attempt to establish a more balanced approach. It seeks to change the culture on all three levels:

* More generous awards for individuals and teams, when their ideas save money or improve service, and
* Incentives to agencies to save surplus funds.

Senate Bill 32 is not a perfect measure, but it is an important step in the right direction. It deserves your support.

# # # #

DATE 12/8/93

SENATE COMMITTEE ON Finance Claims

BILLS BEING HEARD TODAY: SB 32 SB 36 SB 38 SB 39 HB 4 HB 8

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Darrell Holzer	MT. ST. AFL-CIO	SB4 SB8		X
ART WHITNEY	ASSOC. MT. RET PUB. EMP.	SB38	X	
Jim Adams	MPEA	SB36		X
Tom Foley	AFSCME	~~SB 38~~ SB 36		X
Tom Foley	AFSCME	SB38	X	
JOHN FORKAN	MT. ST. BLDG. TRADES	SB 4		X
John Malee	M.F.T.	S.B.38	X	
JOHN DENHERDER	AMRPE & PEPSCO	SB 38	X	
Tom Schneider	MPEA	SB 36		X
Tom Schneider	MPEA	SB 38	X	
Stuart Doggett	MFDA	SB39	X with amend	
Dennis M. Taylor	Justice	SB36		X
Phil Campbell	MEA	SB36		X
Phil Campbell	MEA	SB 38	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 12/8/93

SENATE COMMITTEE ON Finance & Claims

BILLS BEING HEARD TODAY: SB 32 SB 36 SB 38 SB 39 HB 4 HB 8

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Check One

Name	Representing	Bill No.	Support	Oppose
ROXANN LINCOLN	myself	36		X
SCOTT ST. ARNAULD	A.F.S.C.M.E.	HB-4 HB-8		X
Walt Dupea	Self	SB 32	X	
Richard E. Mauzey	Self	SB 32	X	
John Rice	Montanans for B.G.	SB32	✓	
G.W. NEIHART	UNITED WE Stand	SB32	✓	
Marlon Bates	UWSA - Mt for Bet. Gov.	SB 32	✓	
Robert McAtee	Montanans for Better Govt	SB32	✓	
Betty Natelson	Montanans for Better Gov't	SB 32	✓	
Alan Davis	DWRC	SB32	✓	
GARY D. HANCOCK	(UNITED We Stand) Myself	SB-32	✓	
Laurie Kottrick	Montana Coalition Mt (Self)	SB-32	✓	
Walt KERO	MONTANANS for BETTER GOVT	SB-32	✓	
Judy Bolton	" " " " "	SB 32	✓	

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DATE 12/8/93

SENATE COMMITTEE ON Finance Claims

BILLS BEING HEARD TODAY: SB 32 36 38 39

HB 4, 8

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Check One

Name	Representing	Bill No.	Support	Oppose
Pamela Webb	Mont. For Better Govt	SB 32	X	
Paul G. Newby	TEAM	SB 32	X	
John R. Stevenson	Mont For Better Govt	SB 32	X	
[illegible]	MT FOR BETTER GOV'T	SB 32	X	
Marshall Dale	UWSMA	SB32	X	
Andy Olsen	Mont. For Better Gvt.	SB32	✓	
Anna L. "Leke" Keating	self	SB 32	X	
Randall F. Cleaves	Mont. For Better Gvt.	SB32	✓	
Jack Moran	Mont. For Better Govt	SB32	✓	
J. Briggs	Mt. Agency [illegible]	SB39	X	
Jim Smith	Mt. Retail Assoc.	SB 39	X	
Wes Gibbs	self and Mt. For Better Gvt	SB 32	X	

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DATE 12/8/93

SENATE COMMITTEE ON Finance Claims

BILLS BEING HEARD TODAY: SB 32 SB 36 SB 38 SB 39 HB 4 HB 8

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Check One

Name	Representing	Bill No.	Support	Oppose
NICHOLAS BUGOSH	CITIZEN	36	✓	
Debbie Walker	Citizen	36	✓	
Linda Lyndes	Citizen	36	✓	
Shirley Quinn	citizen	36	X	
CHRIS BAILEY	CITIZEN	36	X	
Erin Martin	Citizen	36	X	
Terry Webster	State Worker 2 Kids 1 Dog Get a life	36	+	
JACK PASKVAN	LABOR	36		✓
Mike Dahlem	MFSE	HB 4/18 SB 34		✓ ✓
Steve Johnson	State	36		✓
MARK CRESS	Dept of Admin	36		✓
MARK Cress	" "	32	✓	
BRUCE MORRIS	MT. STATE COUNCIL of CARPENTERS	HB 4 HB 8		✓
" "	" " " "	SB 36		✓

VISITOR REGISTER

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