

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on January 10, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger Debruycker (R)
Rep. Gary Feland (R)
Rep. Marjorie I. Fisher (R)
Rep. Don Holland (R)
Rep. John Johnson (D)
Rep. Mike Kadas (D)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. William T. "Red" Menahan (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: Rep. Royal Johnson.

Members Absent: None.

Staff Present: Taryn Purdy, Senior Analyst
Marjorie Peterson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 29, HB 43
Executive Action: HB 43 DO PASS

HEARING ON HB 29Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, opened the hearing on HB 29, entitled "An Act Allowing Department of Commerce to Deposit 16 Percent of Public Contractor Fees in a Special Revenue Account." He stated that the fees from public contractors' licenses add \$42,592 to the general fund each year. This bill would enable 16 percent of those fees to be used for administration of that program. At these budget times, it is appropriate for people to get something from what they are paying and that is what this bill represents. There are two amendments for this bill. One comes from the Department of Revenue and attempts to clarify the disposition of these fees; and the other amendment would add another 14 percent of the public contractor fees to an account for administration of a construction industry educational campaign for the public.

Proponents' Testimony:

Steve Meloy, Bureau Chief of the Licensing Bureau at Department of Commerce, Helena, stated that this bureau has been administering this program for six months. It was moved from the Department of Revenue to the Department of Commerce to administer the licensing acts for the contractor's profession. The licensing act at the present time is an unfunded mandate and **REP. HARPER** is trying to correct this, so we can use the funds raised by these fees to offset the costs of administering this program.

Chris Racicot, Executive Director of the Montana Building Industry Association (MBIA), Helena, stated that a number of members of MBIA participate in this program and feel it is an excellent bill. They have proposed the amendment to divert 14 percent of their fees to a special revenue account to educate the public as to their liabilities during construction.

Char Maharg, Department of Revenue, Helena, sees this bill as an opportunity to put some clarification in the law. She said that licensing was moved from the Department of Revenue to the Department of Commerce; that there is language which required the contractors' fees tax to be deposited in the general fund and this amendment would clarify when a contractor takes a credit for personal property tax, individual income tax or license tax, the balance remains in the general fund. The first three amendments clarify this action and the fourth amendment states that all remaining money after use of credit must be deposited in the general fund.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. WILLIAM WISEMAN, HD 41, Great Falls, asked for clarification about the unfunded mandate. **Mr. Meloy** stated his bureau was entirely funded by special revenue. The program has survived the last three or four years from special building permits and fees which have subsidized the building contractors' program. They need this bill to operate this program. The contractors are getting nothing back from the fees they are paying at this time and this bill would change that.

REP. WISEMAN asked why this fee is a concern. He stated that as an insurance salesman he pays his annual fee. **Mr. Meloy** answered that what he gets from his fee is regulation. The public contractors would like their fees to pay for regulation and guidelines also, along with educating the public.

REP. BETTY LOU KASTEN, HD 99, Brockway, asked if the 16 percent would be lowered to 14 percent as stated on the amendment, or if this is an additional 14 percent. **Mr. Meloy** explained that the 16 percent and 14 percent would be added to equal 30 percent earmarked from the general fund. **REP. KASTEN** then further clarified that the 16 percent would be used for administration and 14 percent would be used for an educational campaign for the industry. She then asked how much money is involved. **Mr. Meloy** answered that 30 percent of the expected \$226,000 would equal about \$80,000.

REP. MARJORIE FISHER, HD 80, Whitefish, asked what the balance would be used for. **Mr. Meloy** answered that it goes into the general fund.

REP. MIKE KADAS, HD 66, Missoula, stated that, after looking at the statutes, a public contractor only needs a license if he is involved in doing public projects greater than \$5,000 and that the charge is \$250.

Karen Schrader, Department of Commerce, Helena, specified the three classifications of license: (1) Class A for \$250 fee, allows the contractor to bid on jobs for an unlimited amount; (2) Class B for \$150 fee, allows the contractor to bid on jobs up to \$100,000; and (3) Class C for a \$100 fee, allows the contractor to bid on jobs of \$25,000 to \$100,000. **REP. KADAS** then asked what the public contractor gets for these licenses. **Ms. Schrader** answered that the contractor is allowed to bid on his classification of projects and he must put his license number on his bid application. **Ms. Schrader** also said that if there is a complaint to the Dept. of Commerce, the contractor can lose his license, but there have been none to date.

REP. KADAS asked **Mr. Meloy** about the 16 percent (\$42,000) per year that would not go to the general fund -- who would be paying for the services being provided. **Mr. Meloy** answered that the services are currently being paid by building permit fees from

the Building Codes Division. He stated they were here today to make sure the program stays in the Professional Occupational Licensing Bureau. There would be a \$42,000 decrease from the general fund and \$42,000 put into the special revenue fund. **REP. KADAS** requested **Mr. Meloy** to find out if the fees from Building Codes Division would be reduced if they no longer had to subsidize this program.

REP. KADAS asked what would happen in the bill is killed. **Mr. Meloy** answered that it would go back to Building Codes Division and they would have to do what they have done in the past. **REP. KADAS** then asked about the additional 14 percent amendment. **Chris Racicot** stated it would make the program more useful by educating the consumer on possible liabilities, inspections, insurance and contractor references. There would be an educational brochure distributed to the public.

REP. JOE QUILICI, HD 36, Butte, stated that we're taking 16 percent of the public contractors' fees to administer this program. When a contractor pays that \$250, the state checks into the background of the contractor and makes sure he is competent to do the job he has bid on. In essence here, you are protecting the consumer, you are protecting the general contractor by making sure we have reputable contractors doing public jobs.

REP. ERNEST BERGSAGEL, HD 95, Malta, clarified that the fee was for public contractors only in the state of Montana and that part of the fee is to educate the public.

REP. WILLIAM WISEMAN, HD 41, Great Falls, stated that the legislature is trying to stop special funds. If he understands this correctly, we're creating two special funds.

REP. HARPER specified there are different categories of special funds. Building fees and public permits are not referred to the general fund. We earmark income tax for school educational programs and in many cases, this gives greater flexibility for the legislature to earmark programs. In this case, the contractors would be able to see where some of their money goes.

REP. WISEMAN asked **Mr. Racicot** if the program went through would there be a checklist for a consumer to use to keep "out of hot water." **Mr. Racicot** stated that there was a contact association or government agency for state or local projects when you hire a public contractor.

REP. STEVE VICK, HD 31, Belgrade, asked why this would take a percentage of the public contractors' fees to educate the public about all contractors in general. **REP. HARPER** stated that there wouldn't be a new tax on all other contractors who didn't want to bid on these projects; only contractors who want to bid would have to be licensed. Other contractors would receive the benefits from this program, also. **REP. VICK** asked what the education program would consist of. **REP. HARPER** answered that

the consumer doesn't know enough about the work to check if their projects are being done properly. This would educate them and offer some guidelines to use. **REP. VICK** then asked **Mr. Racicot** why the MBIA took on this project. **Mr. Racicot** stated that technically this was the building industry's money, that many of the contractors who participate in this program are public contractors and it is the only program dealing with the building industry. It is a professional association involved in a cooperative effort between local and state government as well as private organizations.

REP. ROGER DEBRUYCKER, HD 89, Floweree, asked **Mr. Racicot** if he represented the contractors and he answered no. He represents the Montana Building Industry Association and those contractors build smaller projects. The public contractors build highways and bridges. **REP. DEBRUYCKER** stated that when he returns home, there is concern in his district that the rule-making authority turns out different than what the legislature had intended. He reiterated that the Department of Commerce will adopt the rules to implement this bill and administer this campaign and asked **Mr. Racicot** if he was comfortable with that. **Mr. Racicot** answered yes, he would work with the people in the department.

REP. WISEMAN asked about the costs stating that about \$80,000 per biennium would not be going into the general fund. **Mr. Racicot** answered that it would be about \$27,000 to \$30,000 per year for the educational program to develop and distribute the brochure, as well as some office charges.

Closing by Sponsor:

REP. HARPER closed by stating that if we are going to continue to charge fees to license the public contractors, that we should administer the program or it would just be another tax that went into the general fund. These programs have merit as many professionals have boards that regulate them. This bill is just a program to give the contractors something back for their money.

HEARING ON HB 43

Opening Statement by Sponsor:

REP. BILL TASH, HD 34, Dillon, opened the hearing on HB 43, entitled "Authorizing a Budget Amendment for Revenue Resulting from the Sale of Goods Produced or Manufactured by Industries Program of an Institution in Department of Corrections and Human Services." He handed out a sheet on the examples of previous requests for budget amendments and stated that he had the opportunity to sit on the Corrections and Human Services Board during the interim. He is aware of the spending needs that occur, stating that the prison ranch had to buy hay one year as

there had been too much rain and it was needed to keep milk production up at the prison ranch. The ranch also had to upgrade a lagoon to keep in compliance with safety standards and that issue was dealt with in the special session. He referred to the bill pointing out the changes on lines 26 and 27 which would allow fiscal oversight and control.

Proponents' Testimony:

REP. MARJORIE FISHER, HD 80, Whitefish, did not testify, but passed out an amendment she said she would introduce. EXHIBIT 1.

Ross Swanson, Prison Manager, would like consideration of this bill to allow flexibility in the program.

JanDee May, Department of Justice, Helena, stated that the amendment prepared by REP. FISHER would authorize the Justice Department's Legal Services Bureau to pay possible litigation costs, which could amount to \$53 an hour from the Attorney General's office as well as the cost of depositions and expert witness fees. This amendment would simply put us on the "playing field." EXHIBIT 2.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

REP. TASH closed by stating that this bill would allow flexibility to apply proper management to the prison ranch and that this is a good rehabilitation program. The workers on the ranch are in the honors program and have to earn the chance to work there.

EXECUTIVE ACTION ON HB 43

Motion: REP. RED MENAHAN MOVED HB 43 AS AMENDED DO PASS.

Discussion:

CHAIRMAN ZOOK noted that there was some concern by the fiscal analyst's office that this situation is occurring in other

agencies besides the Justice Department and we may be opening floodgates in this issue.

Taryn Purdy, Principal Fiscal Analyst, raised that issue since she had not seen the amendment prior to it being presented today. She said the committee may wish to consider whether this was a unique situation that warranted changing the budget amendment law.

REP. KADAS stated his concern, also. In looking at the law, he said, other potential kinds of budget amendments could be additional federal revenue and additional tuition which are pretty big items. Smaller amendments could be the Montana Historical Society in relatively unique circumstances. The law that is being amended here is brand new since it was just adopted last session. **REP. KADAS** stated that there would be other unique circumstances heard before this committee and it might be helpful to review how budget amendments work for those few who are new. There could be a budget amendment for an agency that is able to receive non-general fund revenue after the close of the session. For a budget amendment to happen, the first criteria is that the legislature has no prior knowledge of its possibility in that the federal government could come up with a new program and an agency could submit a budget amendment to try to implement that program. They then submit the amendment to the budget office and the fiscal analyst's office. The budget amendment has to be approved by the approving authority who, in most cases, is the budget office but, in the case of the university system, it's the Board of Regents; in the case of elected officials, it's the elected officials who oversee that particular office. There is a timeframe of three months after initial approval of the legislative finance committee. If they have not submitted a report in that period of time, the approving authority may approve that budget amendment without recommendation; even if we disapprove it, it can still go into effect.

REP. ZOOK clarified that if the finance committee disapproves it, it can still go into effect in 90 days; if approved, it goes into effect immediately.

REP. GRADY stated that this bill addresses different concerns. He likes the bill and feels that the ranch needs flexibility to use their cash, but the bill seems different than the amendment. He asked **REP. MENAHAN** to move to vote on the amendment first and then the bill.

REP. MENAHAN withdrew his motion.

Motion: **REP. GRADY MOVED THAT HB 43 DO PASS.** **REP. COBB** moved the amendment.

Discussion:

JanDee May stated that there were times when revenue comes in above and beyond the appropriated level, which means we have to respond with similar spending authority. There are two expenses that are billed when legal services are used. If you are a client, the charge may be \$53 per hour; if other expenses are incurred, i.e., depositions or paying expert witnesses, these additional costs are not projected. Last year the Justice Department had to ask for additional spending authority to pay bills which totaled more than \$31,000.

REP. KADAS asked what happens when they run out of money.

Ms. May answered that they were able to deal with it last year under their vacancy savings. Another avenue would be for the clients to pay these charges directly, but it is awkward process.

REP. GRADY stated his concern that the amendment might open the door for other agencies. The amendment doesn't really address the emergency situations at the prison ranch. He also felt that they would probably see quite a few more amendments on this bill before it is done.

REP. KADAS stated he was sensitive to **REP. GRADY'S** concerns. He doesn't think the committee should make a judgment based on what might occur, that this agency is charged with representing the state and it is important they do it as effectively as they can. He also reminded the committee that budget amendments don't build the base -- if there is a budget amendment during the interim, that is taken out of the base before the budget is analyzed the next time.

REP. VICK asked **CHAIRMAN ZOOK** to clarify the budget amendment process, stating that if it is denied and the agency waits the 90 days they could get it anyway. **REP. ZOOK** said that budget amendments are supposed to be for unexpected monies that come into a department, i.e., federal funds, and that there is no authority for those. The Departments of Health and Human Services and SRS have a lot of that.... it is basically unexpected money or additional money that wasn't expected to come in during a certain timeframe. That's really what it is designed for. When money comes into a department, they go through the approving authority. If the budget office is the approving authority and **Dave Lewis** gives his stamp of approval then the next time the finance committee meets, it is presented to them. The finance committee can turn it down, but that's not the end. If the administration desires to go ahead with that, they wait 90 days after a negative action by the finance committee and then use those funds. The finance committee's job is to make a recommendation if the budget amendment meets the criteria, and this is the criteria we are looking at today.

REP. MENAHAN explained that another side of the issue is that the administration has the guidelines and the agencies are not going

to go against the budget director or the Governor because they work for him. If the Governor's office okays it and the legislature turns it down, the administration can follow or not. That's why I made the motion. It's the Governor's people and they're running the show and the people elected them to do their jobs.

REP. ZOOK said it sounded to him that they had expended more than was appropriated to spend in a certain area.

Ms. May answered that the Justice Department would have to ask clients to pay the expert witness costs and that it is a cumbersome process.

REP. QUILICI then asked **Ms. May** who some of the clients were. She said most clients are other state agencies, school districts; any agency that does not have their own legal council or needs an area of expertise. **REP. QUILICI** stated that one of the agencies the Justice Department is advising now is the Commissioner of Political Practices.

REP. ZOOK stated that what this committee is doing with this bill and the amendment is changing the requirements for a budget amendment.


Taryn Purdy clarified the reasons these two situations are before the committee are that neither of them would be legal if they were requested. As **REP. ZOOK** stated, the finance committee reviews every budget amendment to see that it meets all the legal criteria. If either the prison or the Justice Department were to request a budget amendment for these two purposes, the LFA would raise an exception saying we do not believe these meet the legal criteria. The finance committee would then make a recommendation and at that point, that is when the approving authority could approve the amendment. There are four approving authorities: (1) judiciary for the Supreme Court; (2) legislative committee for legislative offices; (3) Board of Regents for the university system; and, (4) the Governor for those elected officials not specifically mentioned in the statute.

Vote: Motion that Amendment Do Pass failed 8 - 9, with **REPS. GRADY, BERGSAGEL, DEBRUYCKER, FELAND, HOLLAND, MCCANN, VICK, WISEMAN, AND CHAIRMAN ZOOK** voting no. **EXHIBIT 3.**

Vote: Motion that HB 43 DO PASS carried 9 - 8, with **REPS. BERGSAGEL, COBB, DEBRUYCKER, FELAND, FISHER, MCCANN, VICK, AND CHAIRMAN ZOOK** voting no. **EXHIBIT 4.**

ADJOURNMENT

Adjournment: 4:45 p.m.


TOM ZOOK, Chairman


MARJORIE PETERSON, Secretary

TZ/mp

HOUSE OF REPRESENTATIVES

Appropriations

ROLL CALL

DATE 1-10-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Marj Fisher	✓		
Rep. Don Holland	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson			✓
Rep. Mike Kadas	✓		
Rep. Betty Lou Kasten	✓		
Rep. Matt McCann	✓		
Rep. Red Menahan	✓		
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		



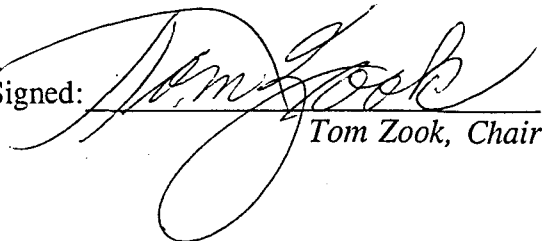
HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Appropriations report that **House Bill 43** (first reading copy -- white) **do pass**.

Signed:


Tom Zook, Chair

Committee Vote:
Yes 9, No 8.

091023SC.Hbk

EXAMPLES OF PREVIOUS REQUESTS FOR BUDGET AMENDMENTS

-In FY-94 the Prison Ranch had a need for a budget amendment for dairy quality hay, work on the Dairy sewer lagoon and Powell Reservoir. This items were not anticipated to occur and as such no budget authority was available. Due to the current requirements for budget amendments we could not comply and as a result a budget amendment could not be done. The effects of not being able to get additional budget authority could have been drastic to the Prison Ranch. Existing hay harvested was not satisfactory to meet dairy production needs and herd health issues. Improvements on dairy sewer lagoon were needed in order to comply with Dept. of Health issues and to remain in operation. Powell Reservoir work was needed in order to comply with DNRC Dam Safety Rules and to permit this reservoir used for the Ranch 7 irrigation fields. It happened that the Legislature was in session and that we were able to get additional appropriation authority added onto our original appropriation authority and thus was able to meet our needs.

-In FY-92 we were able to request budget amendments and we had a number for both the Prison Ranch and the Industrial Complex. These budget amendments were for additional spending authority in both programs and for 4 FTE in the Industrial Complex. Without the additional authority for the Industrial Complex we would have had to shut down or cutback on operations which could have had a detrimental effect to this program. Customer orders would have been delayed, less inmates would have been employed and business decisions made which would not have been in the best interests of the program.

-From FY-83 thru FY-92 various budget amendments had been submitted and approved with a positive impact on our programs. The ability to utilize the budget amendment process during these years has contributed to the growth and success of the various MSP programs as it allowed flexibility to changing conditions and events which occurred that could not always be anticipated during the legislative budget process.

EXHIBIT 2
DATE 1-10-95
HB 43

Amendment to House Bill 43
Requested by Department of Justice

Prepared by
Beth Baker, Department of Justice
January 10, 1995

Line 28

After: "services;"

Strike: "or"

Insert:

"(vii) revenue resulting from the provision of legal services
by the agency legal services bureau within the department of
justice; or"

Renumber: remaining subsection

HOUSE OF REPRESENTATIVES

EXHIBIT 3
DATE 1-10-95
HB 43

ROLL CALL VOTE

Appropriations Committee

DATE 1-10-95 BILL NO. 43 ~~NUMBER~~

MOTION: Amendment to HB 43 failed 8-9.

NAME	AYE	NO
Rep. Tom Zook, Chairman		✓
Rep. Ed Grady, Vice Chairman, Majority		✓
Rep. Joe Quilici, Vice Chairman, Minority	✓	
Rep. Beverly Barnhart	✓	
Rep. Ernest Bergsagel		✓
Rep. John Cobb	✓	
Rep. Roger DeBruycker		✓
Rep. Gary Feland		✓
Rep. Marj Fisher	✓	
Rep. Don Holland		✓
Rep. John Johnson	✓	
Rep. Royal Johnson		
Rep. Mike Kadas	✓	
Rep. Betty Lou Kasten	✓	
Rep. Matt McCann		✓
Rep. Red Menahan	✓	
Rep. Steve Vick		✓
Rep. Bill Wiseman		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Appropriations Committee

EXHIBIT 4
DATE 1-10-95
HB 43

DATE 1-10-95 BILL NO. 43 NUMBER X

MOTION: DO PASS 9-8.

NAME	AYE	NO
Rep. Tom Zook, Chairman		✓
Rep. Ed Grady, Vice Chairman, Majority	✓	
Rep. Joe Quilici, Vice Chairman, Minority	✓	
Rep. Beverly Barnhart	✓	
Rep. Ernest Bergsagel		✓
Rep. John Cobb		✓
Rep. Roger DeBruycker		✓
Rep. Gary Feland		✓
Rep. Marj Fisher		✓
Rep. Don Holland	✓	
Rep. John Johnson	✓	
Rep. Royal Johnson		
Rep. Mike Kadas	✓	
Rep. Betty Lou Kasten	✓	
Rep. Matt McCann		✓
Rep. Red Menahan	✓	
Rep. Steve Vick		✓
Rep. Bill Wiseman	✓	

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Appropriations COMMITTEE BILL NO. HB 29
 DATE 1-10-95 SPONSOR(S) Harper, Tash AB 43

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Chris Racicot	mBIA	X		X
JD May	Attorney General	43		X
CMaharg	DOR	29		
Steve Meloy	Dept of Comm	29		X
Faun Sahred	Dept Com	29		X
Brenda St. Clair	" "	29		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.