

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON GENERAL GOVERNMENT & TRANSPORTATION

Call to Order: By CHAIRMAN ED GRADY on January 6, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Edward J. "Ed" Grady, Chairman (R)
Sen. Thomas A. "Tom" Beck, Vice Chairman (R)
Rep. Gary Feland (R)
Sen. Eve Franklin (D)
Rep. Joe Quilici (D)

Members Excused: none

Members Absent: none

Staff Present: Skip Culver, Legislative Fiscal Analyst
Lorene Thorson, Legislative Fiscal Analyst
Terri Perrigo, Legislative Fiscal Analyst
Shirley Benson, Office of Budget & Program Planning
Dan Gengler, Office of Budget & Program Planning
John Patrick, Office of Budget & Program Planning
Rosa Fields, Committee Secretary

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

Committee Business Summary:

Hearing: -Secretary of State's Office supplemental request
-Clerk of Court supplemental request
-Commissioner of Political Practices supplemental request
-McCarty Farms supplemental request

Executive Action: -Fixed Costs global motion
-Inflation/deflation global motion
-Secretary of State's Office supplemental request
-Commissioner of Political Practices supplemental request
-Clerk of Court supplemental request

{Tape: 1; Side: A; Approx. Counter: 000; Comments: This meeting was recorded on two 90-minute audiocassette tapes.}

EXECUTIVE ACTION ON
Fixed Costs and Inflation/Deflation

Discussion:

Ms. Terri Perrigo, Legislative Fiscal Analyst (LFA), discussed the subject of fixed costs. Once the budgets for the programs that are funded by fixed costs are set, projected expenditures vs. fixed costs revenues will have to be compared. At this point it will be determined whether or not to adjust fixed costs.

CHAIRMAN ED GRADY wanted to know what happened to the fixed costs if a new proposal which has them figured in is not accepted. **Ms. Perrigo** said the fixed costs rates are sufficient to collect enough funding to support all the new proposals. If some are not funded, more collections will be coming in than will be needed. In some cases this could increase a projected ending fund balance beyond the 45-day working capital reserve. At this point the Legislature would need to decide what to do. She reiterated that fixed costs needed a "starting point" from which to be adjusted.

In response to **REP. TOM BECK's** question about inflation rates, **Ms. Perrigo** stated that any adjustments to inflation/deflation would not affect the base budget. If the legislature did change the existing inflation/deflation rates, it would be difficult for the LFA to determine for each program what the new 1997 biennium budget would be until later in the session. She suggested that a motion could be made to allow for approval of the adjustments as shown in the LFA Budget Analysis Book, with these numbers to be adjusted later in the session to accommodate committee actions.

CHAIRMAN GRADY stated that two motions would be appropriate: one on fixed costs and one on inflation/deflation. He cautioned the committee that the House of Representatives planned to stick as close as possible to the 1994 base level when determining the 1996-7 budgets. Any budget increases made in this subcommittee will be subject to removal in the full Appropriations Committee.

SEN. BECK suggested that possibly a program could be eliminated as a mechanism to pay for fixed costs in other programs.

Motion: **REP. QUILICI** MOVED TO GLOBALLY ACCEPT THE FIXED COST RATES AS INCLUDED IN THE EXECUTIVE BUDGET.

Discussion:

Ms. Perrigo clarified that the amount of fixed costs included in the Executive Budget is about \$34 million. By approving this motion, the subcommittee would be approving the "rates that are out there." **REP. QUILICI** pointed out that as the agency budgets are heard, there will be opportunities for the agencies to justify the fixed cost increases being requested. **Ms. Perrigo** reminded the committee that although this committee is tasked with globally approving the fixed costs as presented in the

executive budget, each subcommittee would still have to make a positive motion to add those fixed costs into each agency budget. If there is no positive action to add them in, these costs will occur anyway.

Mr. Dan Gengler, Office of Budget and Program Planning (OBPP), said the LFA could go back and look at the extent to which rates could be reduced after the agency budgets are voted on; i.e., today's tentative approval could be "updated."

Vote: The question was called for and the motion carried with one opposed.

Motion/Vote: REP. QUILICI MOVED TO ACCEPT THE PROJECTED \$1.4 MILLION REDUCTION TO THE EXECUTIVE BUDGET RESULTING FROM THE PROPOSED INCREASE IN COMPUTER PROCESSING AND LONG DISTANCE DEFLATION RATES IN FISCAL 1997. The motion carried.

Discussion:

Ms. Perrigo then discussed the language proposed to be inserted into the General Appropriations Act (HB 2) by the executive, which specifies the timelines by which all the information regarding the next biennium's fixed costs need to be provided to the OBPP and the LFA. It also "legitimizes" the cooperation that needs to happen between the two offices. **Mr. Gengler** added that the language provides for guidance for the development of fixed costs, and is not a change from the current procedure.

Motion/Vote: REP. QUILICI MOVED TO ACCEPT THE LANGUAGE PRESENTED BY MS. PERRIGO. The motion carried unanimously.

EXECUTIVE ACTION ON SECRETARY OF STATE'S OFFICE
Supplemental Budget Request

Ms. Perrigo presented a handout which showed the supplemental budget requests before this committee. **EXHIBIT 1**

{Tape: 1; Side: B; Approx. Counter: 000; Comments: n/a.}

Ms. Perrigo explained that supplementals affect the state's ending fund balance for FY95 but do not affect the coming biennium's budget. **Mr. John Patrick, OBPP,** explained that the Secretary of State's Office supplemental request was a proprietary fund supplemental and would not affect the general fund. In response to REP. QUILICI'S question about what would happen if the supplemental was not approved, **Ms. Perrigo** said that the Secretary of State would have to cut back operations elsewhere in his budget because he would not have the additional \$88,000 in spending authority being requested. It was pointed out that this committee's actions would only be recommendations to the full Appropriations Committee, which had the final decision.

Ms. Perrigo explained proprietary funding to **SEN. BECK**. The Secretary of State's office sells services such as microfilming and records storage to other state agencies. In addition they sell information from corporate records to the public. The revenue received from these sales is deposited into a proprietary account and used for operations. There is sufficient fee revenue available in the proprietary account to pay for the costs contained in the supplemental request, but they need additional spending authority.

Surplus funds in excess of what is expected to be needed the following year in the proprietary account revert to the general fund. The Secretary of State's office transferred above \$440,000 to the general fund at the end of FY94.

In response to a question about limitations on profit from **REP. GARY FELAND**, **Ms. Perrigo** said statute requires that the Secretary of State's office collect only enough fee revenue to pay for the operation of the records management function. However, there is no such limitation on the majority of fees collected by the Business and Government Services function.

Motion/Vote: **SEN. EVE FRANKLIN** MOVED TO RECOMMEND TO THE APPROPRIATIONS COMMITTEE THAT THE SUPPLEMENTAL APPROPRIATION AS OUTLINED BY THE SECRETARY OF STATE BE ACCEPTED. The motion carried unanimously.

EXECUTIVE ACTION ON COMMISSIONER OF POLITICAL PRACTICES
Supplemental Budget Request

Mr. Ed Argenbright, Commissioner of Political Practices, explained that his office is requesting two supplementals. The first request is for implementation of the provisions of Initiative 118 (I-118), and he pointed out that the fiscal note had been attached to this initiative when it was voted on. His staff, which consists of himself and two others, handle all the duties of the office. He submitted that their budget is "lean and mean," and the impact of I-118 is going to be substantial. The other request is for \$18,000 for unanticipated legal expenses.

The request represents the costs of remodeling to house the additional two staff members which are included in the request. An additional two staff members are being requested in the 1997 biennium request. He stressed the necessity of being able to implement I-118, which he added he had not had anything to do with the writing of. **CHAIRMAN GRADY** pointed out that the voters had also voted against any tax increases.

In response to **REP. QUILICI**, **Mr. Argenbright** said I-118 had gone into effect January 1, 1995. **REP. QUILICI** suggested that the committee might build the expectations of the effect of I-118 into the 1997 biennium budget for the Commissioner's office

rather than doing a \$105,000 supplemental. He questioned the ability to determine how much money was needed when the initiative had only been in effect one week. **Mr. Argenbright** replied that the supplemental approach was used because the effective date is in FY95, and the office is already unable to meet its obligations to check financial reports within ten days. The supplemental addresses the reorganization which will be required to implement I-118 without litigation.

REP. QUILICI pointed out that the Legislature had made changes to initiatives in the past such as the gambling initiative, passed in 1971. **SEN. BECK** suggested that it might be less expensive to double the legal expense supplemental request to \$36,000, and get rid of the \$98,000 being requested for I-118. **Mr. Argenbright** said if the provisions of I-118 are changed by the Legislature so that his office is not impacted, then this option might be considered. However, for the present, the law is there and he is reacting to that.

SEN. BECK suggested the committee postpone its action on the supplemental until it is determined whether or not I-118 will be amended.

Motion/Vote: **SEN. BECK MOVED TO APPROVE THE LEGAL EXPENSES PORTION OF THE SUPPLEMENTAL FOR \$18,000. The motion carried unanimously.**

Discussion:

REP. QUILICI asked **Mr. Argenbright** what his office wouldn't be able to do if the supplemental funding request to implement I-118 was not approved. **Mr. Argenbright** said they will need to inform people about what the law says and they will not be able to do this kind of thing.

At present they are addressing the subject of what happens to candidates' surplus monies and the form that could be used to keep track of that. With the passage of I-118, the funds can no longer be used in subsequent campaigns, nor can the monies be converted into anything that would personally benefit the candidate. Rulemaking will need to be done in this regard, which will require funding. Activities such as rulemaking and re-doing the forms would have to be "put on hold" if the supplemental is not approved.

Currently his office has 3.25 FTE and he has had to pay overtime for them to keep up. The part-time position (0.25) has not been filled due to the unavailability of qualified applicants who are willing to work sporadically and on short notice. His hope had been that he could hire someone who could do the work in their spare time or as needed but his decision was to pay his staff overtime.

REP. QUILICI wanted to know what level of funding **Mr. Argenbright** felt was necessary to implement I-118. He replied that the communications and printing budgets could have the personal services taken out, as well as the added costs for computer fees, rent, office equipment, remodeling, etc. Probably money would remain for printing and communications and possibly \$4,000 for hearings.

CHAIRMAN GRADY wanted to know why the rent was going up. **Mr. Argenbright** explained that they do not pay for the use of the basement in their current building. If they remodel, it increases the square footage of the space for staff, the rent would go up.

Motion: **REP. QUILICI** MOVED TO APPROVE THE SUPPLEMENTAL REQUEST AT THE LEVEL OF \$16,750.

Discussion:

REP. QUILICI said this motion would at least enable the Commission to get the process going, as well as avoid litigation. **CHAIRMAN GRADY** commented that I-118 would cause this budget to double, and he submitted that laws that would have such a major impact should be enacted at the beginning of the budget cycle. **REP. QUILICI** said he felt not approving supplemental funding would prevent **Mr. Argenbright** from implementing the wishes of the people.

SEN. BECK wanted to know what the amendment for the \$7,000 (on top of the original \$98,000 request in **HB 3**) was for. **Ms. Perrigo** explained that the remodeling costs had come in higher than projected. **SEN. BECK** wanted to know if the rulemaking and re-doing of forms could be postponed until FY96. **Mr. Argenbright** said he felt his office would be remiss if it didn't at least try to clarify some of the terms used in I-118. If the Legislature wants to adjust the terms of I-118 to reduce the cost of implementation, it could provide for using the primary elections as one cycle and the general elections as another one, which would eliminate some questions his office is having to deal with. He stressed that he was not advocating such a change, but if no changes are made, the amount of funding being requested is what he will need.

REP. QUILICI said he set the level of funding at \$16,750 to provide for costs of \$4,500 in printing, \$4,250 for communications and \$8,000 for hearings.

CHAIRMAN GRADY suggesting approving the computer fee, printing and communications costs at about \$11,730, which he felt might be sufficient. **Mr. Argenbright** said the office equipment being requested would be for computers for the additional staff.

REP. FRANKLIN sympathized with **Mr. Argenbright's** position. She said ultimately the Legislature would need to respond to what the

voters have asked for. She rose in support of **REP. QUILICI'S** motion as a means of showing good faith that this was being begun. However she expressed reservations about approving the increases in the 1996-97 budget of the Commission's office before further study.

SEN. BECK said the personal services in the supplemental appeared to be enough to fund 2.0 FTE for a whole year's time. **Mr. Argenbright** said the FTE had been figured at a grade 11 and a grade 12.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

Vote: The question was called for and the motion carried.

EXECUTIVE ACTION ON
Clerk of Court Supplemental Request

The committee then considered the Clerk of Court supplemental funding request. **Ms. Perrigo** explained some changes. The original request was for \$11,000, but has now been reduced to a \$2,500 general fund request. The office of the Supreme Court Administrator has determined that unexpended funds from fiscal 1994 will be used to pay the \$8,500 associated with the early retirement costs that was previously being requested through a supplemental.

Discussion:

SEN. FRANKLIN wanted to know the source of the \$8,500. **Mr. Patrick Chenovick, Administrator of the Court**, explained it was reverted money from FY94 from about five different appropriations. **Ms. Perrigo** said this money is in the general fund at present. Agencies have up to one year after the close of the fiscal year to go back and charge to the prior year's appropriation, as long as it is a valid obligation from that prior year. Since the ending general fund balance is used to calculate what the upcoming starting biennium balance will be, this amount will be reduced by \$8,500. She added that agencies went through this process frequently throughout the year.

SEN. FRANKLIN wanted to know approximately how much adjustment in the budget occurs from taking back reversions. **Ms. Perrigo** clarified she has seen similar actions occur in numerous agency budgets and often it is not general fund. **Mr. Patrick** said this is a common occurrence although it wasn't that common to have major transactions.

REP. QUILICI asked if reversions weren't one way the Legislature looks for revenue when balancing the budget. **Mr. Patrick** said as far as reversions being a factor in beginning and ending fund balances, they were. **Mr. Chenovick** said there are procedures in statute that dictate what can be paid out of reverted funds.

Usually what is charged against a reverted appropriation is a minor bill that was not submitted before the end of the fiscal year. In the eight years he has been with the Court, they have not spent more than \$5,000 in total out of reverted funds.

In response to **SEN. FRANKLIN, Mr. Ed Smith, Clerk of the Supreme Court**, said there are seven programs for the Judiciary and the Clerk of Court is one of them. Money is laid out for each program, and although it is possible to transfer money between the programs, it rarely happens.

CHAIRMAN GRADY wanted to know what the remaining \$2,500 in the request was for. **Mr. Smith** said the \$2,500 represents a shortfall in the personal services budget for FY94. There may be a reversion at the end of FY95 that could take care of it but there is no guarantee. **REP. QUILICI** wanted to know when it would be determined whether there would be reversions for FY95. **Mr. Chenovick** said it would be approximately 30 days after the end of the fiscal year.

In response to **SEN. FRANKLIN, Mr. Chenovick** explained that the Judiciary is a separate branch of government. If funds are going to be moved between programs, there needs to be a somewhat formal written request to the approving authority. This can occur any time during the fiscal year. There is a limit of 5% of the total budget which can be moved around like this. **SEN. FRANKLIN** asked **Mr. Smith** if he requested that he be provided the \$8,500 in FY94 from another Judiciary Program. **Mr. Smith** said it was never made in writing, but he talked with **Mr. Chenovick** about it in the context of contingency money that might be available for early retirements. At that point, he was told several thousand dollars had been given to the Judiciary and was available. However, the portion available for the Clerk was only about \$300. **SEN. FRANKLIN** said a mechanism needed to be put in place to prevent communications from breaking down in this sort of situation.

In response to **CHAIRMAN GRADY, Mr. Smith** said there were no vacancy savings built up in his program. Staff consists of **Mr. Smith** and three employees. During the current biennium there were reductions to his operating budget totalling approximately \$37,200, and with the reductions ordered by the 1993 Legislature this brought the operating expenses down to about \$32,000. On top of that, they found out at the end of June 1994 that there was a \$2,500 shortfall in personal services, so slowly but surely the amount of operating expenses was being whittled down to 20-30% of the original operating budget. **SEN. FRANKLIN** wanted to know at what point **Mr. Chenovick** realized that there was additional money to revert. **Mr. Chenovick** said this was determined after the end of the fiscal year, in December 1994.

REP. QUILICI concluded that more cooperation and coordination was needed between the Clerk's office and the Office of the Supreme Court Administrator.

Motion/Vote: SEN. FRANKLIN MOVED TO RECOMMEND THAT \$2,500 IN SUPPLEMENTAL APPROPRIATION AUTHORITY BE GRANTED. The motion failed on a vote of 3 - 2.

HEARING ON
MONTANA DEPARTMENT OF TRANSPORTATION
McCarty Farms Supplemental Request

Mr. Marvin Dye, Director, Montana Department of Transportation (DOT), spoke. Since the last meeting with this committee, additional information has been made available regarding the case. When the Governor became the first line of contact with the attorneys for the state on behalf of this case over a year ago, a policy was made to review all requests for dollars to be spent for consulting. This case has been reviewed from top to bottom. The state has a good case with reparations well in excess of \$100 million and considerable reductions in rates. Any wavering on the part of the state at this point would be a bad idea. He stressed continuing support of the business industry in the agricultural community.

At this point, all of the funds spent pursuing this case have been "loans" from the general fund. The department is now suggesting that the supplemental request be paid for with state special revenue funds out of the highway account. When the case is settled, repayment will be made. The department would like to explore the idea that these costs will continue to be paid from the special revenue fund and it is possible that the necessary authority will be found within the department, thus dispensing with the need for a supplemental. They would like to confirm this possibility and report back to the committee.

REP. QUILICI wanted to know where this money would be taken from. Mr. Dye said the expenditure would be charged against the stores' inventory. The money would come out of the Highway special revenue account, which would mean less would be available in that account for those needs. The money would be a loan. REP. QUILICI wanted to know if this would affect highway construction in any way. Mr. Dye said it should not cause any problems in the near future.

CHAIRMAN GRADY commended the agency for exploring the possibility of using money other than general fund to continue the case. He invited anyone wishing to testify on the McCarty Farms issue to speak.

Mr. Bob Stephens, Montana Grain Growers Association, spoke. They have been involved in this long, drawn-out case since the beginning. He expressed the wish that state support continue, because he felt the case will have a successful ending.

Maureen Cleary-Schwinden, Women Involved in Farm Economics (WIFE), asked that the committee support this continuing litigation.

Ms. Patricia (Pat) Saindon, Administrator, Transportation Planning Division, DOT, reviewed the history of the McCarty Farms litigation for **SEN. BECK**. Recently the case was sent back to the Interstate Commerce Commission (ICC) and the accounting method in which each party had to determine whether or not rates were unreasonable was changed to replace a flawed method. The ICC also required that McCarty set up a "railroad on paper" to determine what would happen to the rates if there was some kind of competition in the state to move grain.


Once the information was obtained and a railroad was developed, etc., the McCarty case filed its statement with the ICC in October 1994. At that time, the ICC set a progression order. Burlington Northern (BN) must reply to the state's filing by February 26, 1995 under this order. McCarty is given until May 27, 1995 to rebut BN's reply, and both parties have until the end of June to submit their legal briefs. The ICC will rule on this case sometime after the 26th of June.


In response to **REP. FELAND**, **Ms. Cleary-Schwinden** said the Public Service Commission has no authority over this case, which was originally filed with the ICC. **REP. FELAND** wanted to know if the \$1 million being requested had been spent yet. **Ms. Saindon** said \$315,000 of the request was spent in FY94. \$1 million is what they anticipate spending until the end of FY95. She agreed to give the committee a copy of the chronology of events in the case.

Mr. Dye pointed out that the funding was needed for special consultants: the attorneys handling the case are not charging the state or the class. Regardless of how many times the ruling is appealed, it will probably only involve attorney fees. With the supplemental included, more than \$2.8 million has been spent by the state on this case.

ADJOURNMENT

Adjournment: 11:46 a.m.


ED GRADY, Chairman


for DEBBIE ROSTOCKI, Recording Secretary

Note: These minutes were proofread and edited by Terri Perrigo, LFA.

EG/dr

SUPPLEMENTALS – FISCAL 1995
HOUSE BILL 3
GENERAL GOVERNMENT AND TRANSPORTATION

EXHIBIT 1
DATE 1/6/95
HB _____

<u>Agency/Supplemental</u>	<u>Funding</u>	<u>HB 3 Amount</u>	<u>Requested Amendments</u>	<u>Total</u>	<u>S/C Action</u>
<u>SECRETARY OF STATE</u>					
Business & Govt. Services	Proprietary	\$92,000		\$92,000	_____
<u>COMMISSIONER OF POLITICAL PRACTICES</u>					
Initiative No. 118	Gen Fund	98,329	7,016	\$105,345	_____
Legal Expenses	Gen Fund	18,000		\$18,000	_____
<u>DEPARTMENT OF TRANSPORTATION</u>					
McCarty Farms Litigation	Gen Fund	586,375	441,000	1,027,375	_____
<u>CLERK OF COURT</u>					
Early Retirement Costs	Gen Fund		8,500	8,500	_____
Personal Svcs Snapshot Anomaly	Gen Fund		2,500	2,500	_____
General Fund		702,704	459,016	1,161,720	
Other Funds		92,000	0	92,000	
Total		\$794,704	\$459,016	\$1,253,720	

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