

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON FINANCE & CLAIMS

Call to Order: By CHAIRMAN CHUCK SWYSGOOD, on March 21, 1997, at 7:06 a.m., in Room 108.

#### ROLL CALL

##### Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)  
Sen. Thomas F. Keating, Vice Chairman (R)  
Sen. Larry Baer (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. James H. "Jim" Burnett (R)  
Sen. B.F. "Chris" Christiaens (D)  
Sen. Eve Franklin (D)  
Sen. Loren Jenkins (R)  
Sen. Greg Jergeson (D)  
Sen. John "J.D." Lynch (D)  
Sen. Dale Mahlum (R)  
Sen. Ken Miller (R)  
Sen. Arnie A. Mohl (R)  
Sen. Linda J. Nelson (D)  
Sen. Mike Taylor (R)  
Sen. Daryl Toews (R)  
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division  
Sharon Cummings, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 544, 3/18/97;  
HB 83, 3/18/97

Executive Action: HB 544, BCC; HB 83, BCCAA; SB  
267, Tabled; SB 374, DPAA; HB  
114, BCC; HB 136, BCCAA, HB  
559, BCCAA

HEARING ON HB 544

Sponsor: REP. ED GRADY, HD 55, CANYON CREEK

Proponents: Don Peoples, Montana Energy Research and Development Institute  
REP. JOE QUILICI, HD 36, BUTTE  
REP. BOB PAVLOVICH, HD 37, BUTTE  
Jack Lynch, Butte-Silver Bow County  
Bob McCarthy, Butte-Silver Bow County Attorney  
Carl Stetzner, Anaconda-Deer Lodge County  
Joe Guiberson, Anaconda-Deer Lodge County  
Wayne Ternes, Anaconda-Deer Lodge County Commissioner  
Judy Jacobson, Community Corrections Board  
SEN. J.D. LYNCH, SD 19, BUTTE  
SEN. TOM BECK, SD 28, DEER LODGE  
Mike Thatcher, Community Counseling Corrections Services, Inc.  
Connie Kenney, Butte Chamber of Commerce  
Con Malee, Anaconda-Deer Lodge County Planning Board  
John O'Donnell, Anaconda-Deer Lodge County Resident  
Dave Ohler, Department of Corrections  
Ann Shea, Butte-Silver Bow County

Opponents: None

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, CANYON CREEK      Testimony handed in.  
(EXHIBIT #1) Amendment #hb054402.asf explained. (EXHIBIT #2)

{Tape: 1; Side: A; Approx. Time Count: 7:10; Comments: None.}

Proponents' Testimony:

Don Peoples, Montana Energy Research & Development Institute We are one of two entities that have come together proposing that a regional correctional facility be constructed in southwestern Montana to serve a multi-county area. Four counties, Anaconda-Deer Lodge, Butte-Silver Bow, Beaverhead and Madison, have indicated their support and intent to participate in this facility. An amended version of the Regional Corrections Act will allow us to construct a facility at the Galen campus to house approximately 500 prisoners from the State of Montana. This facility will also provide 120-125 beds for the local jail needs of the counties participating in this effort. The Regional Corrections Act has to be amended to allow local governments to work and contract with entities such as ours to provide these services. It would be our responsibility, as a non-profit entity, to provide the financing and operation of this facility. The amendment is in keeping with the intent of the state to provide the most cost effective measures for state and local government. We support HB 544.

**REP. JOE QUILICI, HD 36, BUTTE** This is a project that will save money and provide a service for the State of Montana. I support HB 544.

**REP. BOB PAVLOVICH, HD 37 BUTTE** I would like to go on record as being in support of HB 544. This is a good idea for southwest Montana and the people of Montana.

**Jack Lynch, Butte-Silver Bow County** I have long been an advocate of regional correctional facilities. HB 544 addresses an area that concerns the people of this state on a regional and statewide basis. The program, as proposed by the private sector, provides an opportunity to contract and provide a treatment component along with incarceration. A number of counties have signed on to this project realizing it will serve the needs of state, federal and local government. Many counties deal with antiquated jail facilities and don't have the financial resources to repair them. The regional jail concept is a good idea and we have no reservations about supporting it. We urge your support of this measure.

**Bob McCarthy, Butte-Silver Bow County Attorney** My real concerns are for the citizens of our community. One of the advantages of a facility like this comes from the economy that will result in having a facility which can provide medical services, housing, counseling, food service, etc. This will provide great benefit to the citizens of our state but, in particular, it will provide benefit to the people in our region. It will provide safety for inmates and the citizens of our area. I can't find any disadvantages to this proposal, it seems to benefit everyone. I encourage your support.

**Carl Stetzner, Anaconda-Deer Lodge County** Our county supports this proposal. This proposal will provide jobs that are badly needed for many of our citizens. I urge you to support HB 544.

**Joe Guiberson, Anaconda-Deer Lodge County** This proposal is good for the safety of the inmates and personnel operating the local jails. This is a good proposal that will save money for the counties and will provide better services for inmates. I urge your support.

**Wayne Ternes, Anaconda-Deer Lodge County Commissioner** Our commission supports this bill. This is a chance for several counties to work together collectively to take care of a problem we all have. Many jails in local counties were build over 100 years ago and are in need of repair. This facility gives counties the opportunity to enter into a long term contract to solve this pressing problem.

**Judy Jacobson, Community Corrections Board** This is a proposal we've been working on for quite some time and are very excited about. We have the experience and people to do a good job with this.

**SEN. J.D. LYNCH, SD 19, BUTTE** It takes several sessions before we get a bill like this which is truly a win-win situation for the state. This proposal asks for no state money. We should do everything we can to eliminate obstacles on projects such as this. We should encourage a partnership between local government, private enterprise and the state. It will work and answers a lot of our problems. I hope other areas of the state will eventually get into this type of partnership.

**SEN. TOM BECK, SD 28, DEER LODGE** We have a number of units in Deer Lodge that this unit will enhance, cook/chill can supply meals, interchange between the present prison and the new 500 beds in this facility, they will be within 12 miles of each other and this facility is in a different water system which is one of the problems with the present prison. This is the ideal situation to help solve the problems the State of Montana faces. I hope the committee will give it serious consideration.

*{Tape: 1; Side: A; Approx. Time Count: 7:28; Comments: None.}*

**Mike Thatcher, Community Counseling Corrections Services, Inc.** I encourage you to support HB 544. This is a cost effective and viable solution to local and state needs. We do not have facilities for housing women in southwest Montana. We've held two public forums and have received no opposition to this proposal. I believe this is a message from southwest Montana that they are amenable to working in a partnership with the state and local governments. I ask your support. **(EXHIBIT #3)** handed out.

**Connie Kenney, Butte Chamber of Commerce** I speak in support of HB 544.

**Con Malee, Anaconda-Deer Lodge County Planning Board** The planning board fully endorses this creative and unique approach to funding local infrastructure.

**John O'Donnell, Anaconda-Deer Lodge County Resident** This is a common sense approach in planning and thinking about how Montana transitions into a different way of looking at some of our problems. I urge your support of this, we have a group of can-do people who are willing to take the risk.

**Dave Ohler, Department of Corrections (DOC)** The department supports HB 544. It amends the Regional Correctional Facility Act which was passed in the last legislative session. HB 544 gives local government and the state some options.

**Ann Shea, Butte-Silver Bow County** I support this and urge you to do the same.

Opponents' Testimony: None

*{Tape: 1; Side: A; Approx. Time Count: 7:32; Comments: None.}*

Questions From Committee Members and Responses:

**SEN. LYNCH** How do you get the financing without any state capital? **Mr. Peoples** We have had experience putting together projects for the community corrections operations in Butte. We will be using industrial development bonds issued by either Anaconda-Deer Lodge or Butte-Silver Bow counties. Those bonds will be repaid over a 30 year period. We need an occupancy rate of 80% to make this work. We understand that we are subject to biennial appropriations, it would have been our preference not to be subject to those but we must because that is the law. We would have also liked a non-substitution clause which would have prohibited the state from competing with us but that is also in violation of the law. We need a contract with the State of Montana and local governments for a 30 year period. We will provide the services, construction and administration of the facility and will repay the debt from the revenues from the state and counties.

**SEN. BECK** Can you swap prisoners at the present time under the Interstate Compact Agreement? **Rick Day, DOC** Montana State Prison (MSP) exchanges 1 for 1 in most cases based on management issues.

**SEN. BECK** They have to have an 80% occupancy to make this work. If the State of Montana will not make that guarantee, why can't they have out-of-state prisoners? **Mr. Day** Both Governor Racicot and I don't feel it is appropriate to adopt a policy that is designed around the commercial implications in this and other states. One of the primary functions of DOC is to protect public safety. Inmates from other states might bring in infectious diseases and the level of violence in MSP is not the same as institutions in other states. We don't think these items are in the interest of public safety. We will be able to negotiate an effective contract in which it may be necessary to have some level of guarantee. That is not unusual, we guarantee a certain level of occupancy to pre-release centers and regional correctional facilities to guarantee a stable revenue source for them to count on for budgeting purposes. There has been no problem with us fulfilling our minimum and, in most cases, we are at our maximum. Those contracts have been effective even though they are only for 2 years as the legislature can choose not to fund those agreements.

**SEN. BECK** The state is willing to guarantee what this community corrections facility says they need of 80% occupancy, is that right? **Mr. Day** We would be willing to negotiate an effective contract in the interests of the State of Montana.

**SEN. LYNCH** I understand it would probably be unconstitutional to have a non-substitution clause. Can we get a 30 year contract stating that as long as there are appropriations we'll keep using the facility? **Mr. Day** That is what our long term contracts are.

**SEN. MIGNON WATERMAN** Do we have a right to refuse prisoners that are assigned to us under the interstate compact? **Mr. Day** Yes, we request the file on every inmate and make the determination to accept that inmate.

**SEN. WATERMAN** Does this bill allow federal inmates? Will the facility house females as well as males? **Mr. Day** It is my understanding that this legislation does not apply to federal inmates. There is nothing in the legislation that would restrict female inmates. **SEN. WATERMAN** I want to make it clear whether or not federal and women inmates can be housed in this facility. **Mr. Day** The regional correctional facility in Great Falls has an agreement with the federal marshall, this will be for federal inmates already in the State of Montana. The federal government pays better than the state so they are using a combination of inmates to make the facility pay for itself.

**SEN. WATERMAN** I see the possibility that the legislature may reduce the contract in 2 years, why should these people be assured that won't happen? **Mr. Day** The contract always causes some level of nervousness for the people investing in it. It has not been my experience that prevents people from entering into long term contracts. There is always the concern that the legislature and counties will back out of the agreement.

**SEN. WATERMAN** Can this facility contract with the federal government to bring in federal prisoners to fill the other 20% occupancy? **Mr. Day** Yes.

**SEN. WATERMAN** If the state backs out on its commitment for the 80% capacity, what precludes this facility from contracting with another state or the federal government to house out-of-state prisoners? **Mr. Day** The language in the current bill prohibits contracting to bring in commercial quantities of out-of-state inmates.

*{Tape: 1; Side: B; Approx. Time Count: 7:50; Comments: None.}*

**SEN. ARNIE MOHL** What is the difference in Montana shipping prisoners out and then having them come back into the state? They could be bringing diseases back. **Mr. Day** There is no question that we have an increased risk when we move inmates out of the state.

**SEN. MOHL** What will the per day cost be and is there a guarantee on this cost? **Mr. Day** We usually negotiate that in the contract. Our present regional contracts allow for renegotiation every 2 years. The contracts use the MSP per day cost as a guide, we don't want the contracts to go above that cost.

**SEN. LOREN JENKINS** I don't see any public right of refusal in this bill. **Mr. Day** Most of our regional processes are local voter approved with bond issues. This project is a little different, we would have to design another mechanism to make sure

we have local approval. **Mr. Ohler** There is a provision in current law addressing local government and approval.

**SEN. JENKINS** There is nothing in the bill referring to the prison population corresponding with security ranges and I would like to know how this will be handled. **Mr. Day** The regional prison concept process calls for a lock down, close security structure for all inmates.

**SEN. JENKINS** A big concern with the Havre regional facility was that there might be maximum security inmates in a facility that is not equipped to handle them. **Mr. Day** The contractor has the right of refusal of an inmate. Maximum security inmates will only be housed at MSP, that is reflected in all contracts.

**SEN. JENKINS** What do you do if the rates increase for the next contracting period? Is there anything in the contract stating the rate can't be a certain percentage over the MSP cost? **Mr. Day** This decision is ultimately made by the legislature as they have to approve the budget. There is no percentage, contracts require proof as to why those costs need to be above MSP costs.

**SEN. MIKE TAYLOR** How long will it take this facility to be up and running? Do you have a per bed cost factor in mind? **Mr. Peoples** 18-24 months. The cost per bed will be approximately \$43 per day which is less expensive than MSP.

**SEN. TAYLOR** What would be your preference in out-of-state prisoners? **Mr. Peoples** We are not interested in out-of-state prisoners as we thought that was not acceptable. We would accept out-of-state prisoners to reach the 80% occupancy rate as we need this 80% occupancy guarantee to sell the bonds at a low interest rate and make this project financially feasible.

**SEN. TAYLOR** If it is possible, perhaps we could negotiate a longer term contract with a guaranteed bed rate. **Mr. Peoples** We would be interested in guaranteeing a bed rate that had some factor for inflation.

**SEN. CHRIS CHRISTIAENS** We had a couple of proposals for bonding to purchase additional land around the women's prison in Billings. If this facility houses women inmates, would we not be better off allowing those inmates to be housed in the regional facility instead of spending state dollars to expand the women's prison? **Mr. Day** That would be something we'd have to look at. I don't believe so because the location and facility in Billings can be expanded and there are cost efficiencies in the state when the populations are larger.

**SEN. CHRISTIAENS** Do you have competition clauses or anything in your contracts that keep one facility from undercutting another as the need for beds increase? **Mr. Day** This is an issue that we have to keep a close eye on. At this point the department's capacity plans are just at the anticipated levels. Any private

facilities are suppose to fit into the department's long term plans of population needs. Current contracts protect the counties and the state because they have the ability to bring forth actual costs for negotiation.

**SEN. CHRISTIAENS** Have you considered contracting with the state's cook/chill operation? **Mr. Peoples** Yes, we will look at every possible way to economize.

**SEN. CHRISTIAENS** There was concern expressed yesterday that if something happened there would be no other use for this kind of facility. Have you thought about that? **Mr. Peoples** That is a serious concern that causes bondholders anxiety. We need to put forth a program that will convince the bondholders that the value level is manageable.

**SEN. CHRISTIAENS** We've heard that other pre-release centers are not able to come up with financing but you were able to do that. What is the difference between your ability to finance and others? **Mr. Thatcher** We have an abundance of old buildings in Butte, therefore they were relatively cheap to acquire. I believe the problem in other communities is building costs.

*{Tape: 1; Side: B; Approx. Time Count: 8:11; Comments: None.}*

**SEN. TOM KEATING** Are you building a new building? Are you leasing the land from the state? **Mr. Peoples** Yes, we are building a new building with construction costs of \$20-24 million. We are looking at a long term lease with the State of Montana on the land at the Galen campus.

**SEN. KEATING** Are you going to bond privately or go through the state? **Mr. Peoples** We will use industrial development bonds that would be issued by the counties subject to our debt.

**SEN. KEATING** Page 2, sections 6-8 allow state bonding for contracting with private corporations. Is the intent of the bill to allow state bonding to be used by private corporations? **REP. GRADY** Yes, that was the intent.

**SEN. WATERMAN** I thought I heard someone state they would be renovating the buildings at Galen and now **Mr. Peoples** states this will be a new facility. Can someone clarify that for me? **Mr. Peoples** The correction facility will be new construction. We are hopeful that some of the buildings at Galen can be rehabilitated and used for juvenile institutional care.

**SEN. WATERMAN** Page 3, line 17-19 precludes using out-of-state prisoners for the state portion of the facility, is that right? What precludes the facility from using out-of-state prisoners for the other portions of the facility? **Mr. Ohler** This amendment was put on in the House, it appears there is nothing to prohibit the local portion of the facility from accepting out-of-state prisoners.



**SEN. WATERMAN** Would you have a problem if we removed the state portion so it read "may not be confined in the regional correctional facility"? **REP. GRADY** I'd have to discuss that as there could be a problem with doing that. **Susan Fox, Legislative Services Division** Local jails have no restrictions on federal prisoners. The intent was to restrict them from the prison portion of the facility.

**SEN. LYNCH** We need to understand the make-up of the facility. The county jails will be treated the same way they are now and all restrictions apply to the prison population. They don't intermingle.

**CHAIRMAN SWYSGOOD** Regarding the women's prison in Billings, you said you'd look at expanding that before housing women prisoners in a facility that was ready to take them. I find that amazing. Why would you expend state money to expand a prison when there were beds available elsewhere? **Mr. Day** The regional prison concept is designed for male prisoners and the size of the population on the men's side. If we increase the capacity of the women's prison it will lower the cost per day and keep women inmates in a facility that is programmed and designed for women. It may be possible to accommodate that same theory in a regional prison.

**CHAIRMAN SWYSGOOD** If a regional prison was constructed that had the facilities for women prisoners and they were not at capacity, would the state utilize those beds before expanding the existing prison? **Mr. Day** Yes, we would have to give it consideration.

**SEN. CHRISTIAENS** Will this facility be built under ACA standards? **Mr. Peoples** Yes.

Closing by Sponsor:

**REP. GRADY** We've been addressing the corrections problem during most of this legislative session. We are going to be short 300-400 beds and it doesn't look like this legislature is going to put more money into corrections. We passed legislation getting tough on crime but no one estimated what it would cost to get tough on crime. This is one way to address the state corrections problem and the local jail problem. It will cost less than the state per day cost and Montana people will be running it. We are close to abandoning Galen which is a terrible option. We can select the prisoners that will be housed in this facility. Currently, we are sending prisoners out-of-state and expecting other states to help solve our problems.

{Tape: 1; Side: B; Approx. Time Count: 8:25; Comments: None.}

HEARING ON HB 83

Sponsor: REP. ERNEST BERGSAGEL, HD 95, MALTA

Proponents: Rick Day, Department of Corrections  
Bob Anderson, Department of Corrections  
Mike Voeller, Lee Newspapers of Montana  
Ward Shanahan, Powell County Progress and the Bobby  
Ross Group

Opponents: Betty Waddell, Montana Association of Churches  
Sharon Hoff, Montana Catholic Conference  
Scott Crichton, American Civil Liberties Union

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, MALTA There is no provision within Montana law that restricts the importation or construction of private prisons in the state. HB 83 is an attempt to regulate and provide those types of restrictions to insure the safety of our general population. Significant amendments were placed on this bill by the Select Committee and the same provision on out-of-state inmates is in this bill as in HB 544.

*{Tape: 1; Side: B; Approx. Time Count: 8:27; Comments: None.}*

Proponents' Testimony:

Rick Day, Department of Corrections I am here on behalf of the department and Governor Racicot in support of HB 83. HB 83 provides the legislature with the vehicle to decide whether a private corrections firm should be permitted to operate corrections within the State of Montana. We are aware that private corrections corporations provide effective services in other states within defined roles, parameters and the plans of that state. HB 83 prohibits the commercial importation of inmates from other states. It requires that such a facility must fit into the state and department long range goals and plans and provides for public participation in the deciding process. Corrections is not a business and our bottom line must always be public safety. However, private business can contribute and should be allowed to play a role in correction services in the State of Montana. The department's budget request provides for contracted prison space, up to 500 inmates at the end of the biennium. HB 83 serves as the legal framework to support the departments request.

Bob Anderson, Department of Corrections Amendments handed out and explained. (EXHIBIT #4)

Mike Voeller, Lee Newspapers of Montana We support this bill and have a vested interest in it as regards access of the news media to private citizens. It has been very difficult for the news media to access inmates in the private prison facility in Texas.

We requested an amendment to address this problem. We support this bill as amended.

**Ward Shanahan, Powell County Progress and the Bobby Ross Group**  
We support HB 83.

*{Tape: 2; Side: A; Approx. Time Count: 8:36; Comments: None.}*

Opponents' Testimony:

**Betty Waddell, Montana Association of Churches** Our concern is with giving our primary responsibility, the power to imprison, to a for-profit group. The private prison companies don't talk about rehabilitation which is one of our primary concerns. When we talk about public safety we need to know that they are able to readjust to society and become better citizens. We feel private, for-profit prisons will not have this concern and that the recidivism rate will be higher than it is now. I urge you to modify this bill to make sure prisoners are being rehabilitated.

**Sharon Hoff, Montana Catholic Conference** We believe privatizing prisons is bad public policy. We don't think the state should contract fundamental rights, prisons are created for the good of society, not the good of the corporation. We are concerned with how fast this is moving and whether or not all the implications of privatizing our system have been researched and checked out. (EXHIBIT #4A) handed out.

**Scott Crichton, American Civil Liberties Union** Testimony handed in. (EXHIBIT #5)

*{Tape: 2; Side: A; Approx. Time Count: 8:55; Comments: None.}*

Questions From Committee Members and Responses:

**SEN. CHRISTIAENS** Item #2 of (EXHIBIT #4) gives them 3 years to meet ACA standards, why are they allowed that long to meet the standards? **Mr. Anderson** ACA has construction standards which will be met right away. It usually takes 18-24 months to get accredited for ACA operational standards. We're trying to give them a fair length of time to become ACA accredited.

**SEN. CHRISTIAENS** I'm troubled with the Bobby Ross Group not responding to people's calls. I find it interesting that they won't allow the news media to talk with county officials. **Mr. Shanahan** I don't have personal knowledge of what you are talking about. I understand the purpose of this bill is to set up an accreditation situation whereby our organization would meet the standards set up by the State of Montana for a contractual arrangement. I'm not sure something in the State of Texas is relevant to this legislation but if you have a list of grievances I'd be glad to have them addressed.

**SEN. CHRISTIAENS** What did we not put in our contract with Texas that precludes this type of communication and how long before that can be changed? **Mr. Day** We didn't include the news media in the contract, the private operator makes the decisions on media access. We can cancel the contract with 60 days notice.

**SEN. CHRISTIAENS** If you decided media should have some input or that the educational components are not there, can you address that within 60 days? **Mr. Day** I don't know that we'd have to wait 60 days if we thought there were contract deficiencies. The current arrangement with the Bobby Ross Group was designed to be a temporary solution to an immediate problem.

**SEN. CHRISTIAENS** What kind of educational requirements do we have? **Mr. Day** Our contract called for the same programming environment as MSP. Due to distance, I can't confirm whether that has been effectively duplicated.

**SEN. WATERMAN** Someone testified that other states have ended up taking over private, for-profit corrections facilities. Do you perceive that the state would be in the situation of having to take over a private facility? **REP. BERGSAGEL** There is always that potential and it needs to be addressed.

**SEN. GREG JERGSON** I see a difference in the language in HB 544 and HB 83 regarding confinement of persons convicted out-of-state. Why is there this difference in language? **REP. BERGSAGEL** Last session, when we passed the bill implementing regional corrections facilities, many counties built their county site based on income from federal prisoners so they could afford to build the facility. If you place language in this bill or any other bill that restricts their ability to bring in out-of-state inmates, we have the potential of taking over the Great Falls or Missoula facility because they cannot financially operate that facility unless they bring in out-of-state inmates.

**SEN. JERGSON** Does the language in HB 83 tell the state if they enter into a contract with a private correctional facility we guarantee 100% occupancy? **REP. BERGSAGEL** Most of the contracts are based on 80-90% occupancy. They will sell bonds based on that occupancy and the per diem rate charged to DOC will include that.

**SEN. JERGSON** What will the private correctional facility do if the state doesn't have enough prisoners to cover the 80% occupancy rate? **REP. BERGSAGEL** I believe it is unlikely that will happen but there is the potential. I believe there will always be a growing prison population in this state. We also have the contract negotiation part of this, which happens every 2 years.

**SEN. EVE FRANKLIN** What kind of process do you have in place to monitor these contracts? **Mr. Day** We have a contract unit within the department that is responsible for developing requests for

proposals (RFP) and contracts. We also utilize other state's knowledge and the ACA licensing procedures. We have requested a full time contract monitor and plan to inspect the facilities.

**SEN. FRANKLIN** Are you currently monitoring the Dickens, Texas facility? **Mr. Day** Yes, to the best of our ability since we don't have an on-site person.

**CHAIRMAN SWYSGOOD** Have you looked at the amendments that were offered by the department? **REP. BERGSAGEL** I have only looked at them briefly, I would like the chance to look at them in more detail. I want some oversight on the contracts, the department would like to eliminate the Legislative Auditor, I suggest changing this to the Legislative Finance Committee.

*{Tape: 2; Side: A; Approx. Time Count: 9:11; Comments: None.}*

Closing by Sponsor:

**REP. BERGSAGEL** The purpose of HB 83 is to control privatization, to protect the citizens of this state and to make sure it is done in a fashion we, Montanan's, want.

*{Tape: 2; Side: B; Approx. Time Count: 9:47; Comments: None.}*

EXECUTIVE ACTION ON HB 544

Amendments: Amendment #hb054403.asf. (EXHIBIT #6)

Motion: SEN. WATERMAN MOVES TO AMEND HB 544 WITH AMENDMENT #HB054403.ASF.

Discussion: SEN. WATERMAN This clarifies the language on page 3, line 17 & 18. It is not my intention to change REP. VICK'S amendment.

**Ms. Fox** If the state contracted for 80% of beds perhaps it could be construed that there was 20% left for out-of-state prisoners. This language makes it clear that this is for the prison portion of the facility.

**SEN. WATERMAN** We've told the people of Montana that we will not be importing prisoners and I think this clarifies that but will not restrict the local governments on what they do with their part of the facility.

**SEN. CHRISTIAENS** How will this fit with the contracts that are already in place for regional jails? **Mr. Anderson** This language clarifies the intent of the current contracts. I don't think this amendment would bother the department.

Vote: THE MOTION TO AMEND HB 544 WITH AMENDMENT #HB054403.ASF  
FAILED 6-9 ON ROLL CALL VOTE.

Motion/Vote: SEN. KEATING MOVES HB 544 BE CONCURRED IN. THE MOTION CARRIED WITH SEN. JERGESON AND WATERMAN VOTING NO. SEN. LYNCH will carry HB 544.

{Tape: 2; Side: B; Approx. Time Count: 10:00; Comments: None.}

EXECUTIVE ACTION ON HB 83

Motion: SEN. KEATING MOVES HB 83 BE CONCURRED IN.

Amendments: Amendment #hb008310.asf. (EXHIBIT #7)

Motion: SEN JERGESON MOVES TO AMEND HB 83 WITH AMENDMENT #HB008310.ASF.

Discussion: SEN. JERGESON This amendment provides for a public vote on private prisons.

Vote: THE MOTION TO AMEND HB 83 WITH AMENDMENT #HB008310.ASF FAILED 8-9 ON ROLL CALL VOTE.

Motion: SEN. KEATING MOVES TO AMEND HB 83 WITH (EXHIBIT #4).

Discussion: SEN. JERGESON I would like to separate the portion taking out oversight by the Legislative Auditor so it remains in the bill.

SEN. JENKINS These amendments don't match the bill.

CHAIRMAN SWYSGOOD Items #8 & 11 will be separated from this. A great amount of time was spent on this bill in the Select Committee, I don't know why the department didn't bring these amendments to that committee.

Mr. Anderson I apologize for the problem with these amendments. I believe amendment 18 should be line 29 instead of 28. We didn't know how the Select Committee was going to amend the bill until after action was taken. We talked with the Legislative Audit Division and REP. BERGSAGEL because the bill came out of committee in a messy fashion. We have been working with everyone on the Select Committee to make this a workable bill. I understand your action on separating legislative oversight but the rest of the amendment is an attempt to make it a better bill. It is not intended to add substantive changes to the intent of the Select Committee.

CHAIRMAN SWYSGOOD If these amendments pass it will be with the understanding that the technical implementation be left to staff to work out.

SEN. CHRISTIAENS I'm not sure that the same things aren't already in the bill.

Vote: THE MOTION TO AMEND HB 83 WITH (EXHIBIT #4) SEPARATING OUT ITEMS #8 & 11 FAILED 5-11 ON ROLL CALL VOTE.

Motion: SEN. KEATING MOVES TO AMEND HB 83 WITH ITEMS #8 & 11 FROM (EXHIBIT #4).

Discussion: SEN. JERGSON The reason I asked for separation is that the amendment was to take any legislative oversight out of this bill. I don't think that is appropriate, there has to be some responsible legislative oversight as we get into this new territory.

SEN. KEN MILLER I would like to hear why SEN. KEATING thinks the Legislative Audit Committee should be taken out. SEN. KEATING The Legislative Auditors job is to audit and if they are a party to the contract then that is a conflict of interest when it comes time to audit.

SEN. WATERMAN Doesn't this occur in other areas and don't they try to do a private audit? SEN. KEATING The Legislative Auditor avoids all kinds of contacts with government agencies they have to audit to avoid that conflict of interest.

Vote: THE MOTION TO AMEND HB 83 WITH ITEMS #8 & 11 IN (EXHIBIT #4) CARRIED 11-5 ON ROLL CALL VOTE.

Discussion: SEN. LYNCH "The private correctional facility is responsible for all monitoring incurred by the state," if they are monitoring the people that are paying the bills, isn't that a conflict of interest? It seems to me the state should be paying their own monitors. SEN. KEATING The state charges inspection fees for all kinds of things. That is what this is.

SEN. LYNCH Page 8, subsection 3, if an inmate kills another inmate or one hangs himself and there is a lawsuit, is the facility or the state responsible? Can the state absolutely disassociate itself of any responsibility? Mr. Anderson Amendment #18 of (EXHIBIT #4) would have clarified that language. We didn't think that was substantive because that language was agreed to in the Select Committee but wasn't put in.

Motion: SEN. LYNCH MOVES TO AMEND HB 83 WITH ITEM #18 OF (EXHIBIT #4) WITH THE TECHNICAL CORRECTIONS NECESSARY TO MAKE IT WORK.

Discussion: SEN. LYNCH Does this make the state responsible as well? Mr. Anderson This question was asked during subcommittee and the attorneys felt this language was correct.

SEN. LYNCH Are we responsible in Texas if an inmate murders another inmate? Mr. Anderson Yes.

SEN. LYNCH WITHDRAWS HIS MOTION TO AMEND.

**Motion/Vote:** SEN. JERGESON MOVES TO AMEND HB 83 BY STRIKING "PROVIDE" AND INSERT "GUARANTEE". THE MOTION FAILED 7-9 ON ROLL CALL VOTE.

**Discussion:** SEN. CHRISTIAENS I find it ludicrous to be dealing with department bills without having the right people here to answer our questions. CHAIRMAN SWYSGOOD The department was informed before they left that executive action would take place and I'm going to continue with it. I apologize to Mr. Anderson for this.

SEN. LARRY BAER We may have put this bill in the position of requiring a two-thirds vote on the floor because of the indemnity issue on line 28-30. That may be of concern to people who want to pass this bill.

CHAIRMAN SWYSGOOD I'm going to delay further action on this bill until we can get someone from the department to answer these questions.

{Tape: 2; Side: B; Approx. Time Count: 10:20; Comments: None.}

GOVERNOR RACICOT'S ADDRESS ON SB 374

GOVERNOR MARC RACICOT I appreciate your indulgence of this unusual circumstance. This is an issue of significant magnitude and I wanted to provide the opportunity for you to cross examine me because this issue is before you as a result of my decision. I understand that the committee is substantially elevated in mood in reference to SB 374 and I can understand why. I may be able to provide some insight and persuasion to have you act favorably on this particular piece of legislation. This is the product of an extraordinarily conservative Republican congress and I understand not every member of congress was aware of what they were doing. There are some intrusive portions of this bill that have caused you concern, but there are practical reasons to carefully think this decision through. It is my understanding that you have not had any objections lodged by the business community, I believe they recognize we may sacrifice the opportunity to continue to move forward with the progressive welfare reform process you put in place during the last legislative session and we will also place our child support capabilities in substantial disarray. We have been informed, in unequivocal terms, by the U.S. Department of Health and Human Services that if we do not proceed in this direction we will not be in the position to proceed with the revenue sharing arrangement we presently have in place. There is a great deal riding on your decision. You may have to hold your nose as you move in this direction, but approving this piece of legislation is the right thing to do.

CHAIRMAN SWYSGOOD The problems with this bill crosses both sides of the aisle. I'm grateful that you are willing to listen to our concerns as it relates to the intrusiveness of this bill. We



would appreciate if you convey our feelings regarding this bill to the people in Washington.

**SEN. LYNCH** I'm concerned about what ultimately happens to the poor and welfare reform. Evidently we will not lose any old money but we will not get the new money which could be as high as \$52 million. Some people advocate that won't happen. How strong is the assurance that the federal government will withhold our entire grant? **GOV. RACICOT** In my understanding, we are not just talking about new funds that have been made available. This includes the funding for the welfare reform proposals that are linked to child support enforcement. I have a letter dated January 7, 1997 addressed to **MaryAnn Wellbank** from the program manager in the Department of Health and Human Services that states this is unequivocal. There are many states that have the same concerns but have complied. Wyoming is lodging some resistance but they meet on a yearly basis. Resistance has not been successful so far and I don't anticipate it will be. My best analysis is that there will be no exceptions with this situation.

**SEN. DARYL TOEWS** It seems to me we've been through this before with Goals 2000. If enough states hold resistance to this the federal government should respond. **GOV. RACICOT** I suggest losing a month or two would be very difficult for us to cope with in terms of our welfare programs that are presently in place. In reference to Goals 2000, I don't believe that what Montana ultimately did changed in any significant degree what occurred in congress. There were some changes but they were in contravention to what this legislature wanted to happen, that was to provide the opportunity for individual school districts to directly access Goals 2000 without going through the State of Montana. The margins are not quite the same as they were in reference to the Goals 2000 issue.

**SEN. BAER** I fail to see the urgency in making the decision on this bill at this time. **Sen. Burns** was unaware of many of the intrusive requirements in this bill and believes many of these things were inserted administratively. He has offered to work with us to ameliorate the offensiveness of the bill. We need to approach this with great caution. I have difficulty with the communication you received from the federal government on January 7, 1997 saying other programs would lose funds. There was a recent decision in the 4th circuit court stating the language must be clear and specific and must specify the conditions whereby the grant is awarded and paid to the state. I think there is a misinterpretation as to which funds will be lost and I believe funding directly connected to this program may be refused if we don't comply. I feel we have the opportunity to work with them to come up with something the federal government and the State of Montana can live with. Deciding on the this bill right now would be reckless and premature. **GOV. RACICOT** I respect your intuitions concerning state sovereignty and protection of our fundamental rights. My understanding of the legislation is

that it does specifically tie the ability to receive funds under the program, Temporary Assistance for Needy Families, to having a child support mechanism in place that meets the requirements of sub-part B and that is contained within this legislation. There may be opportunity for improvements to be made. I think it is a very risky gamble to proceed in a direction of refusing, up front, the requirements that are set before us, hoping that policy will be reformed as a result of action taken by the Montana legislature. That is a fanciful hope and large risk that we should not take. My view would be that we continue to pursue reformation of this arrangement. I do not know how we will address the requirements of our welfare and child support laws if this bill doesn't pass.

**SEN. CHRISTIAENS** Does this bill need to be passed in its entirety or can it be modified? Are our welfare reform waivers in jeopardy if we do not pass this bill? **GOV. RACICOT** There is always speculation on how we can modify a bill, I have no way of telling you if that is possible. My advice is that making a modification to remove requirements is a placebo. This one size fits all process that occurs in Washington D.C. occurs because it fits all and is one size. That is why we have some of the requirements we currently have. I don't believe this will threaten the waivers but it will remove all of the funding so there wouldn't be much need for a welfare program or waiver in the state.

**SEN. FRANKLIN** I would like a little more information on the community response to this. **GOV. RACICOT** My information is second hand but accurate. I've been informed by members of my staff who have spoken with the Chamber of Commerce and National Federation of Independent Business. They are conspicuously absent because they have decided not to be here to offer their objections.

**SEN. WATERMAN** Regarding the idea that we shouldn't rush into this, I believe we are already receiving TANF funds. If we delay action on this, do we put the funds we've already received at risk? **GOV. RACICOT** There is no mention in our correspondence from the federal government that there would be a retroactive liability. There is a clear, unequivocal reference to immediate suspension.

**SEN. MOHL** Is Wyoming going to lose a full year of funding? **GOV. RACICOT** I don't know the answer to that question. They have lodged some objections and have the same sentiments that you have.

**SEN. JERGESON** If we fail to pass this bill and the sanction is imposed, would your likely response be to pursue a court battle or call us for a special session to address the issue? **GOV. RACICOT** I doubt there would be much of an escape clause. It would seem to me I would have to consult with the legislature

because it is a massive reduction in the funding available to do some very important things that are commanded by our law.

**CHAIRMAN SWYSGOOD** We appreciate your coming before us to answer questions. Your comments will be taken under advisement. **GOV. RACICOT** I'd be happy to come back any time.

{Tape: 3; Side: A; Approx. Time Count: 10:44; Comments: None.}

EXECUTIVE ACTION ON HB 83

**Motion:** SEN. LYNCH MOVES TO AMEND HB 83 BY STRIKING SUBSECTION 3, PAGE 8, LINES 28-30.

**Discussion:** SEN. LYNCH I think Mr. Anderson is correct but you don't insulate yourself from liability when you contract with someone else. If you are trying to indemnify the state from responsibility it takes a two-thirds vote in the legislature.

**Mr. Ohler** This amendment was put on by the House Select Committee on Corrections and is not a department amendment. It places the cost of legal defense on the private contractor for incidents that occur in the private prison. We do that all the time with private providers.

**SEN. LYNCH** If a Montana prisoner murdered another Montana prisoner in Spur, Texas, you are saying the Texas facility would have to incur all the legal expenses. **Mr. Ohler** With this example, the surviving family members of the inmate who has been killed will file a lawsuit naming everyone they can possibly name, probably Dickens County, the Bobby Ross Group and the State of Montana. We have an indemnification clause in our contract with Dickens County where they are responsible for their negligence and they agree to defend and indemnify us if we get sued as a party to their negligence.

**SEN. LYNCH** Won't there always be negligence? Are we insulated from everything that happens? Can we do that? Does the court uphold that? **Mr. Ohler** Yes, we do that with the contract, they are responsible for their errors. The court does uphold that contract. We're still going to get sued and have defense costs but the Bobby Ross Group has to pay for our costs. This is true of all community correctional facilities in the state.

**SEN. LYNCH** Wouldn't it be smart for the state to send every bad boy out of our prison? **Mr. Ohler** Most places won't take the bad boys.

**SEN. LYNCH WITHDRAWS HIS MOTION TO AMEND.**

**SEN. CHRISTIAENS** Pre-release centers currently operate under the same language.

**SEN. KEATING** Item #18 on the department amendments (EXHIBIT #4), is that clean-up language or is it necessary? **Mr. Ohler** The

language we have proposed is clean-up language for what is already in the bill. I believe we require this in our contracts, so I don't know that it is necessary.

**SEN. WATERMAN** I'm concerned that the department will not be able to monitor a private facility. We also have no legislative oversight of this process.

Motion/Vote: **SEN. KEATING MOVES HB 83 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED 15-2 ON ROLL CALL VOTE. SEN. BECK** will carry HB 83.

*{Tape: 3; Side: A; Approx. Time Count: 10:57; Comments: None.}*

RECONSIDER SB 267

Motion/Vote: **SEN. MOHL MOVES TO RECONSIDER ACTION ON SB 267. THE MOTION CARRIED 9-8 ON ROLL CALL VOTE.**

EXECUTIVE ACTION ON SB 267

Amendments: Amendment #hb026701.agp. (EXHIBIT #8)

Motion: **SEN. MOHL MOVES TO AMEND SB 267 WITH AMENDMENT #HB026701.AGP.**

Discussion: **CHAIRMAN SWYSGOOD** Currently, there is a \$6.4 million General Fund impact with SB 267. This amendment diverts the amount necessary to administer the school trust before it goes into the school trust fund.

**SEN. KEATING** Is this \$6 million additional expense for running the department? I don't understand where the \$6 million shortfall is. **CHAIRMAN SWYSGOOD** \$6.4 million is the money necessary to fund the agencies and state lands. It is created by transferring those that are currently funded out of RIT and into the General Fund.

**SEN. KEATING** It looks like the proposal is to divert money that is going into the permanent education trust fund from oil, gas and coal royalties and the sale of property. That money will be put into the General Fund to finance the portion of state lands that currently administers the Resource Indemnity Trust fund interest income. By doing this it will increase the amount of spending out of the RIT program by increasing grants for water development projects, etc. You are adding General Fund revenue out of money that does not normally come to General Fund to increase spending in the RIT. I thought our job was to cut spending or at least have appropriate spending for useful and necessary programs. I resist the motion, I don't think this is a good source of revenue.

Vote: **THE MOTION TO AMEND SB 267 WITH AMENDMENT #SB026701.AGP FAILED 7-10 ON ROLL CALL VOTE.**

Motion: SEN. KEATING MOVES SB 267 DO PASS AS AMENDED.

Discussion: SEN. KEATING SB 267 doesn't have to have a \$6 million shortfall in it. We could arrange for appropriate spending that would bring about reclamation and remediation for the extraction industries in the state that have identified hazardous waste dumps, etc. We could have more appropriate spending by refining the method of appropriation as well as changing the direction on some of the programs. I think it would be beneficial to the state to accomplish remediation within the available money and not adding General Fund. This could be done if the committee would want to reconsider the previous amendments.

SEN. CHRISTIAENS I oppose this motion because the opportunity to make this work failed with the last motion.

Motion/Vote: SEN. MOHL MAKES A SUBSTITUTE MOTION TO TABLE SB 267. THE MOTION CARRIED 17-0 ON ROLL CALL VOTE.

{Tape: 3; Side: A; Approx. Time Count: 11:05; Comments: None.}

RECONSIDER HB 208

Motion: SEN. MILLER MOVES TO RECONSIDER ACTION ON HB 208.

Discussion: SEN. MILLER This is a bill REP. MARSHALL brought in. I'm not clear why it failed but I would like to reconsider our actions so we can discuss the bill.

SEN. LYNCH I oppose the motion. This bill was killed by a convincing majority. I don't think the fines need to be increased. I think the ignition interlock device should work.

SEN. MILLER With SEN. LYNCH'S amendment this bill goes to the white collar worker. This would give us some more options so we aren't filling up our prisons. I hope you will support my motion.

Vote: THE MOTION TO RECONSIDER ACTION ON HB 208 FAILED 7-10 ON ROLL CALL VOTE.

{Tape: 3; Side: A; Approx. Time Count: 11:12; Comments: None.}

EXECUTIVE ACTION ON SB 374

Motion: SEN. LYNCH MOVES SB 374 DO PASS AS AMENDED.

Discussion: SEN. LYNCH This is our last day to reconsider SB 374.

SEN. BAER I'm not going to reiterate everything I've said before. I was going to ask the Governor to provide us with proof that we will lose our funding for that contract if we refuse a

future contract. I don't think that can be shown after the decision in Virginia which happened a month after the Governor received his letter. Let's not confuse facts with suppositions. We should not leap haphazardly into this. We can work with everyone involved to come up with a solution to this problem without being threatened by the federal government. There is no urgency to do this right now. To change our position on this would be an abdication of the power of the legislature to the executive. A lot of people already suspect and allege that and I don't want to give credence to that allegation. Let's negotiate the terms before agreeing to the contract.

**CHAIRMAN SWYSGOOD** I hate this bill with a passion but I don't think the 17 of us should make this determination. This is a bill that the full body of the Senate needs to discuss. I'm going to vote for this bill to get it on to the floor and I hope the problems we are having with this bill get back to Washington. This is not right. We've made tremendous strides and saved considerable amounts of money with the bill we passed last session relating to welfare reform. That is working. The federal government could throw their muscle at Montana and a lot of the reform we put in last session could be at jeopardy. I don't know that I will vote for this bill on the Senate floor but I am not going to hold it up in this committee without the full Senate having the opportunity to debate this and hear the problems we are facing.

**SEN. LYNCH** I think we could come up with the money if this were \$1-2 million. I'm thinking the people who will not be served are the ones who cannot defend themselves. I hate the bill as much as anyone else but I have to make the motion in good conscience.

**SEN. JENKINS** Why doesn't the Department of Public Health and Human Services and the Governor have more current correspondence on this matter? **MaryAnn Wellbank, DPHHS** We do, we handed the letter dated March 12, 1997 out the last time we were here. They feel the decision does not apply, Title IV-D funding is dependent on these requirements and they reiterated the severity of the consequences to Montana which are approximately \$52 million.

**SEN. BAER** An erroneous opinion and just an opinion. The court rules otherwise.

**Vote:** THE MOTION THAT SB 374 DO PASS AS AMENDED CARRIED 11-6 ON ROLL CALL VOTE.

{Tape: 3; Side: B; Approx. Time Count: 11:20; Comments: None.}

EXECUTIVE ACTION ON HB 114

**Motion/Vote:** SEN. CHRISTIAENS MOVES HB 114 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. SEN. CHRISTIAENS will carry HB 114.

EXECUTIVE ACTION ON HB 136

Motion: SEN. CHRISTIAENS MOVES HB 136 BE CONCURRED IN.

Amendments: Amendment #hb013601.asf. (EXHIBIT #9)

Motion: SEN. WATERMAN MOVES TO AMEND HB 136 WITH AMENDMENT #HB013601.ASF.

Discussion: Ms. Fox This amendment clarifies that only non-profit pre-release centers could come to the Health Facility Authority to ask for bonding.

(EXHIBIT #10) handed out by Mike Ferriter, DOC.

Vote: THE MOTION TO AMEND HB 136 WITH AMENDMENT #HB013601.ASF CARRIED UNANIMOUSLY.

Motion/Vote: SEN. MAHLUM MOVES HB 136 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH SEN. MOHL AND TAYLOR VOTING NO. SEN. MAHLUM will carry HB 136.

{Tape: 3; Side: B; Approx. Time Count: 11:24; Comments: None.}

EXECUTIVE ACTION ON HB 559

Amendments: Amendment #hb0559.bgn. (EXHIBIT #11)

Motion: SEN. CHRISTIAENS MOVES TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN.

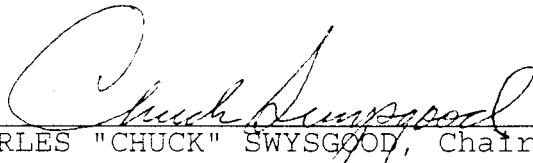
Discussion: SEN. CHRISTIAENS explains the amendment. This is a bill that was worked on by the DUI task force and is considered a very important piece of their work. I urge your support of this amendment.

Vote: THE MOTION TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN CARRIED WITH SEN. MOHL VOTING NO.

Motion/Vote: SEN. CHRISTIAENS MOVES HB 559 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED 11-5 ON ROLL CALL VOTE. SEN. CHRISTIAENS will carry HB 559.

ADJOURNMENT

Adjournment: 11:29 a.m.

  
SEN. CHARLES "CHUCK" SWYSGOOD, Chairman

  
SHARON CUMMINGS, Secretary

CS/SC