

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on April 3, 1997,
at 6:30 PM, in Room 405

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB293

EXECUTIVE ACTION ON HB293

Amendments:

CHAIRMAN GROSFIELD asked Larry Mitchell to explain the grey bill
he prepared for HB293.

Larry Mitchell passed out the Grey Bill, (EXHIBIT 1), and four
sets of amendments.

Amendments Requested by the Governor, hb029301.ate,
(EXHIBIT 2).

Amendments Requested by SEN. FRED VAN VALKENBURG, hb029313.alm,
(EXHIBIT 3).

Amendments Requested by **SEN. MACK COLE**, hb029308.alm,
(EXHIBIT 4).

Amendments Requested by **SEN. MIKE TAYLOR**, hb029307.alm,
(EXHIBIT 5).

Mr. Mitchell said these amendments were to replace yesterday's amendments. The governor's amendments and **SEN. VAN VALKENBURG'S** amendments were incorporated in the Grey Bill. The third set of amendments by **SEN. COLE** are some of the Governor's amendments, and all of **SEN. TAYLOR'S** amendments. Those were incorporated as well in the Grey Bill as **SEN. TAYLOR'S** amendments were. **SEN. COLE'S** amendments 8 and 9, were late editions and were not incorporated in the Grey Bill.

Mr. Mitchell said he made a key for the Grey Bill, where the Governor's amendments had been shown as shadowed and the amendment number is circled.

SEN. VAN VALKENBURG'S amendments were shown as a double underline and the number of the amendment was circled twice. **SEN. TAYLOR'S** amendments were shown as shaded and bolded language, and the amendment numbers coincide with the box. **SEN. COLE'S** amendments appear in the bill because they are segments of the Governor's and **SEN. TAYLOR'S** amendments.

CHAIRMAN GROSSFIELD asked **Director Simonich** to speak on any changes that might have occurred to the Governor's amendments.

Director Simonich said there were discussions with the Governor that afternoon relative to the amendments he put forward, particularly, because of questions asked by the committee yesterday in the hearing in terms of the Governor seeing it as a package or if there was prioritization on some amendments. The Governor would like to have the following amendments:
1,2,3,4,5,7,10,11.

Director Simonich said in reference to amendment No. 6, the amendment dealing with economic benefit, the Governor felt that the majority of the violations that would occur associated with the self-audit bill, would be violations that would depict "oops" activities. He said the Dept. did not expect cases where the violations would be purposeful or grossly negligent. If it was a grossly negligent situation, the bill already gives us the full ability to collect all of the penalties that may be prescribed under the law, including the economic benefit. **Director Simonich** stated that the Dept. was trying to encourage people to come forward so that we can help them correct their problems. He said he didn't feel collecting economic benefit from those companies was appropriate or necessary and the Governor would agree not to pursue amendment No. 6.

Director Simonich said amendment No. 8 and 9 of the Governor's package, both dealt with the Dept.'s ability to collect information to determine what the violations were, and how the violation needed to be fixed.

He did not think there was any opposition to amendment No. 7. The Governor would be willing not to ask for amendment No. 8, which requires or allows the Dept. to request the audit, if the Governor can have amendment No. 9. This amendment helped clarify that the Dept. may request all the relevant facts and data that the Dept. needs to independently establish the nature and extent of that violation to determine whether or not all the damage created by the violation has been corrected. He said for a violation that has been disclosed to the Dept., we need to determine what the violation was and that all appropriate steps were taken to correct that violation. **Director Simonich** added that the Dept. wasn't interested in finding out every other aspect of what was going on in the business through a self-audit.

Director Simonich associated amendment No. 12 with the bad actor provision. He said in reference to an entity not getting immunity after continually violated a law, the bill originally said, "has established a pattern of repeatedly violating these laws," and the Governor felt "repeatedly" was a bit open-ended and that was why the Governor suggested "previously." Now, he suggested that the words instead read, "has established a pattern of violating." That gave the Dept. some discretion and the ability to look at that violation, of that statute, and that particular entity, and determine if it was something they saw over and over, or if it was a one time occurrence.

SEN. GROSFIELD wanted to clarify that the language would read "the regulated entity has established a pattern of violating a specific state or federal law." **Director Simonich** responded that was affirmative.

Director Simonich referred to amendment No. 13 as the escape clause. The Dept. recognized that the language suggested by **SEN. VAN VALKENBURG** was more workable and recommended his language be used. He said the provisions in this audit would not be able to be used if, in some fashion, these specific provisions of this bill would threaten the state's primacy over those programs. He noted that the state still has to deal with EPA, and their guidance of operations, but the Dept. would be allowed to deal with EPA on a point by point basis.

Director Simonich said amendment No. 14, the imminent threat issue, was discussed and it was felt that it did not need to be in the bill. He gave the example of an innocent accident that had occurred near Alberton, where the second largest spill of Chlorine in the history of the United States resulted from a train derailment. The Dept. worked with the entity to clean it up and no enforcement action was taken. That caused an imminent threat, but it was clearly not from negligence or done purposely. They felt the above situation was going to be the typical case. When it was that type of situation, they felt that imminent threat did not need to be included in the bill. He reiterated that if there was gross negligence, on the part of the business entity, then all the other enforcement actions that are

enforceable, still apply, and they do not get immunity. **Director Simonich** said the Dept. did not believe imminent language needed to be established in the bill as well.

SENATOR DALE MAHLUM asked **Director Simonich** about the Chlorine spill and if he said it wasn't an imminent threat?

Director Simonich replied that there was no doubt that there was an imminent threat. The Dept. did not feel it would make any sense to take away immunity from a company for disclosing something like that when it was purely an accident.

SEN. MAHLUM asked if there would be any difference if it was being stored in a building and the spill occurred?

Director Simonich replied yes and there would be a large difference. If it was not stored properly, it could have been gross negligence.

SEN. TOM KEATING asked **Director Simonich** on the Governor's amendments then, we can strike No. 6, 8, and 14? Affirmative.

SEN. TAYLOR asked about amendment No. 13.

Director Simonich said on the Governor's amendment No. 13, it was proposed to strike "law" on line 21 all the way through rule on line 22, where it talked about federally adopted laws and federally adopted rules. "Agencies specifically prohibited environmental audits," would be inserted.

SEN. VIVIAN BROOKE asked **Director Simonich** who all was involved in the work?

Director Simonich responded that there was a meeting today in the Governor's office with reporters, environmental groups, industry groups, and himself. Since then, he said we have met with just the Governor Racicot, Lieutenant Governor Martz, Judy Browning, Chief of Staff, Julie Lapeyre, Policy Advisor for Natural Resources, and himself. That small group that went through and talked about every specific amendment and worked through it. It was strictly within the Governor's office, the staff and himself.

SEN. BROOKE commented she wanted to get the situation clear. The bill came in the House, and the Governors Office was in support of it. Yesterday, there were amendments by the Governor that were packaged, and now we are peeling off some of those amendments. Is that correct? **Director Simonich** said that was correct.

SEN. KEATING asked about the Governor's amendment on the April 3 sheet, if No. 3, 4, and 5 were just subsection renumbering?

CHAIRMAN GROSFIELD said they actually go with No. 6.

Larry Mitchell added that all that remained of Amendment No. 2 would be the last two lines. The first two lines set up for Section 2 would be added to the bill. Amendment No. 3,4, and 5 are just renumbering to set up Section No. 2. Amendment No. 6 is the New Section No. 2, which provides for the assessment for the administrative civil economic penalties. He stated if Section No. 2 or amendment No. 6 basically is not offered, then 5,4,3 and the first two lines of Amendment No. 2 go away.

{Tape: 1; Side: A; Approx. Time Count: 6:45; Comments: None.}

SEN. KEATING asked Director Simonich if No. 6 could be struck?

Director Simonich said yes, No. 6 could be struck.

SEN. KEATING asked if you allow No. 6 to be struck, then you don't have to make the technical changes in No. 3,4, and 5?

CHAIRMAN GROSFIELD answered yes, along with part of amendment No. 2.

SEN. KEATING clarified if 3, 4, and 5 go away, you just rearrange No. 2. Affirmative answer.

Motion: SEN. TAYLOR MOVED THE GOVERNOR'S AMENDMENTS.

Discussion: SEN. VAN VALKENBURG had a question for Director Simonich about why the Governor has decided in the last few hours, that Amendment No. 6 was no longer necessary. He understood Director Simonich's explanation, as believing the violations here would be the "oops" violations. He said a week ago, this Committee received a letter from John Wardell, State Director of EPA, and in that letter, Mr. Wardell said that while incentives should be offered for voluntary compliance, EPA believes, that in fairness to law-abiding companies, violators should not be allowed to retain the benefits of their violations. Therefore, it is important that penalties be imposed to remove any significant economic benefit gained from non-compliance. Why did the Governor, now think, that the language from Mr. Wardell was not important enough to put into the statute?

Director Simonich replied that significant non-compliance would lead to not being able to use the immunity provisions of this bill. The Dept. would still have the ability under the statutes, to proceed for all the penalties, including the economic benefit for cases of gross negligence. We make the argument to EPA that we believe that the amended bill would allow the Dept to collect the economic benefit in those situations where companies had attempted to circumvent the standards in order to try to gain some advantage of economic benefit.

SEN. VAN VALKENBURG retorted that he did not think that was what Mr. Wardell meant. He clearly would be accepting purposeful or knowing activity, because that kind of activity is subject to criminal prosecution. He said negligence is a legitimate subject

for environmental audits that is left to deal with by the Dept. **SEN. VAN VALKENBURG** elucidated what may be involved could be more serious than 24 batteries buried out in the backyard or the industry people would not be as interested in this bill as they are. They are worried about significant violations.

CHAIRMAN GROSFIELD asked **Eric Finke of EPA**, about the language in the Amendment No. 13. The language in Sub 1 says "would cause" and in Sub 2 it says "would prevent." How would the EPA communicate to the State of Montana something that "would cause" or "would prevent." How would that communication take place, both in terms of what it would look like, and in terms of timing.

Eric Finke, EPA, responded that in terms of reviewing whether a particular program of the State meets the delegation requirements, the delegation requirements are set out in both federal statute and regulation. Those are the standards EPA uses to compare a State statute and its accompanying regulations to see if they meet the federal requirements. If so, then the program can be delegated. It is done through federal register notice, and he also noted that withdrawal would be done through the federal register notice. During the interim period, there probably would be an extended legal review of the State's laws, to determine if the State of Montana still met the delegation standards with the new law coming on the post. There would be some communication with the Attorney General's Office asking for their interpretation of certain laws. Ultimately, the legal analysis would be done, and the conclusions of that would be published in the federal register. He said there would also be some communication in writing to the State agency and to the Governor as well, informing them of the results of the review.

CHAIRMAN GROSFIELD asked if the actual trigger would take place by the notices on the federal register?

Mr. Finke said the notices on the federal register was the formal mechanism to approve or withdraw.

CHAIRMAN GROSFIELD asked **SEN. VAN VALKENBURG** about the timing situation if this bill passed and an audit was done and sometime down the road, a trigger resulted in a notice given in the federal register. What will that do to on-going actions that have already occurred or started. Is there any sort of legal problem there?

SEN. VAN VALKENBURG replied that there was certainly a legal problem there. He could foresee an argument being made by entities that came forward with self-audits, saying that they relied on the fact that the law was in place, so how can you come back now and seek criminal or civil penalties. **SEN. VAN VALKENBURG** believed that the EPA would clearly be in the position to come back at Montana and say, that they had been given plenty of notice, back when this bill was being considered in the Mt. Senate. Because everyone was aware of the letter written by **Mr.**

Wardell and his concerns, the EPA was going ahead and proceed to revoke primacy. Then in order to retain primacy, the Department of Environmental Quality, in essence, through its own rule making process, would have to pull the plug on self audits, or through some executive order, declare that this particular section is now revoked. Next, affected members of the public might then say there never was a self audit act in place, and penalties ought to be assessed against these violators.

CHAIRMAN GROSFIELD asked **Director Simonich** the same question.

Director Simonich first responded that revoking primacy would be a very lengthy process, and could take years. He did not see the situation any different from the current situation today. He explained that the Dept. has delegated authority, in the federal programs given to the state. If there has been a violation determined, the Dept. then decides if an enforcement action will be taken. In the cases where EPA found the violation and the state has not, the EPA then notifies the Dept. and they tell us that the State of Montana has so many days to take an action and if action isn't taken, then the EPA will take the action. He suspected that in fairness to the businesses that came forward trying to use and implement the Self-Audit, the Dept. would continue to try and work with them, and simply choose at that point in time, not to take any enforcement action and let EPA take that enforcement action if they so chose. This bill specifically indicated that nothing in this bill prohibits the federal government from taking that action at any point in time.

CHAIRMAN GROSFIELD asked **Mr. Anderson** to respond to that.

Mr. Jerome Anderson, Attorney for Shell Western Exploration and Production Inc., responded that it sets up an opportunity outside of the Legislature for a federal entity to essentially make this law null and void, at a undetermined date in the future. He thought that some things that have happened in good faith up to that point are in some jeopardy.

Mr. Anderson addressed the amendments presented by the Governor and said he would not oppose those amendments, providing amendment No. 6,8, and 14 would be stricken and the amendments technically corrected to conform to the requirements. With respect to No. 13, he thought we could get along with that provision. He commented if the federal government were to take action with respect to removing primacy, the length of time required to obtain primacy, could feasibly be longer than two years. He did think that if an effort were made to prosecute someone who had commenced an audit proceeding in good faith, reliance upon the statute, would be a possibility of protection.

Mr. Pilcher had some additional comments that he would like to make with respect to that issue.

{Tape: 1; Side: B; Approx. Time Count: 7:00; Comments: Turned Tape Over..}

Mr. Steve Pilcher, Western Environmental Trade Association, said he had spent a fair amount of time dealing with EPA in water and other environmental programs, and felt that **SEN. GROSFIELD'S** concern was never going to develop. The reason for that, he concluded, was the politics involved. In those programs where a delegation has been granted, there is an agreement between the State and the EPA, that any enforcement action that might be taken, or failed to be taken, has to be reviewed by the EPA. They would have an opportunity at that time, to either approve or disapprove any enforcement action that was taken, or send the notice of violation letter, giving the State of Montana 30 days in which to act. All of those violations that might be in limbo are going to have to be addressed by the State and EPA before the issue of primacy ever comes about. He did not believe that the situation of having a number of lingering cases would exist. If there were cases lingering, it would be subject to the change in policy by the EPA at the time they reached a decision on delegation. Then EPA would have to look at each case individually, on a case by case basis. EPA would also have to look at the delegation under each act individually, such as the Federal Safe Drinking Water Act, the Federal Clean Water Act, etc., and go through the same process for each case. **Mr. Pilcher** hoped that the environmental audit provision meet the requirements as outlined in the proposed amendment.

CHAIRMAN GROSFIELD asked **Director Simonich** for clarification in reference to the language where it says, "would prevent the State from obtaining primacy," and the language in the bill on page 3, line 9 and 10, where it says, sections 1 through 5 do not apply to a violation if: Section 1 through 5 would prevent the State from obtaining primacy. He wanted to clarify if that was for any kind of primacy, or primacy that was related specifically to the violation.

Director Simonich replied that he did not know exactly how EPA would review that.

CHAIRMAN GROSFIELD asked **Mr. Finke, EPA,** about the primacy issue. He commented that he was presuming that this language intends to mean any kind of primacy. He was trying to clarify that for the record. Is that your interpretation of that?

Mr. Fink, EPA, said he did not think he could answer that question.

SEN. VAN VALKENBURG responded to the question and said it would basically be saying that Sections 1-5 of the bill, do not apply to a violation if those same sections would prevent the state from obtaining primacy. Therefore, if the EPA said that this particular bill prevents us from obtaining primacy on anything, even though the violation is not related to that particular issue, then all the stuff about immunity do not apply to that

violation. He said that is the clear language of that particular section.

Mr. Pilcher wanted to add some comments to what **SEN. VAN VALKENBURG** had said. He said that one has to keep in mind that each of these program delegations is considered separately. If the state should choose to seek additional delegation, or delegation of additional programs, under the underground injection control program, they would have to put together an application package which would be intended to address the delegation requirement and the EPA would have to make a decision on that application itself. And to say aye or nay to that application would not have any effect directly on the other programs, and that each would have to be considered separately.

CHAIRMAN GROSFIELD asked the members of the Committee if there was anymore discussion?

Motion: **SEN. TAYLOR MOVED THE GOVERNOR'S AMENDMENTS.**

Larry Mitchell clarified that the **Governor's** Amendments without No. 6, 8, and 14.

The Amendments under consideration are numbered hb029301.ate and they include: No. 1, the last two lines of No. 2, No. 7, No. 9, No. 10, No. 11, No. 12 with modifications on page 3, line 13, where it would strike "repeatedly violated," and insert "has established a pattern of violating," and No. 13.

{Tape: 1; Side: B; Approx. Time Count: 7:15; Comments: None.}

Discussion: **SEN. TAYLOR** said he felt comfortable with the amendments overall, but would like to see a few of his amendments on the bill such as a termination date. He thought the bill would help protect the environment and at the same time give companies a chance to clean up environmentally without being penalized.

SEN. VAN VALKENBURG wanted to have a vote on his amendments and thought it would be more appropriate.

Substitute Motion: **SEN. VAN VALKENBURG MOVED TO ADOPT THE VAN VALKENBURG AMENDMENTS.**

Discussion: **SEN. VAN VALKENBURG** said there is some importance in meeting the issues set out in EPA's letter, which was a statement of EPA's policy, and he thought if the state is to attain primacy, we need the things that were in his amendments.

CHAIRMAN GROSFIELD made a comment that he could not support those amendments because he thought some of the amendments went way beyond what the Legislature could support, such as the bad actor provision. He cited an example of No. 12, that talks about going after the facilities's parent organization in the last five years. He mentioned the fact that companies may have operations

in 20 states and foreign countries. If the company violated any laws anyplace in the last five years, then the audit privilege in this law would not be available for them.

CHAIRMAN GROSFIELD commented on amendment No. 3, which he felt went way beyond what should be done. For example, in No. 3, the language stated, "immediately report to the Dept." He thought that statement seemed very ambiguous.

SEN. VAN VALKENBURG retorted to **CHAIRMAN GROSFIELD'S** concerns by reading directly from EPA's document that sets out incentives for self-policing discovery disclosures and the direction and prevention of violations. He referenced the federal register, dated Friday, December 22, 1995, page 66709, which set out the conditions EPA believed that self-policing would be appropriate. The EPA said, in response for request from commentaries, EPA has established bright lines to determine when previous violations will bar a regulated entity from obtaining relief under this policy. These will help protect the public and responsible companies by insuring the penalties are not waived for repeat offenders, under condition D 7. "The same or closely related violation must not have occurred previously, within the past three years, at the same facility, or be part of a pattern of violations on the regulated entities part, over the past five years."

He said that above statement is no different than what was in his amendment. It is just the EPA policy. He did not think it was going too far or that it was out of line.

Vote: **SEN. VAN VALKENBURG'S AMENDMENTS, MOTION FAILED, 7 TO 3, WITH SEN. MCCARTHY, SEN. BROOKE, AND SEN. VAN VALKENBURG VOTING AYE.**

Vote: **GOVERNOR'S AMENDMENTS, MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. TAYLOR MOVED AMENDMENT hb029307.alm, Prepared by Larry Mitchell, provides for a termination date of 2001. Line 5, on page 2, line 4, strikes 30, and inserts 15.**

Discussion: **SEN. KEATING** asked what was the purpose of having a sunset on the bill? He did not see a reason for it.

SEN. TAYLOR had a concern that legislation be reviewed in the future. He believed that 30 days was a little bit long to report a violation, and did not feel industry had a problem with going to 15 days.

SEN. CRISMORE said he did not have a problem with the other amendments but he did not feel a sunset clause necessary.

SEN. MILLER believed 15 days was too fast of a time frame to report the violations. He said he was not going to support the amendment.

Vote: Motion to adopt Amendment hb029307.alm, FAILED, 6 TO 3. MCCARTHY, VAN VALKENBURG, TAYLOR, (WITH BROOKE ABSENT).

Motion: SEN. VAN VALKENBURG MOVED TO ADOPT THE GOVERNOR'S AMENDMENTS, NO.6 AND NO.14. (INCLUDE 3,4,5 IF NEEDED BY VIRTUE OF ADOPTING NO.6)

Discussion: CHAIRMAN GROSFIELD commented on No. 6, the economic benefit issue, where he believed it would be difficult for anyone to equitably determine a specific amount of economic benefit. He felt that No. 14, the imminent threat issue, was too nebulous or subjective.

Vote: Motion to adopt No. 6 and 14 of the Governor's Amendments FAILED 7 TO 3, WITH SENATORS MCCARTHY, VAN VALKENBURG, BROOKE, voting aye.

Motion: SEN. KEATING MOVED THAT HB293 BE CONCURRED IN AS AMENDED.

Discussion: CHAIRMAN GROSFIELD said to the committee to remember that the goal was to provide another tool for cleaning up some past and present environmental problems in the State of Montana. He concluded it was a bold step in some ways, but it was a positive step forward. He added that even the EPA has a policy of approving environmental audits, although not exactly in this format, but the EPA understands the benefits involved. In the course of the testimony, many of the opponents indicated that they supported some kind of a concept of an environmental audit. People understand there is potential for environmental audits to have a very positive effect. CHAIRMAN GROSFIELD emphasized that we need tools to clean up and improve the environment, and that was what this bill does, and he supported the motion.

{Tape: 1; Side: B; Approx. Time Count: 7:30; Comments: None.}

SEN. VAN VALKENBURG followed up the discussion and said it could be a good step if we had done some of the other things that he offered as amendments that were rejected. He said at this point, it will create litigation, division between the environmental community and the regulated community, and the Dept. of Environmental Quality will get thrown in the middle of it. Its not going to be a positive situation given the context of how this bill is becoming law. He thought it was interesting to watch the process over the course of the last week, particularly the last 24 hours. He could not believe the incredible amount of what he called, arrogance, that the regulated entities here showed when the bill first arrived in front of this committee. It appeared that they were saying, we can do whatever we want, and you can just take it or leave it. Fortunately, the Governor of this state was not as easy to roll over as the House of Representatives. The Governor got in the way and said you are not going to do that.

SEN. VAN VALKENBURG said it was interesting to watch just the change in the attitude of the lobbyists of this legislation from yesterday to today, when they came to grips with that the fact that the Governor wasn't going let them roll over the top of him. He reiterated the fact that the law was being broken and essentially, the people we're referring to were asking to give them immunity from breaking the law. **SEN. VAN VALKENBURG** brought up other people that broke the law such as burglars, bad check writers, or domestic abusers. He wondered if the Legislature would be as eager to give them immunity because they said that they wanted to go in the right direction and make things right. He felt it might not be bad for some of these environmental violations to be prosecuted and then they might appreciate a little bit more what it meant to get immunity. He thought even with respect to burglars and thieves and others, there might be a good reason to give them a second chance to help them out. There might be even more of a reason to be helping out more people who are employing people, and who are making the economy of this state run. But he did not think that we should ever be in the position where we think we have to roll over because those people tell us they're going to have it their way.

{Tape: 1; Side: B; Approx. Time Count: 7:45; Comments: None.}

SEN. MILLER commented that he had to take exception to what **SEN. VAN VALKENBURG** had said. He said the Governor was not the only one to show concern on this bill when it came to this committee. **SEN. TAYLOR, CHAIRMAN GROSFIELD**, showed concern along with others. To say that industry groups came in and was going to do whatever and thank goodness, the Governor rode in on his white horse and saved the day, was not accurate. He said this was not the first time immunity was being granted, and there was immunity for different crimes presently. He mentioned that the IRS allowed immunity for taxes. That's the law, you have to pay your taxes. If you can't, under certain circumstances, there were things that can be set up to where you don't have to pay it all, and the IRS will work a deal. There is certain crimes that have been allowed in the past that will allow immunity. OSHA, comes in and allows immunity if they can come in and do an audit on your business and find problems in there. If you invite them in, they won't fine you. If they come in because they have had a complaint, then you get fined. This was not a new idea or concept, he reminded the committee. He felt this is where we need to be going for the same reasons as OSHA because they want to make sure the shops are safe. The businessmen that have the shops want to make sure they have a safe place for their employees. **SEN. MILLER** believed that this legislation was one more tool to be used to help have a clean environment, and was in support of this bill.

SEN. CRISMORE also wanted to go on record as saying that he did not feel that the door was being opened for violations where they can come back and say I violated the law, now I want immunity. He did not believe that was the idea of the bill. In the logging

industry, which he was familiar with, they had already been doing audits. When the industry has SMZ violations, at this point in time, they could be cited for that. He did not feel anyone was doing it intentionally. If someone called in and said, hey, we have a SMZ violation, we would like you to come out and look at it with us, and lets clean it up. He said that was what this bill was all about. Its not to give people the right to break the law.

SEN. MAHLUM said what this bill was about according to his feelings, was it gave an individual a chance to clean that dirt up. He gave an example of a small automotive business, where there might of been oil spills in the yard. He can take care of the problem without getting fined.

CHAIRMAN GROSFIELD made one final comment. He said we are not necessarily talking about people who are breaking the law here. We are talking about the potential of finding a problem that may have happened before a law was even put into place. It may of been there for a long time. It may not be a responsible party. We are definitely not talking about people who purposely or knowingly break the law. Page 3, line 11, said this does not apply if you purposely or knowingly break the law. He felt it was more like are you going to clean it up or are you going to hide it. Or maybe even, are you going just go out of your way not to find it, or not even look for it, versus, has some ability to move forward responsibly and clean it up.

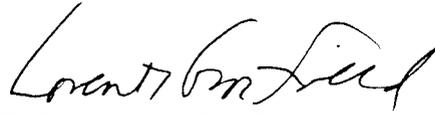
Vote: MOTION CARRIES 6 TO 4, WITH SEN. BROOKE, MCCARTHY, VAN VALKENBURG, TAYLOR VOTING NO.

The final amendments were combined and completed by **Larry Mitchell** and are attached as (EXHIBIT 6).

CHAIRMAN GROSFIELD adjourned the meeting at 8:05

ADJOURNMENT

Adjournment: 8:05



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH