

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Esther Bengtson, on February 7, 1991,
at 3:20 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused:

Staff Present: Connie Erickson (Legislative Council).

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

Announcements/Discussion: The committee will discuss drafting a
committee bill on February 14, 1991 instead of February 12,
1991. Linda Stoll-Anderson will be at the meeting to
discuss the information she gave to the committee and the
members' information from their districts.

HEARING ON HB-119

Presentation and Opening Statement by Sponsor: Representative
Bob Ream, District 54, which includes Missoula County. This bill
contains the current statute, Page 2, Section b. that allows
creation of special improvement districts by acquiring by
purchase or construction municipal swimming pools and other
recreation facilities. There has been some question whether it
would cover park lands in Montana. His reading of this section

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would cover park lands, but Page 4, Section h, line 15-17, clarifies the general law, by spelling out that public park or open space land are covered.

Proponents' Testimony: Chuck Stearns, Finance Director, City of Missoula. They support HB-119 and appreciate Representative Reams introduction of this legislation. This bill is just a small clarification, but the City Attorney preferred that the clarification in law be made, rather than try to rely on the interpretation that buying park land would be buying a recreational facility. This bill does not change the protest language as in all special improvement districts. This special improvement districts would be a large benefit to neighborhoods that would like to develop more park lands in their areas. In Missoula we have a situation they would like to put general fund money and neighborhood contribution into a park, and this would be the only way to fit the neighborhood contribution into that. We support this bill and ask for the committee's favorable recommendation.

Opponents' Testimony: none

Questions From Committee Members:

Senator Hammond asked if this would affect eminent domain? Mr. Stern said that eminent domain is handled through a separate section of law, and it is not addressed by itself. This is typically a supported procedure because you have to have more than 50% support or less than 50% protest to go through with a special improvement district. Typically you have a neighborhood petition involved, and does not typically involve eminent domain.

Closing by Sponsor: Representative Ream closed by asking the committee to Do Pass as Concurred on HB-119

Senator Bengtson turned the chair over to Vice-Chairman Eleanor Vaughn.

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HEARING ON SB-195

Presentation and Opening Statement by Sponsor: Senator Esther Bengtson, District 49, introduced this legislation at the request of the Montana Water Resources Association (MWRA). (Exhibit #1). Senator Bengtson's district deals with this a lot through the courts. She said that she understood that there was some opposition to this bill because of the technicality of how it is applied. In cities such as Billings, Missoula, and Helena where the developments are moving out into the existing irrigation systems there are all sorts of stories of the problems that arise when the information is not provided. People build on laterals, or obstructed canals, or they have seepage, and then they sue. This bill is an amendment to the law that could address these problems.

Proponents' Testimony: Jo Brunner, Executive Secretary, MWRA, said their association requested this bill because of the problems Senator Bengtson mentioned that arise between land purchasers and water user entities. (Exhibit #2, amendments Exhibit #2a). The amendment is offered because the need to address "sources of water" was not stressed in the drafting of the bill.

Brendan Beatty, Montana Association of Realtors (MAR) support this bill. The MAR feels that the purchaser should know this information. There are many concerns about subdivisions and the problems that arise. He suggested that the committee hold up any action on this bill until they see what the many bills that are in the House come up with, so that if they fail or pass they do not create more problems. Possibly this can be worked into some legislation that comes out of the House, rather than have two bills that could create a loggerhead later.

Opponents' Testimony: Rick Gustine, Montana Association of Registered Land Surveyors (MARLS) opposed this legislation. This is a two part bill, #1 deals with the amendments to Section 76-1-103, which deals with including water user entities in master plans. We have no problem with that, and feel it is a good place to start the process. When it gets to 76-3-103 which is the subdivision planning act, we do have problems. He has been surveying for 24 years, and he has worked around a lot of irrigation systems, and there are very poor public records kept of water user entities. By definition in the code 7-12-1151 and 7-85-7101 it is very hard to determine what a user entity comprises. From a surveyor standpoint, whenever possible, when a ditch, canal, or other water is of record we can find it in our research and we show it on the certificate of survey and on

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subdivision plates. But in the vast majority of cases in the State of Montana the records do not exist for these facilities that have been here for up to 100 years of more. If the records were cleaned up and surveyors could define what a water user entity and define their boundaries on an easy basis, MARL would be more willing to look at this legislation. He has tried to track down individuals to find out about some of these ditches, and spent a great deal of time, a matter of weeks trying to find one individual that claims to know what is going on with a particular ditch.

Questions From Committee Members:

Senator Harding asked if Mr. Gustine if he would be subject to liability if he was unable to run down all the particular water entities? Mr. Gustine said if they are public record that they would probably share some liability, but that is part of the research. Some of this information does not address problems like seepage, they are positional things on maps. If it is of record it can be found and added. The fear is that the way the bill is written, is a finished survey with a pending sale will be held up because the Clerk and Records office will require the review by the water user entity. Then the process of hunting down the responsible water user to provide the review. This could take forever, and the sale could fall through, and the surveyor doesn't get paid. Senator Harding asked if Mr. Gustine and Jo Brunner could get together and find a way to provide this information? Mr. Gustine said that possibly they could work something out.

Senator Hammond asked Mr. Gustine if the bill was O.K. up to the point of water user entities? Mr. Gustine said that requiring water systems to be put in the master plan should be adopted. Senator Hammond asked if land is annexed into the city what happens to the water rights. Mr. Gustine said that they do not have jurisdictional authority on water rights. Irrigation districts by law can petition the court, and if the district is formed within 30 days they must record that. But as far as water rights or anything else, hours and days in the Clerk and Records office provided no information.

Senator Waterman asked Jo Brunner if there is a listing of water user entities. Ms. Brunner did not know if the permits are recorded. The MWRA is different in that it does not deal with the occasional sale, that Mr. Gustine is protesting, that might have these problems. Surveys do not list water user entities, but water user services. Ms. Brunner could tell her where they might be listed. MWRA has minute records of where the water

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rights are, where canals run, easements, placement of dams, and where the water runs. It is their intent to use this information to relieve the members from the responsibility of the protest that come from the fact that people buy land that they do not know has water user facilities on it. She was not sure how water rights that have not been used for a number of years would be handled. Missoula has water user entities that have been incorporated into the city. Those people buy lots that have ditches that they think they can landscape it and use the water. They also think water user entities are responsible to fence off the ditches. There are smaller problems with seepage, but they feel the water user entity is responsible. They sue for these things. Billings Bench rarely has less than 15-20 suits a year against them. And they don't lose those cases because the facility was there first, and the land buyers were not aware of it.

Senator Eck asked if Jo Brunner's water user entities are always a definable group? Ms. Brunner said that it is not a definite group, and most anything could be put into it. The MWUA uses the translation that does not include the occasional sale. Their big concern is what happens to major water facilities. Senator Eck asked if her amendments would provide that the water users' facilities be included in the master plan, and then later in the bill, that the water user entity be allowed to review the plate. Would a developer be able to find these users by regular meetings with officers? Ms. Brunner said that there are some organizations that do not meet, but MWUA have a listing of water user entities, and they know they have ownership, so they could be found. They are primarily irrigations or stock water users, but they know who their board members are, the landowners, but she was unsure whether they are registered in the Clerk and Records office. Senator Eck asked if they required those entities and their facilities be included in the master survey plan, would the organizations have the information for the surveyors to research? Ms. Brunner said that the majority of the organizations would. Ms. Brunner stated that the bill would allow for review, but the water user entity could not prevent the surveyor from doing his work, in the case of an occasional sale, if he can't find the information he needs. It requests that they go to the water user entity and present their problem or situation and the user will review it. It does not say that they can not complete the survey without this approval. Senator Eck said that the bill did say that the master plans should have maps, charts, etc will have the character of the entity.

Senator Eck asked Mr. Gustine about holding this bill until other subdivision bills come out of the House. This is a Senate bill,

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and we have a couple of weeks before transmittal. The subdivision bills are still floating around getting signatures. It may not get to this committee before transmittal, and so if we wait on this bill it might be too late. Does he know if any of those bills are being heard yet.? Mr. Gustine said that Representative Connelly's bill has been introduced as HB-399. EQC verified that Representative Gilbert is getting signatures, and his will probably be introduced tomorrow. There are rumors of others. Mr. Gustine wanted to clarify that he was talking about minor as well as major subdivision plates. There is the same problem with water user entities, but in major subdivision advertised public notice or public hearings are held that water users can attend. Jo Brunner admitted that good records do not exist. This is not a surveyor's responsibility or our problem to clean up their record keeping by having to get this review.

Senator Eck asked if it would be appropriate to ask that the water user entity be given the opportunity to come to public hearings? Mr. Gustine said that they already have the option to testify, like anyone else. Senator Eck asked if they are specially noted or addressed. Mr. Gustine said that they received no special notice other than the ones required by statute.

Senator Eck asked Ms. Brunner to respond also. Ms. Brunner stated that the purpose of the bill was to let the buyer know what water user entities are on that land. They have a right to know. Senator Eck stated that several things in the bill do not deal with the sale of land, but have to do with subdivision of the land. So if a major or minor subdivision is done there might be no buyer in sight. She thought that the attaching of notice to the property itself was dealt with before. Ms. Brunner said that this did not work, and the idea was to have it on record, so the purchaser could see that there is a water user entity there. The bill does not say that they have to do anything about it, the user does not have to approve the sell, they just ask that the record show that there is a water user entity on this property.

Senator Thayer asked Brendan Beatty, MAR, when land is sold or subdivided isn't the buyer made aware of these things through disclosure. What are the MAR requirements? Mr. Beatty said he was not well informed about the ins and outs of disclosure. Senator Thayer stated that if the problem is the lack of knowledge of the buyer why not address that issue. Senator Bengtson said she found it hard to believe that the surveyors would not be able to find this information. Major irrigation districts know all their information and the problems and it should certainly be on a master plan. Realtors use these

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certificates of survey to sell property. This protects the buyers as well as the water user entity shown on the property. The Realtors had their annual meeting in Helena and they reviewed this bill and had no objections. They felt that the buyers need to know this information. The occasional sales produce a lot of these lawsuits. Irrigation districts do not have the money and time to constantly fight these lawsuits. There are major problems in cities where the fencing of canals are an issue. Senator Bengtson did not want to hold up this bill awaiting others. Big subdivision legislation from EQC may not make it to the Senate.

Senator Hammond asked if they can determine who has the water rights? Senator Bengtson said that this bill has nothing to do with water rights. Senator Hammond said that in Malta it had been dealt with. His example under this bill would have taken months to complete.

Senator Thayer asked Mr. Gustine if any second part of the bill that he objected to could be amended to get his support? Mr. Gustine said that the biggest problem is who these water facilities belong to. If the definition was limited to those water user entities on record in the county courthouse, they might be able to work with this bill. Currently in Gallatin County there is no one single registered water user entity on record, and this is the common scenario.

Senator Harding questioned that lack of record because these districts hold elections and are assessed, so they must be recorded. Mr. Gustine said this information is there from some public works projects and it carried through, but in the vast majority of cases you have to dig through boxes and hope you'll find it. Senator Vaughn thought the Clerk of Court would have some record of the irrigation districts. Mr. Gustine said by statute they should be, but from personal experience, he has spent hours and days going through boxes because nothing is indexed. They refer you to boxes and wish you Good Luck!

Closing by Sponsor: Senator Bengtson closed by thanking Mr. Gustine for bringing his concerns to the committee. This allows the committee to have the best information. Possibly these records could be compiled by the MWRA. She was surprised that these records could not be found. Working with this bill the committee can hopefully address these concerns, and handle the concerns of the water user entities without having any big losers. She asked the committee to only hold the bill for a few days, but not leave it hanging.

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Senator Bengtson took over the chair again.

HEARING ON SB-189

Presentation and Opening Statement by Sponsor: Senator Tom Beck, District 24, during the last interim he chaired a subcommittee on the Environmental Quality Council that dealt with solid waste and our municipal land fill dumps. This bill is a result of the work by that committee. He stated that this bill has several sections and he would go through each and briefly highlight what it deals with. Other experts would be testifying about the specifics. Section 1-3 deals with the restrictions of contracts on local governments. They can only levy contracts for 5 years. With the cost of landfill dumps and federal regulations, this has been amended to 10 years to recover these costs. Section 4 provides the counties with the authority to issue revenue bonds for the purpose of financing a solid waste system. Section 5 explains the laws counties will use for their bonding. They are the municipal laws of the State of Montana. Section #6 redefines the definition of refuge and solid waste to consist with the public health statutes. Section #7 clarifies solid waste management districts only have the authority specifically delegated by the county commissioners. This is a result of a Supreme Court decision that solid waste districts do not have the authority to establish or do anything not granted to them by the county commissioners. Section #8 asks that the law conform to the appeals or protest period. This changes the time from 30 days to 15 days. Section #9 states that the commissioner can not arbitrarily expand the district, but they may change the boundary description if the changes do not add territory or increase purposed fees. This stops them from going through the whole process to establish a new district if someone wants out of the district. Section #10 explains the powers and duties of the board. Section #11 allows district flexibility on the methods of charging for the services. Many counties use different ideas on how they assess the people in the district. Section #12 deals with the current law that will not allow the district to collect any fees until it begins a delivery service. This change asks for 1 year prior the district will be able to collect the fees to start this service. Section #13 allows districts to make installment payments other than equal payments. Some other proponent will explain that. Section #14 clearly establishes that county commissioners can issue revenue bonds for solid waste systems, and pledge the revenue of the district. More than one county will be encompassed, so those counties can levy revenue

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bonds to support the solid waste system. To make the bonding possible Section 15 & 16 provide the backup for the counties to collect the revenue by levying 2 mills if something happens and the bonds can't be paid off. Section #17-19 establish joint districts that encompass more than one county. This is the guts of the bill. There are numerous counties on the highline that would like to join together and have one solid waste site. There has never been any provision in the law to allow this. This provides the opportunity to form multi-county districts. The rest of the sections mostly deal with things in the law. This gives you the meat and potatoes of the bill, and the other proponents will add to this.

Proponents' Testimony: Seldon S. Frisbee, Attorney at Law, representing the Northern Montana Joint Refuse District (NMJRD). Mr. Frisbee gave a thorough explanation of the bill and amended sections. (Exhibit #3) Mr. Frisbee said that if the amendment for joint districts is accepted then there should be there should be the addition that the creation of any joint district or any previously created district that complies with the provisions in this act, should be validated.

Tom Hammerbacker, Mayor of the City of Conrad, and member of the board of directors of NMJRD. We support this bill and he hope the committee will consider Mr. Frisbee's proposals as he is the attorney for the district and has worked for over two years on that district and its needs. Montana landfills are going to be jerked into the twentieth century, and streamline legislation to allow people to deal with this is necessary.

Pete Frazier, Director, Cascade City-County Environmental Health Department, and he served for 20 years as the Director of the Cascade Solid Waste Disposal District. He supports SB-189 but felt an amendment was necessary. (Exhibit #4). He did not want to change the mobile park section that Mr. Frisbee suggested.

Chris Kaufman, Montana Environmental Protection Information Center, support this bill because their are provisions in this law that will be good for the environment. One of those is the encouragement of regional landfills. We are moving into a new age of recycling, and we want to make sure what is left over after recycling does go to a place that is safe and protects the ground water. It makes more sense to have a few located in regions throughout the state rather than one in every municipality. Also this bill will allow districts to charge their rates in a more flexible manner, and one we hope will be to charge by the volume of waste produced. This will encourage citizens to produce less waste and recycle more.

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Frank Crowley, Montana Solid Waste Contractors Association (MSWCA), generally support this legislation. The association is a statewide comprised of private refuse haulers and landfill owners and operators. We support it because we recognize that adequate resources are necessary for everyone, public or private, who is facing the responsibility of solid waste management into the 90's and beyond. His testimony is divided in two parts. #1 with some specific language and #2 with the general concern and some recommendation. #1 regards the current entities that are named refuse disposal districts, Section 34, and he feels that operates adequate clause to capture those prior landfills. #2. Page 6, line 5, talks about collection and or disposing. The same phrase references ALL solid waste created in the district. This needs to be changed because some districts do not collect all the solid waste. Here in Helena, private concerns collect refuse from some commercial and residential operators in the district boundaries. So the language needs to be amended to "all or part of" the solid waste. Then on Page 6, line 25 shortens the protest time. The process currently takes a few months, so the shortening of this protest time will not really streamline that much. This protest time is a critical issue to allow the public their say, and 15 days is hardly time to organize and carry out a protest. We recommend deletion of that time change. The last comment is on Page 16, line 5, d. other sources was said to be there for repayment of funds if the bonding fails. This is a very broad subpart. The committee should inquire as to whether other sources relates back to Page 15, line 23, "payable from any revenue from the joint districts". If this opens the door to ALL county revenue sources, he suggested that this was too broad for keeping the district within its own budgetary constraints. Subsection d. should be deleted.

His broader consideration that relates to the future landscape of solid waste management. Currently in the state we have a mix of private and public operators. Both in hauling, collecting and operation of landfills. Recycling so far has been initiated and pursued by the private sector. There is a healthy element of competition. SB-189 allows multi-county districts which is a good idea, but it allows grants significant new powers to local government in way of assessments, taxes, and access to low interest sources of public finance. We do not deny the need for some enhancement for local government to fund and operate local solid waste system, a bill of this magnitude makes us wonder if the private sector operating in the industry will be crowded out. This bill does not overly concern us because it is one in a series of bills which have been developed by the EQC under SJR-19 from the 51st Legislature. EQC conducted a very thorough assessment. Members from the private industry participated in

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that, and this is one of the bills that was produced from that. Each bill reflects what EQC suggests needs to happen over the next many years to have an integrated and effective solid waste management program in the state. SB-189 is one of those recommended. One of the companion bills is SB-99 which is also been assigned to this committee. SB-99 is slowly working its way to action in this committee. SB-99 deals with the long standing provision of the state's solid waste act, which requires that private industry be utilized to the maximum extent possible in the provisions of solid waste services in the state. He conceded that the preference has been on the books for many years has only had lip service at best. What SB-99 does two things to amend that preference. #1 it reaffirms the preference by requiring that for new systems, the private sector applicant if there is one, must be given the preference if it can provide the service for substantially the same cost as the public bid. #2 it establishes a procedure for assuring that local government will give consideration to a private proposal if there is one. Even if SB-99 is enacted it gives no guarantees, but it does recognize the legitimate and necessary role in the private sector who operates in this industry. From the MSWCA point of view SB-99 is closely related to SB-189. If both bills are passed then the MSWCA has a chance of holding its own, despite the significant funding powers granted to local government in SB-189. If SB-189 passes, but SB-99 does not, then a substantial shift will occur where the public sector will have clear advantages on how it can finance and fund solid waste management systems. The private sector will have an even more difficult time remaining viable. Therefore, we see a clear linkage, and these two bills should be considered together. MSWCA asks the committee to defer any action on SB-189 until you have heard SB-99. By deferring action on SB-189, you eliminate the chance of adopting only one of these EQC bills. That could strike a serious blow to the future of the private solid waste industry.

Gene Huntington, Financial Consultant, Environmental Quality Council and helped write this bill. He would be available to answer questions.

Pat Trusler, Administrator of Land Services, Lake County, and also involved with the solid waste district since 1978. He was not going to comment, but Mr. Crowley brought up SB-99. Mr. Trusler is concerned that this is not a hearing for SB-99, the committee should not defer on SB-189 until SB-99 comes up. Senator Bengtson said during the hearing on SB-195 that you risk the opportunity for local government to have expanded authority to raise money to defer the cost of the new regulations. He asked that all the comments concerning SB-99 be stricken from the

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testimony.

Senator Bengtson said that the testimony would not be stricken, but Mr. Trusler's request would be noted.

Opponents' Testimony: Ben Cohen, NVR Inc, Whitefish. He is a small private contractor who is in the hauling, not disposal business. He hauls all the refuse to the Flathead County Refuse District's landfill. That district budget is a budget of about \$2 million/year. Their rates are set by the former mechanism in section 7-13-232 which he is happy to see is being amended in this bill. They have a board with 11 members that is suppose to meet once a month, but does not meet once a month. The citizens of the county are lucky if the board meets nine times a year. So basically they have a manager with close to \$2 million dollar budget with very little public oversight. He has increased fees from \$19.50 to \$30.50 with board approval. A citizens group was concerned about the process of solid waste and the lack of recycling. They asked the manager what the new money would be used for, and he felt that he did not have to tell them. He got the increase from the board without a budget of what the new funds would be used for, and it was done with little oversight. Mr. Cohen is concerned that this type of abuse will continue on a larger scale in these joint districts. In addition, the citizens group has asked the manager to separate out the costs of the landfill and the transfer and hauling. There are two different operations in refuse disposal districts. One is establishing transfer sights, picking up materials, bringing it to the landfill. The other operation is the actual excavation, back-filling, and placement of material in the ground. Possibly there is the testing of tail water. The manager of the Flathead district will not give this information to the citizens. When pushed, he says he does not even know how much material he is putting in this landfill. He has a guess. Mr. Cohen asked the committee that if they are going to create monster districts that they be made accountable to the citizens and the communities that they serve. They should be required by law to have accounting system that lets people know what the funds are spent on.

Questions From Committee Members:

Senator Harding asked Senator Beck where the support of the county commissioners was, and why weren't there any testifying on behalf of the bill? Senator Beck said that county commissioners were on the interim study, and that the county commissioners of Northern Montana do support this bill.

Senator Hammond asked Mr. Frisbee what was the final count of the

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counties in the joint district. Mr. Frisbee said that 3 counties were involved with parts of others. Pondera County (excluding the reservation) Glacier County (excluding west of Delta Mia Highway) Choteau County, Teton County, parts of Valier, and Conrad. Senator Hammond asked what the ones that did not come in are doing? Mayor Hammerbacker said that they are trying to come into the district. They realize they had poor information when they pulled out. We are negotiating right now.

Senator Vaughn asked Mr. Frisbee about the amendment dealing with mobile home parks? What is his feeling on changing it back to the home owner? Mr. Frisbee said he testified that his preference would be to the landowner responsible, because they don't come and go without record of property change. He deferred if people have difficulty with this. Senator Vaughn asked if the assessing of fees would be against the user, then who would be assessed the bonds? Mr. Frisbee said they are revenue bonds and there would be no tax levy, it would be revenue from the district would pay off the bonds. The backup of the 2 mill levy is in the bill. Mayor Hammerbacker said that they have a mobile park that has both residential and overnight hookups, so people come and go without notice. Mr. Frazier said that the assessment should be different for those types of assessment for a campground or rv sight v.s. a mobile home park. Mayor Hammerbacker said that they had a combination in this one sight. Mr. Frazer said they have an assessment that takes into account the shorter stays differently than long term.

Senator Thayer asked Mr. Cohen about his concern on Page 9 & 10, line 19-20 about the rates must be subject to approval by the county commissioners, Page 10 subsection 6 is the public hearing before rates can be changes, would these take care the problems in Flathead? Mr. Cohen said that they had public hearings, but no documentation was presented. So no one knew what the intention was for the new increase. Holding the hearing did not seem sufficient. Mr. Frisbee said that he thought the structure needed to be kept in mind. The resolution of intention that is published and adopted, sets the top fee to be collected, and in their case it is \$68/year. That notification is mailed to every property owner to be affected. They, within the protest period, can protest. If a majority object, there can be no increase. Then that same process must be initiated again for an increase. The other statement, under the law, the district is a local government entity, subject to budget law, and they must expend the monies for the purposes indicated. The books are public record. If there is a local problem in Flathead county, it would should be taken care of by budget laws, and all other operating laws of local government.

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Senator Harding asked Pat Trusler why he did not want the private enterprise concerns to be entered into this discussions? Mr. Trusler said his only comment was that this was a hearing for SB-189, revising solid waste law. SB-99 deals with something else, and nothing concerning SB-99 should be allowed during this hearing, nor should SB-189 be held hostage until that bill is heard.

Closing by Sponsor: Senator Beck closed by asking the committee to consider an amendment he had prepared by Pat Sihler (Exhibit #5). It coincide the definition of solid waste with present law. He asked the committee to enter this. Senator Beck said that this bill would definitely need thorough discussion by the committee. The bill's intent is to allow counties that want to form multi-county solid waste disposal districts to do so. Federal regulations are coming down, and these make it extremely costly for each county to have a dump. This is the right approach to limiting the number of landfill dumps that we will see in the state, and it will try to lighten the burden to those local people by allowing them to group and fund those landfills.

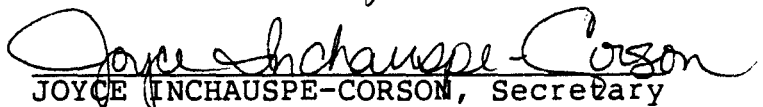
Senator Bengtson directed the secretary to put the amendment in the committee books to be considered during Executive Action on SB-189.

ADJOURNMENT

Adjournment At: 5:20 p.m.



ESTHER BENGTSON, Chairman



JOYCE INCHAUSPE-CORSON, Secretary

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ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-7-91

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NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

with 100% entitlement
record
SB195
Quarantined
Swimming
Public
They should know
innovative in research
major
 SENATE LOCAL GOVT. COMM. *water users*
 EXHIBIT NO. *#1*
 DATE *2-7-91*
 BILL NO. *SB-19* *Enson*

SB195 is introduced in an effort to provide relief for water entities from the problems that occur with subdivisions when the purchasers are not aware that there might be problems in the future from the delivery system, or storage facility. This does not say that permission must be granted from the entity to develop, only that if the proposed division lies partly or totally within the boundaries of a water user entity that it must be reviewed by the water user entity to ensure that the existence and location of all water user facilities are properly noted on the certificate of survey.

Certain situations exist, peculiar to water user facilities, such as seepage, openj canals, drain ditches that an owner ought to be aware of prior to the closure.

We believe that to make such information available to those who are considering subdivision, or buying within a subdivision, will be beneficial to all concerned. It will inform the purchaser of the situation, and it will protect the water entity from problems that might arise later.

occasional sell
Hopper
Reactors
approval
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SB 399



EXHIBIT NO. 7

DATE 2-7-91

BILL NO. SB-195

SB195--Bengston--February 7, 1991----Senate Natural Resources--Support

Mr. Chairman, members of the committee for your information, my name is Jo Brunner, and I am Executive Secretary of the Montana Water Resources Association.

Mr. Chairman, MWRA asked Senator Bengston to introduce this bill for us because of the situations that arise between our water entities and people who purchase property which either lies partially or totally within the boundaries of our entities.

Most often they are unaware that there are regulations related to water user projects or districts, and of the responsibilities of the entities concerning ditches that might run through their property, diversions of water onto their property, location of storage facilities in relation to their land, and that they may see some adverse effects from the facility that they are unable to understand, because they were not even aware that the facility existed.

This request does not require approval of the water user entity involved, only that the entity must review the proposal to make sure that the existence and location of the facilities are properly noted on the certificate of survey.

It also partially lists facilities that would be considered.

I have the amendment Senator Bengston referred to-- we inadvertently failed to include in our draft to her the need for the words "sources of water" on our list. We ask that you do accept this amendment. It would be placed in listed sections of SB195.

I worked with other groups interested in the subdivision laws-- for around three years--- MWRA consistently asked that only a few words be included in any renovation of subdivision laws, or new law---those words were to the effect that water user facilities need to be considered in any subdivision.

Failing that we decided to go on our own. We certainly understand that this could be, in rare instances, a nuisance to surveyors. The water user entities usually have the information necessary available and would cooperate in every way to lessen any problems.

We think the problem would be minimal. However, it is not minimal to our people. Lawsuits are constant--and costly. One of our members yearly increases his legal budget, and has never once lost a case. I cannot tell you of an instance where the landowner won against the facility that was in existence prior to the subdivision.

I'll be glad to answer any questions or to find the answer for you.

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. _____

DATE _____

BILL NO. _____

Amendments to SB195---Bengston

Section 2, paragraph 2, subparagraph (r), page 4, line 21, after the words storage facilities. delete the period, insert comma and sources of water .

Continue same amendment in:

Section 4, paragraph 2, subparagraph (c) page 10, line 12.

Section 5, paragraph 2, subparagraph (e) page 12, line 4 .

MONTANA WATER RESOURCES ASSOCIATION

501 N. Sanders • Helena, Montana 59601 • (406) 442-9666

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 7a

DATE 2-7-91

BILL NO. SB-195

Esther,

We want to offer an amendment--through you---if possible that will include wording in Section 2, paragraph 2, (sub-r) page 4, line 21

Section 4, paragraph 2, sub paragraph (c) page 10 line 12

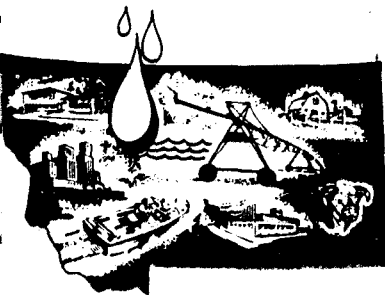
Section 5, paragraph 2, sub paragraph (e) page 12 line 4

same amendment each time-----and sources of water.

I'll get the amendments typed out for the committee.

The reasoning is that some subdivisions are going in close to sources of water. The other additions are primarily delivery and storage systems. Source, such as mouth of river, spring included in system, etcetera .

For your information, I'm enclosing an outline you may want to refer to in your presentation. I'll do the testimony for MWRA and hope that it works out. I wish that the surveyors were not determined to fight this, but maybe we can show that its just as much or more of a nuisance for the water entities all the time as it is for the surveyors for a few days,



"Montana's Voice for Montana's Water"

DATE February 7, 1991

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Tom Hammerbacher	City of Concord	189		
Chuck Stearns	City of Missoula	HB 119	✓	
Janet Jessy	Huntington Assoc	189	✓	
Tony Grover	DHE'S	189	✓	
RICK JUSTINE	MT HRLS	195		✓
DAN WHITE	CSC OF MONTANA			
Brendan Penly	MT Assoc. Realtors	195	✓	
Pat Trusler	Utah County	189	Arrang.	
Pete Frazier	CITY-CL HEALTH 1130 17 ALI B	189	Amend	
Joanne Chance	MT Tech. Council	195		✓
Chris Huntington	EQC			
Bob [unclear]	MT [unclear]	195	✓	
Frank Blitzer	ALISA MIVOTA			
Stark Crowley	MT Solid Waste Coalition	189	✓	
Jordan Morris	MACO	189	✓	
Boyd [unclear]	NVR Inc Whitefish	189		✓
Old [unclear]	MT Solid Waste [unclear]	189	✓	

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of Feb, 1991.

Name: Pete Frazier

Address: 3309 17 Ave S

67 Feb-47

Telephone Number: 761-3808 761-1190 work

Representing whom?

(174 - 20 H/176 Dep)

Appearing on which proposal?

SB 159

Do you: Support? _____ Amend? 8 Oppose? _____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE LOCAL GOVT. COMM.
SELDEN S. FRISBEE
ATTORNEY AT LAW
P.O. BOX 1998, 13 EAST MAIN STREET
CUT BANK, MONTANA 59427-1998
EXHIBIT NO. 3
DATE 2-7-91
BILL NO. SB-189

Telecopier (Fax) No. (406)873-4342

OFFICE (406) 873-2263
RUS (406) 873-4374

September 10, 1990

Gene Huntington
Huntington & Fenter
P.O. Box 364
Helena, MT 59624

Dear Gene:

Following are suggestions I have concerning joint refuse disposal districts, and changes in, or amendments to, the laws affecting these joint refuse disposal districts.

This is not intended as a comprehensive analysis by any means, nor am I using specific language that I believe might be used in amendments, or changes to, the applicable statutes.

I have not endeavored to analyze every possible pertinent statute, but following are just some of the matters that might be considered.

1. CONFLICT BETWEEN NOTICE PROVISIONS.

I earlier told you about the conflict between the notice provisions of Sec. 7-13-208, 7-13-209 and 7-1-2121.

Sec. 7-13-209 provides that any owner has 30 days after the first publication of the notice within which to protest.

Sec. 7-13-208 provides that notice shall be published as provided in 7-1-2121.

Sec. 7-1-2121 provides in subsection 5 that the notice must be published twice, with at least 6 days separating publication. The first publication must be no more than 21 days prior to the action and the last no less than 3 days prior to the action. If this provision is followed, then the property owners will not be allowed 30 days after the first publication of the notice within which to make their protest.

Two changes can be made. Either the provisions of Sec. 7-1-2121 be followed with a change in sections 7-13-208 and 7-13-209 reducing the notice period to the owner to 15 days, or letting the 30 day notice provision stand, doing away with the reference to Sec. 7-1-2121, and adding further provisions showing how often the notice should be published.

2. AUTHORIZATION FOR CITIES AND TOWNS TO ENTER A JOINT REFUSE DISPOSAL DISTRICT ABSENT ANY ACTION BY THE COUNTY COMMISSIONERS.

One of the problem encountered is the inability of a city or town independently of the county commissioners to become a part of a joint refuse disposal district. Some provision should be made for cities and towns to adopt a resolution of intention and to enter into a joint refuse disposal district where the county commissioners either fail or refuse to become a part of the action, such as we encountered in Toole County.

In order to do this, Sec. 7-13-202 should have the definition added of cities or towns and what is intended by the use of those words.

Sec. 7-13-203 which provides "The commissioners may create a refuse disposal district" should add in some sort of language that in the absence of such action by the commissioners, the cities or towns in a county where the commissioners fail to act may also create a refuse disposal district. If that is done, then Sec. 7-13-204, 208, 210, 212, 213, 231, 241, and 243 would have to be amended by some language referring to the governing body of the city or town in the absence of any action by the county commissioners.

This could also be accomplished by an amendment of Sec. 7-11-1102, multi-jurisdictional service districts, adding to the listed services refuse disposal districts and joint refuse disposal districts.

3. PROVISION AUTHORIZING CHANGE IN BOUNDARIES AND TERRITORIES BETWEEN ADOPTION OF THE RESOLUTION OF INTENTION AND THE ADOPTION OF THE RESOLUTION CREATING THE REFUSE DISPOSAL DISTRICT.

You are familiar with the problems created by changes by the various county commissioners resulting in deletion of lands, and changes in the boundaries of the lands, included in the joint refuse disposal district. There should be some

provision made in the statutes providing that the deletion of territories from those described in the resolution of intention will not invalidate prior to subsequent proceedings, provided no increase in fees proposed to be charged as specified in the resolution of intention, is made.

Just a word of explanation. Much litigation in connection with special improvement districts has indicated that people provided the right to protest have the right to know the amount of the taxes, or the fees to be levied, in deciding whether or not to protest. This seems to be a constitutional question. For this reason, I feel that as long as a change in the amount of land included in the district does not increase the amount of fees, we are on safe ground. However, I believe there is a necessity for such a provision to be enacted. Sec. 7-13-212 might very well be amended by the inclusion of this type of language. This type of language could be added as an exception or a provision in subsection 1 of Sec. 7-13-212.

4. DELETION OF REQUIREMENT OF APPROVAL OF COUNTY COMMISSIONERS OF ACTIONS ON THE PART OF THE BOARD OF DIRECTORS OF THE JOINT REFUSE DISPOSAL DISTRICT.

Sec. 7-13-215 sets out the powers and duties of the board but provides they can be exercised only "with the approval of the county commissioners of the counties involved." Sec. 7-13-231 provides for the establishment of a service fee, with the approval of the county commissioners.

I believe that the statute should be amended to do away with the necessity of the approval of the county commissioners, but if we wish to retain that option, then I would suggest an amendment of Sec. 7-13-215 to provide for a delegation of this authority to the board and for a prior blanket approval by the board of county commissioners of the exercise of either all, or any specified, powers set out in 7-13-215. The same sort of a provision could be written into 7-13-231.

In our proceedings I handled this by the following provision:

"Sec. 7-13-215 Montana Code Annotated provides that the board of directors shall have the foregoing powers and duties, with the approval of the county commissioners of the counties involved. Each of the undersigned board of county commissioners, so far as it is legally entitled to do so, does hereby give

advance approval of the exercise of these powers and duties by the board of directors without the necessity of obtaining specific approval for each act performed, or decision made, by the board of directors. By this provision, it is the intention of each of the undersigned board of county commissioners to, in effect, delegate to the board of directors each and every of the foregoing powers and duties."

5. BOARD OF DIRECTORS AND AUTHORIZATION FOR EXECUTIVE COMMITTEE.

Sec. 7-13-242 provides for the composition of the board of directors of a joint district and, as you know, provides for one commissioner from each county involved, one member from each of the incorporated cities or towns, and one member from each of the county or city/county boards of health. As you know, this can result in a very cumbersome type of a board.

I believe an amendment to this section could be made providing that the board would be entitled to elect or appoint an executive committee to exercise all of the powers of the board. While I think this can be done without statutory blessing, I think it would be a precautionary measure to provide for such an amendment.

Furthermore, nothing in the statutes provide for the term of office of the directors. Some provision to the general effect should be made that the term of office shall be as specified by the appointing authority, or in case of an elected official for his term of office.

6. AMENDMENT OF THE "MULTI-JURISDICTIONAL SERVICE DISTRICTS" PROVISIONS.

Sec. 7-11-1101 and 7-11-1102 provide for multi-jurisdictional service districts and the services that may be provided. Curiously enough, no mention is made in 7-11-1102 of refuse disposal district or joint refuse disposal districts. It is my suggestion that 7-11-1102 be amended to specifically cover this omission. If this were done, it would provide another method for the creation of a joint refuse disposal district which would be less burdensome than the one that we are going through.

7. AUTHORIZATION FOR JOINT REFUSE DISPOSAL DISTRICTS TO ENTER INTO INTERLOCAL AGREEMENTS.

Curiously enough, there doesn't seem to be any specific provision providing for joint refuse disposal districts to enter into interlocal agreements. Sec. 7-11-103 provides that public agencies can enter into interlocal agreements and it includes in that definition any political subdivision, including municipalities, counties, school districts and any agency or department of the State of Montana. It might be very well to add to 7-11-103, or include in it, joint refuse disposal districts specifically.

8. CLARIFICATION OF TERM OF INTERLOCAL AGREEMENTS.

One further misunderstanding has been occasioned by Sec. 7-11-206 and 7-11-105 concerning interlocal agreements.

Part 2 provides for a "interlocal cooperation commission." Sec. 7-11-206 provides "all commissions shall terminate five years from the date of their establishment." This has created some sort of a feeling that perhaps this provision places a limitation upon the term or duration of an interlocal agreement.

Sec. 7-11-105 (Part 1, Interlocal Agreements) provides, among other things, the contract authorized by 7-11-104 shall specify the following:

1. (its duration).

It is obvious that there is no limitation on the duration of the interlocal agreement and I believe that this section governs the creation of the interlocal agreement unless an interlocal cooperation commission is created under the provisions of Part 2. Nonetheless, it might be well to provide in Sec. 7-11-206 that this is not intended to create any sort of a limitation on the duration of an interlocal agreement adopted under the provisions of Part 1.

9. ADMINISTRATION OF DISTRICT FUND.

Sec. 7-13-234 provides that all fees received by the district shall be placed in a separate fund with the county treasurer and that warrants on the fund shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Sec. 7-13-243 provides that fees and

other money collected by joint refuse disposal districts may be administered by one county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

I believe that either or both of these sections should be amended by providing that the proceeds may also be administered by the district board, and an account opened by the district board into which the service fees are deposited, and from which the service fees are disbursed. Further provision should be made that upon receipt by the county commissioners or the county treasurer of the fees from the refuse disposal district assessments, the treasurer shall remit those fees to the district fund.

10. PROVIDE THAT FEES CAN BE COLLECTED IN ADVANCE OF COMMENCEMENT OF SERVICE FOR FINANCING CAPITAL IMPROVEMENTS.

Sec. 7-13-216 provides that fees may be levied only against that part of the district that is receiving service. Sec. 7-13-231 also provides that the fees shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of the district. An amendment should be made to these sections which provides for the fee to be collected for capital expenditures immediately upon creation of the district. This can be done through either amendment or the addition of a separate section so providing. A little refinement might be a separate section governing the collection of fees for capital expenditures as distinguished from fees collected for the purpose of maintenance and operation of the district or commencement of service.

11. SPECIFIC AUTHORIZATION FOR ISSUANCE OF REVENUE BONDS.

I haven't found anything in the statutes which specifically authorizes the issuance of revenue bonds by the joint refuse disposal district, or by the counties to defray the expense of the service and capital expenditures. Sec. 7-13-215 provides for the borrowing from any loaning agency funds available for assistance in planning or financing a refuse disposal district and the repayment of these borrowings with the money received from the fees levied under this part (Subsection 8, Sec. 7-13-215).

Sec. 7-13-215 might very well be amended by the addition of a subsection 9 which specifically authorizes the issuance of revenue bonds.

Gene Huntington
September 10, 1990
Page 7

12. ADDITIONAL PROVISION REGARDING CHANGES IN BOUNDARIES.

I earlier discussed with you the problem encountered in connection with changing boundaries after the adoption of the resolution of intention. Sec. 7-13-217 provides that the governing body of the district may, by resolution, make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearing outlined under 7-13-205 and 7-13-212. This section creates a conflict possibly in the question of whether or not boundaries can be changed between the adoption of the resolution of intention and the adoption of the resolution creating the district. I believe that an amendment to this section will do away with that possible conflict. Some sort of language such as the following might very well be added to Sec. 7-13-217. Sec. 7-13-217 might very well start out with:

"After the creation of the district by adoption of the resolution creating the district and the determination of the territory or lands to be included in said district, and the boundaries thereof, as provided by Sec. 7-13-212, the board of directors of the district may by resolution make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearing outlined under 7-13-205 and 7-13-212."

Gene, the foregoing are the changes or amendments which come to mind and if any later occur, I'll be sure to relay them on to you.

Yours very truly,

SELDEN S. FRISBEE

By: Selden S. Frisbee

SSF/jrs

TESTIMONY ON SB 189

MADAM CHAIR AND COMMITTEE MEMBERS, MY NAME IS PETE FRAZIER, ENVIRONMENTAL HEALTH DIRECTOR WITH THE CITY-COUNTY HEALTH DEPARTMENT IN CASCADE COUNTY. IN ADDITION, I HAVE SERVED AS THE DIRECTOR OF THE CASCADE COUNTY SOLID WASTE DISPOSAL DISTRICT SINCE ITS CREATION 20 YEARS AGO.

IN GENERAL, WE SUPPORT SB 189, BUT WE FEEL IT NECESSARY TO POINT OUT A COUPLE AREAS THAT, IN OUR OPINION, MUST BE AMENDED.

ON PAGE 5, THE DEFINITION OF "REFUSE" HAS BEEN DELETED AND A NEW DEFINITION OF "SOLID WASTE" INCLUDED. WITHIN THIS NEW DEFINITION, SOLID WASTE IS DEFINED, AMONG MANY OTHER ITEMS, AS "HAZARDOUS WASTES" AND "SEPTIC TANK AND CESSPOOL PUMPINGS." ON PAGE 6, LINES 3-5, THE DEFINITION OF SOLID WASTE DISTRICT TELLS US THAT A DISTRICT MUST COLLECT AND DISPOSE OF ALL SOLID WASTE CREATED IN THE DISTRICT. BASED ON THESE DEFINITIONS, ALL DISTRICTS WILL HAVE TO START ACCEPTING THE RESPONSIBILITY AND COST FOR HAZARDOUS WASTE DISPOSAL. SINCE HAZARDOUS WASTE MUST BE DISPOSED OF IN A CLASS I HAZARDOUS WASTE DISPOSAL SITE, OF WHICH THERE IS NONE IN THE STATE OF MONTANA, DISTRICTS WILL BE REQUIRED TO ASSURE ANY HAZARDOUS WASTES RECEIVED ARE PROPERLY PACKAGED, TRANSPORTED, AND DISPOSED OF AT OUT OF STATE FACILITIES AT A SUBSTANTIAL COST AND LIABILITY. THE MONTANA HAZARDOUS WASTE ACT CURRENTLY ADDRESSES HAZARDOUS WASTE AND PUTS THE RESPONSIBILITY FOR DISPOSAL ON THE GENERATOR OF THE WASTES. WE ARE SURE THAT IT IS NOT THE INTENTION OF SB 189 TO CHANGE THIS PROCEDURE. THEREFORE, WE RECOMMEND THAT THE TERM "HAZARDOUS WASTE" BE DELETED AT THE END OF LINE 15 AND THE BEGINNING OF LINE 16 ON PAGE 5 IN ORDER TO ELIMINATE ANY CONFUSION.

AGAIN, BASED ON THE DEFINITION OF SOLID WASTE DISTRICT ON PAGE 6, LINES 3-5, DISTRICTS WILL BE REQUIRED TO ACCEPT SEPTIC TANK AND CESSPOOL PUMPINGS, YET MOST, IF NOT ALL, STATE SOLID WASTE LANDFILL LICENSES ISSUED BY THE STATE SOLID & HAZARDOUS WASTE BUREAU PROHIBIT LANDFILLS FROM ACCEPTING LIQUID WASTES. THE PROPOSED DEFINITIONS OF SOLID WASTE AND SOLID WASTE DISTRICT WOULD FORCE LANDFILL OPERATORS TO EITHER VIOLATE PROVISIONS OF THEIR STATE LICENSE OR VIOLATE PROVISIONS OF STATE LAW. THESE WASTES ARE HANDLED UNDER THE EXISTING CESSPOOL, SEPTIC TANK AND PRIVY CLEANER ACT AT APPROVED LAND APPLICATION DISPOSAL SITES. THEREFORE, WE RECOMMEND THAT THE TERM "SEPTIC TANK

AND CESSPOOL PUMPINGS" ON LINE 18, PAGE 5, BE DELETED.

ONE FINAL DEFINITION REVISION HAS TO DO WITH "SOLID WASTE DISTRICT" ON PAGE 6, LINES 3-5. AS WRITTEN, THIS DEFINITION INDICATES SOLID WASTE DISTRICTS WILL BE, OR ARE, INVOLVED IN BOTH COLLECTION AND DISPOSAL OF SOLID WASTE. I KNOW OF NO DISTRICT CURRENTLY IN OPERATION IN MONTANA THAT PROVIDES COLLECTION SERVICES. MANY DISTRICTS UTILIZE 40 CUBIC YARD OR SMALLER CONTAINER PROGRAMS IN CONJUNCTION WITH A LANDFILL, BUT THE PICKING UP OF CONTAINERS IS CONSIDERED A MEANS OF DISPOSAL, NOT COLLECTION. THEREFORE, FOR CLARIFICATION PURPOSES, IT WOULD APPEAR TO BE MORE APPROPRIATE, ON LINE 4, PAGE 6, AFTER THE WORD "COLLECTING" TO ADD "AND/OR" RATHER THAN JUST "AND."

WITH THESE AMENDMENTS, I WOULD URGE THE COMMITTEE GIVE SB 189 A "DO PASS" RECOMMENDATION.

THANK YOU.

P.

Amendments to Senate Bill No. 189
First Reading Copy

EXHIBIT NO. 5
DATE 2-7-91

Requested by Sen. Beck
For the Committee on Local Government

BILL NO. SB-189

Prepared by Paul Sihler
February 6, 1991

1. Page 5, lines 15 and 16.
Following: "refuse;" on line 15
Strike: "hazardous wastes;"

2. Page 5, line 18.
Following: "facilities;"
Strike: "septic tank and cesspool pumpings;"

3. Page 5, line 20.
Following: "wood" on line 20
Strike: "wastes"
Insert: "products or wood byproducts"

4. Page , line 21.
Following: "materials. "
Strike: "The term"
Insert: "\"Solid waste\""
Following: "not"
Strike: "include"
Insert: "mean"

5. Page 5, line 24.
Following: "lands"
Insert: ", slash and forest debris regulated under laws
administered by the department of state lands, or marketable
byproducts "