

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Vice-Chairman Eleanor Vaughn, on March 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: none

Staff Present: Connie Erickson (Legislative Council).

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

Announcements/Discussion: none

HEARING ON HB-182

Presentation and Opening Statement by Sponsor: Representative Don Larson, District 65, said his bill expands rural fire districts to allow trustees to provide firefighting personnel and emergency response equipment. This bill permits the expansion of the purchasing authority of the fire districts to buy ambulances, search and rescue equipment, hazardous duty equipment, and other things not normally associated with strict firefighting. The roll of volunteer firefighting groups has greatly expanded, so their equipment needs have also expanded. They have not been specifically authorized to buy those other types of equipment.

Proponents' Testimony: James Lofftus, Montana Fire Districts Association, and also representing the Missoula Rural Fire District and Lockwood Fire District, said that county attorneys have said that if the law doesn't say it, then the fire districts can't do it. Many districts have heavy rescue trucks that are

not essential firefighting equipment. Missoula Rural has a hazard materials van, and they responded last night to a call at the Stone Container Corporation. The spill was sulfuric acid. This is just a clean up bill that permits fire districts to buy this other equipment such as pickups, suburbans, cars, etc. that are used for other types of responses.

James Balke, Gallatin County Fire Council and Belgrade Rural Fire District, support this bill.

Opponents' Testimony: none

Questions From Committee Members:

Senator Hammond asked what this bill will do? Mr. Balke said it would legalize what is already being done by some fire districts.

Senator Thayer asked Representative Larson why the term "personnel" is in the bill? Representative Larson was not sure. Mr. Lofftus answered by stating that some fire districts have paid personnel. Missoula Rural and Lockwood have paid personnel, and other districts have looked at the idea.

Senator Beck asked what "adequate and standard personnel" would be? Representative Larson said some fire districts that have partially paid/partially volunteer. This bill authorizes them to hire a part-time EMT or medical personnel, and then that skill would be brought into the unit. The new member could cross train the other volunteer firefighters.

Closing by Sponsor: Representative Larson closed by stating that there are over 400 volunteer firefighter units in the state of Montana. They are important to the communities they serve. They operate voluntarily, and they need to give them every bit of support, and this bill is a small clarification to help them.

Senator Vaughn asked if Representative Larson had someone to carry it. Representative Larson said that Senator Thayer was very capable.

EXECUTIVE ACTION ON HB-182

Motion: Senator Thayer moved to Concur in HB-182. The motion was unanimous, and was recorded as a roll call vote. Senator Thayer will carry HB-182.

EXECUTIVE ACTION ON HJR-7

Amendments, Discussion, and Votes: C. Erickson explained the amendments that Senator Bengtson requested (Exhibit #1). Senator Eck moved the amendments.

Senator Thayer said he realized that this was only a resolution, but he felt that it would indicate that the Legislature is interested in local school developing curriculum. He felt this was just opening the door for things. He would support the resolution as it is, but not the amendments.

Senator Beck asked why the amendments were for public schools to promote recycling by private citizens? Senator Eck said the students are the private citizens. Senator Beck asked when students started being addressed as "private citizens"?

C. Erickson said the attempt was to aim the resolution at encouraging local governments and schools as entities to do their own recycling within their own means, like the state is doing. The amendments attempt to expand this beyond, so they could get the community residents encouraged to recycle. This would get further programs on how, what, and why you recycle. Maybe "private citizens" is not the best wording.

Senator Eck said that school children are the best teachers. School kids built the "ethics" concerning littering. She heard a public radio ad on what Missoula has for kids about recycling. Ideas like how to work worms into your compost. This is not a mandate.

Senator Waterman said she had no problem if this was a mandate. This is obviously a request for the schools to do a public relations campaign for local governments to educate citizens. She felt most schools are recycling, and it is a very effective way to educate the public. She did caution that schools have said that they already have more to do than they can handle.

Senator Thayer said that in a taxation committee there was testimony that showed that in states that have been recycling for several years don't know what to do with the recycled material. The tin cans work beautifully, but some of the other material is creating a problem. Before everyone gets excited about recycling we need to use common sense.

Senator Beck added that he chaired an interim committee that dealt with solid waste, and one thing brought out was recycling and the problems. One suggestion was to put a tax on people to subsidize recycling, so we can get rid of the paper. He doesn't support that. We need research that shows how to make our recycled products competitive to the market, but they are not competitive now. This is the problem. We get stacks of newspaper, and what do we do with them.

SENATE LOCAL GOVERNMENT COMMITTEE

March 7, 1991

Page 5 of 16

Representative Hoffman said this will eliminate the organizational meeting when no appeals have been filed. Senator Beck asked if has ordinarily been on the 3rd Monday of April to start the appeal process? Representative Hoffman said this meeting is only organizational because the tax assessments do not come out until the middle of June. Senator Beck said when the assessments come out the counties set the mill levy by the 3rd Monday of August, and then this is the appeal period? Mr. McNaught said people appeal the assessed value of the property. They do not know what their taxes will be until after that, and so they normally appeal their assessed value. This is normally received in June, so they appeal after that. Senator Beck asked if they try to appeal before the valuation is distributed to the counties? Mr. McNaught said not necessarily, because appeals cases are heard until they are all complete. This last process was just finished last week by Cascade county. If the appeal is filed timely back in August, it is 15 days after they receive their assessment. Senator Beck asked if the appeal is successful then how does the county refund that money? Mr. McNaught said that people who appeal pay their taxes under protest. This money is put into a separate fund that does not disturb the budgets of the county. Senator Beck said that taxes still must be paid before your appeal? Mr. McNaught said yes.

Senator Thayer asked Mr. McNaught how much he thought the savings would be including the mileage? Mr. McNaught said it would be approximately \$9,000. The mileage varies, they might have lunch, etc., so this is approximately the savings.

Senator Harding asked if local appeals boards had any input to this bill? Mr. McNaught said they have not had input, but they don't care. Most are aware that this is a waste of money to have a meeting two months prior to the first hearing.

Senator Eck asked Mr. McNaught if he supposed that at one time the assessments were available in April and that is why the law is written this way? Mr. McNaught said way back, a long time ago, the assessments might have been out on time.

Closing by Sponsor: Representative Hoffman closed by asking the committee to Concur in HB-392. He asked Senator Beck to carry this bill.

EXECUTIVE ACTION ON HB-392

Motion: Senator Beck moved to Concur in HB-392. The motion carried, and was recorded as a roll call vote.

DISCUSSION ON SB-407

Discussion: Senator Waterman entered amendments to SB-407 that are a result of the DHES meeting with the Billings group. (Exhibit #2). She also explained her handout from the March 5, 1991 meeting (Exhibit #3). Senator Waterman said the bill was amended on February 21, 1991, and this second set of amendments are clarifications, notably Steve Brown, one of the mining interest representative. DHES will further explain them. Briefly #1. amends the title, #2 & #7 strikes the effective date: the DHES felt they would not be able to implement this by July 1, #3 amends fees and sets up an appeals process to oppose the fee established, #4 outlines the appeals process, #5 concerns the \$1000/day fine, so it has been changed to \$500/day in line with criminal penalties, #6. deals with contested fees. She said questions and concerns need to be discussed. What this bill is talking about is the Public Drinking Water Act (PDWA) and whether we will continue primacy in this state, and at what level and services we will provide. This bill came from a task force that was established by Governor Stephens. The Federal Government had indicated that the state of Montana would lose primacy because we were not adequately enforcing the EPA rules. We were told if we did not adequately enforce these rules by adding additional staff that we would lose primacy. The Governor established the task force. They reviewed the different options, and in the material in Exhibit #3 the options are outlined. Six options were studied. Everything from full state program with full primacy to the repeal of all state programs and letting EPA take over. There were several programs in between. This bill is a basic policy decision, and this is what Legislatures are all about. Deciding what kind of public water policy we want in the state of Montana. Whether we want to retain primacy, is this important? Is it important to have a state system? Or do we want the Federal Government to regulate this area? The EPA program is really a regulatory and compliance program as opposed to the state program that will monitor, train, and offer assistance to local communities to safeguard their public drinking water systems. The task force concluded that Montanans want to retain control of their own drinking water systems, and they like the assistance they receive from the state program, and they want it continued. The state system has allowed variances. They have allowed water systems to come into compliance slowly, and the feeling from Montanans was that this was good. This does not bring us into full compliance with the EPA. It was the feeling of the task force and the DHES that this is an interim measure. They believe it will bring us close enough to compliance that the Federal Government will not threaten us with lose of primacy. The bottom line is that it protects drinking water in the state, and assists in planning for programs that will last for the next 100 years. They don't want to see local communities come up with water systems that may not be adequate, and then they would have to go back in 10 years to rebuilt and replace these systems. Some subdivision areas have seen this happen because there was not adequate planning. No one told them that their systems they

SENATE LOCAL GOVERNMENT COMMITTEE

March 7, 1991

Page 7 of 16

were buying were not viable. For these reasons the task force concluded that they favored option #1 to retain primacy with a full state program. That is what is entailed in this bill.

Senator Harding asked if Bruce McCandles concerns about fees had been addressed? Senator Waterman said there had been a meeting yesterday with the city of Billings to try to work this out. Honestly, this is another policy decision. The task force decided that never will small and rural public water systems in the state of Montana be able to fully fund their own programs. Financially they just can't do it. They will always be subsidized by urban water systems. That is how the fee schedule is designed, and Billings is the hardest hit. Billings would like to see the fee reduced to 1/10 of what is proposed, or \$7500. This would mean that small water user systems would have to have their fees increased. Billings' proposal would have small water user fees go to about \$150 in order to absorb the difference. The DHES position is that this will be a burden on the small systems. A rational judgement can be made that this is fair, but there is a DHES concern. The other option is to fund this out of General Fund dollars. The feeling was that money to do that is not available.

Senator Thayer said he had several questions on the penalty section. The amendment cuts it from \$1000 to \$500/day. Even \$500/day is a lot for small communities to come up with in a short planning period. What is the lead time to bring a water system in compliance? Does the DHES just go in and fine them? The next section imposes a civil penalty of \$10,000, and he thought these were just unreasonable penalties. For the program to pass it needs to be some reasonable fashion. Are these penalties greater than the EPA's if they had primacy? Senator Waterman deferred the questions to the DHES. Steve Piltcher, Administrator Environmental Sciences Division, DHES, and prior to that he spent many years at the Water Quality Bureau as Chief. Including enforcement authority in the bill is the downside of any program. A regulatory program in order to be successful has to have that component. The way the DHES views enforcement response is that we do not just go out after a violation and start the penalty clock. Enforcement response historically in the DHES has taken a series of steps: #1 the first concern after finding a problem is to insure the safety of the user of that water by helping the water supply operator to solve the problem. If there are problems that can't be resolved the DHES will send a letter to the operator asking him to look into the problems. The next higher step of enforcement response would be a certified letter. Then the option of an administrative order or issuance of an administrative penalty. The last resort, if all else fails, then we could seek a civil penalty. The civil penalty amount is consistent with the solid and hazardous waste laws and water quality laws. The important part is that this is not administratively imposed. We must ask the courts to impose the civil penalty. We would like the administrative penalty to deal with those problems that are not real serious as those that would

warrant file a complaint in district court and asking for a civil penalty of \$10,000/day.

Mr. Piltcher made a comparison to the Water Quality Act, this body has considered SB-211 to SB-214 that would increase the civil penalty authority in the Water Quality Act from \$10,000/day to \$25,000/day constituting a separate violation. So this penalty is consistent with other enforcement response authority, but the key is that the DHES can not arbitrarily impose the penalty. We must ask and prove to the courts that it is needed. Senator Thayer said it may be consistent, but that is of little comfort for the people who have to pay the bill.

Senator Hammond asked who the court would impose the penalty on, the operator of the system, the water board, the water users? Mr. Piltcher said it would be the operator of the public water system in violation. It could be an incorporated community, a water user association for a subdivision, or whomever is responsible for that public water system. Senator Hammond said that the DHES would have authority to levy fines of \$500/day on people who build and maintain their own systems? Mr. Piltcher said it would only apply to systems under the authority and jurisdiction of the Montana Safe Drinking Water law, and that would be public systems. It would not be small individual systems. This would be systems serving 25 or more people, or systems with 10 or more connections. Those systems come under the jurisdiction of the law, and would be under the enforcement authority. We need to make sure that it is clear that the administrative penalty authority would be limited to \$500. The civil penalty or authority, which is comparable to the Water Quality laws, would be the \$10,000. But to impose that the district court has to be convinced that the system and violations are worthy of the penalty. Senator Hammond asked who goes to jail? Mr. Piltcher said fortunately to this point no one has gone to jail. He hoped that all violations could continue to be resolved without any one going to jail.

Senator Beck asked if they had ever had a \$10,000/day penalty imposed on a system, and for how long? Mr. Piltcher said there is not penalty of that amount under Safe Drinking Water laws because at the present time the only authority we have is criminal sanction. We have had the civil penalty authority in Water Quality laws for years, and he didn't know of a case that the court imposed \$10,000. We may ask, but then we negotiate with the responsible party for a more reasonable amount that considers the violators attempts to achieve compliance. Senator Beck asked about the new addition of water dispenser or other water supplies. What is a water system designed to serve 10 people? Mr. Piltcher said an example is a trailer court that is constructed with 20 hookups, but the operator only has nine trailers, and thinks he does not have to comply. He has the capability of serving 20 people, and if the connections are there and the system is capable, the chances are that it will be used at some time. This is just a clarification. Another issue is

the fallout shelters of a certain religious group in Montana. There has been considerable discussion of the system designed to serve a portion of their facility, and this answers the question. If you build a system designed to serve more than 10 connections or 25 people then it is a public water system. Senator Beck wanted this clear in the bill because he didn't want someone to say that a 3-5hp pump is a public system. Mr. Piltcher said it is not the capacity of the pump it is the rest of the system. The piping system, if it went to ten unoccupied homes, it would be a public system.

Senator Eck asked if the EPA enforced this what would the penalty fees be? Mr. Piltcher said that they have penalties that approach \$10,000/day which is significantly higher than anything we are talking about here. He said he would confirm that number.

Senator Thayer said some trailer courts might only have 9 occupants on a system designed to have 50, would this be a public system? Mr. Piltcher said that this situation would be considered a public system, unless the operator of the court disconnected all but those nine hookups. Possibly the boom bust economy were he did not utilize the entire 50 hookups for 5 years, so he might elect to disconnect anything beyond the 9 connections, and make it a non-public system. Senator Thayer said it would be better if the bill would take out the uncertainty by defining it as the number of units being served rather than the number of hookups designed? Mr. Piltcher said the problem with that is a system with the capability of serving more than 10 and has been using it, but when DHES goes out and talks with him he only has 9 today. Then the next day he has pulled in 5 or 10 more trailers and is operating what is normally a public system. This is just an attempt to clarify it. If you intend to use it as a public system, then you will be reviewed and regulated as a public system.

Senator Hammond asked how Butte Water would be handled if this bill were in place? Mr. Piltcher said Butte is an excellent example. We have been working for 2 years, and Butte still doesn't have good water. They have safe water, but whether it is good enough is the question. All we currently have authority to enforce is criminal action. If Butte Water knew that the DHES had the option of \$10,000/day civil penalty they would be more receptive to cleaning up the algae, etc. that comes from there system.

Senator Beck asked about why bottled water companies are covered in this bill? Mr. Piltcher said a water bottling company will produce water that will serve more than 25 people, and these people deserve the same protection as those of a public water system.

Senator Harding said she was on a long range building committee that heard testimony of how broke small areas are, and the penalty clause would cause them to come with legislation just to

cover the fees and fines. Fort Shaw has 70 households and problems from sewers that they can't afford to correct. Mr. Piltcher said the point is well taken, and the DHES does not want to set up a situation where monies are recycled to pay fines that go back to the General Fund. The problem is real, and it is not a joke. We have discussed the concerns of financially strapped communities, that are going to find it impossible to meet the requirements of the state and federal Safe Drinking Water laws. We are proposing to respond in a couple of ways. There is a provision on Page 7, line 7, that says in addition to reviewing a new system, the financial viability of the system should be addressed. Let's not put a small system in a precarious situation, so down the road are going to be strapped with bills they can not pay. We are recognizing the problem already created, and we're trying to prevent any additions to that list of problems. To deal with the problems already out there like Fort Shaw is to have a strong state program where we maintain some control over the regulations they must meet. We can influence those regulations and work with those systems to give them time to comply with the new requirements. Senator Waterman mentioned that the EPA is only concerned with compliance and enforcement. These are the rules, comply. We think if the state maintains a strong role in this program where we adopt the regulations, then we will have some flexibility to work with these systems to put them on a compliance schedule. While they are on the compliance schedule, working towards a viable, safe system, does not mean they would pay a penalty all that time. As long as they are on a court ordered or agreed upon schedule to reach compliance we are satisfied with that. It is only when someone like Butte Water says they will not do anything that we would resort to either the administrative or civil penalty.

Senator Thayer said he serves on a local government policy committee that has already identified an excess of \$100 million in work needing to be done to bring some areas into compliance. These communities don't have borrowing capacity right now to solve these problems. There is a bill in the hopper that tries to address that. He did not oppose what the DHES is trying to accomplish, but Mr. Piltcher's goals and plans are great, but he might be gone. Someone else might interpret the law just as it is stated, \$10,000/day, final. Senator Thayer said he believed in doing things that are prospective. The part that deals with new systems is great, but when you already have \$100 million dollars of problems that can't be dealt with now, and we are going to pass something to kick them in the teeth that much more. Mr. Piltcher said that Senator Kennedy is very cognoscente of the costs and burdens being imposed on communities. He emphasized the financial situation that these communities are in. That is not necessarily changed by this legislation. The Federal Safe Drinking Water Act and the amendments of 1986 are coming down the road. Regardless of this bill they will be here. We are saying that a strong state program as proposed in this bill gives us some opportunity to control the downhill slide. Without it the requirements are still there, and the communities will still face

the financial situation. We are hopeful that we can work with those communities to come up with some solutions. In the waste water area, we have had 25 years of financial assistance programs that have granted or picked up 90% of the cost of building waste water or sewage treatment plants. There have been few or no effective similar programs to deal with water systems. As a result, many of our water systems are antiquated, and the cost of repair is mind boggling. He did not know how we will get over that, but he was trying to point out that this bill will not change this. As he sees it, a strong state program gives us some opportunity to influence the scheduling of when the rock comes down the hill, and to adjust it to take into consideration some of these concerns. The EPA does not care about the economic burden. They have made the decision that these requirements are going to be met. EPA says it is just a matter of counting the beans. You are in compliance or you are not. They do not meet with the communities, advise them for better operation to come into compliance because this is not their job. They are just there to enforce and insure compliance with the laws.

Senator Thayer said accepting everything he'd said, it still does not answer what happens when this is put in statute. Then the DHES can say we're sorry, we'd like to work with you or defer this, but the law says you have to be fined. Would it not make more sense to put wording in for a lead time to allow the DHES not to assess penalties? Mr. Piltcher said there is one word in the bill, "may", that makes it discretionary to penalize, and it does not back the DHES into a corner. They may impose a penalty, but they are not obligated.

Senator Hammond said he was trying to conjure up the different problems out there already. If he voted for this how would it affect those people in rural Montana, and their source of water during drought times. They check the water every month, but it is not fit for drinking, so they use it for lawns and crops, and haul their drinking water. When the water is high, they don't have a problem. They pay \$120/month for water now, and he would have to go home and tell them that someone is going to check them out. He'll have to hide for a few weeks. The Butte situation might have been helped, but if we pass a law, and impose it on everyone with different situations. Senator Thayer is right, once it is in law it can be held over their heads.

Mr. Piltcher said it is difficult to enforce public water safety in Montana because of the wide range of public water systems. In some areas of Montana where any water is better than none, and people try to make do with what they have. In rural areas people pay a lot for water that is not good, but it is wet and it serves most of their purpose most of the time. It is difficult to regulate that type of system the same way that the city of Billings with a sophisticated treatment system, trained technicians, and the Yellowstone River to supply the water. So it makes it difficult for the DHES and the Legislature to pass legislation that regulates the majority without having an adverse

impact on the minority. We understand this, but he is not sure that there is a bureaucratic solution to all of these answers. The point is well taken, and it is difficult to manage all different types of systems. This bill is trying to cover a large part of the public water systems.

Senator Beck said where would this bill be used? Would the DHES go after Dennis Washington and Butte Water Supply right now? Mr. Piltcher said he did not see the DHES changing how they do business. Butte has a suit filed against them, and currently Mr. Washington and Butte Water Company only face a \$500 criminal penalty. If we had civil authority we would go to a judge and prove our case. Using the civil penalty of \$10,000/day would probably get his attention. We would be using our same operating procedure, but we would have a bigger tool to enforce it. Senator Beck asked if civil court procedure would be easier to use? Mr. Piltcher said that it would be better, and that the criminal court is not protecting the citizens. The DHES would still have to parade a bunch of witnesses with their water jug with crud in it, and say they are trying to eliminate, but the Water Company is not cooperating. We are asking the court to use the civil penalty to get his attention. We would have to convince the court to impose the penalty.

Senator Beck asked what the criteria to implement this program is? Mr. Piltcher said Helena is a good example. Their system was a good system that was ignored too long. DHES worked with Helena for years, and when they finally agreed to build the Ten Mile Treatment plant it cost the city of Helena \$8 million dollars. If they had listened earlier, or the DHES would have had the authority in this bill, it might have been constructed earlier and cheaper.

Senator Thayer asked if the statement of intent could be amended to say that the Legislature recognizes the existing problem of over \$100 million to bring systems into compliance. The DHES would still have the authority, but the pre-existence of the problems would be stated in the legislation. Mr. Piltcher said he would like to increase the committee's comfort level with this bill, and if amending the statement of intent will provide that he had no problem with it. The statement can say that this is how the DHES does it now, and how it will be done in the future. He said he was sure an attorney would caution him not to say that, but the DHES understands the legitimate financial concerns. They just don't want communities to plead poverty to delay or go around improving their systems. Jim Melstad, DHES, agreed that this amendment could be made.

Senator Thayer asked about the situation in Cascade County where an honest effort has been made to come into compliance? Mr. Piltcher said that the Cascade situation would take a long time to explain. Cascade County is in a dilemma. DHES and Cascade County have worked long and hard, but we seem to be taking different tracks. Would penalties be imposed on Cascade County?

Probably not because progress is being made, and it is the classic example of limited resources. Cascade County did have an opportunity to take grant money to improve the entire system. Political opinions differed, and they lost those grant monies, so now Cascade County will have to foot the bill. We asked that you not use Cascade County as an example.

Senator Bengtson had returned from another hearing, and she questioned the equity of the fees across the wide range of systems. Is this fee structure equitable? Bruce McCandles had questioned the fees paid versus the services provided. Will the fees be uniform to the services provided? Mr. Piltcher said that this bill does not achieve equity in fees. This bill sets up procedures to develop an equitable system. It was acknowledged that the larger communities would pay more than the smaller communities. We are not trying to develop this system at the cost of the larger systems, but even \$1000 for a small rural system becomes a tremendous burden as compared to a large sum for the city of Billings. The task force looked at several choices for generating the funds to support a program of this magnitude, and they recommended the per/connect charge to achieve equity. Granted that Billings has many more connection than Townsend. This does not equate to equal service, but there is some equity as to the way fees are generated. He acknowledged her concerns that some of the large communities may be paying a disproportionate share versus the services they get in return.

Senator Waterman said that the top nine municipal users would pay about 50% of the cost. Mr. Piltcher said this was correct.

Senator Hammond asked what services would be provided? Mr. Piltcher said water systems are paying to be regulated which is not much of a privilege, and they are also paying for the state of Montana to participate in the development of the regulations that control their destiny. Otherwise the EPA would do it. They are also paying for some inspections, operational assistance and training support. We recognize communities like Billings have a large, well trained staff with training programs of their own. We would still work with them to insure that the people in Billings are provided with high quality water.

Senator Bengtson asked to introduce Joe Steiner of Billings to clarify the Billing's position. Mr. Steiner said he was a member of the Governor's task force, and he does not oppose the state retaining primacy. Billings opposes the equity of the fee structure. We feel the fee proposed is a "back door tax". If the state health is important then it should be funded through the General Fund. Billings proposed a cap. Based on the services we have received in the past the cap would still mean that we pay twice as much as the services we would receive. Currently under this bill, Billings would pay \$75,000, and this is the highest fee assessed against a municipality in the entire nation. This is not equitable. We recognize that we spend \$7 million to provide our own expertise. We are not against the

health of Montana, but we just strive for some equity. The other thing that has not been discussed that Billings recommended is that the water system should be able to pass this assessed fee to the consumer without having to go through a PSC hearing. The private water suppliers expressed this in the meeting with the DHES yesterday, that they wanted the ability to pass this fee on without having to go through the requirements of the PSC.

Mr. Steiner wanted to address the penalties that everyone seemed concerned about. As a regulated entity, and we do not feel threatened by these penalties. We have never been stomped on, and we have violated our discharge permit on occasion because of mistakes and errors or equipment failure. We have repaired it, and no one from the DHES has assessed a penalty against us. We have been under the \$10,000/day waste water penalty, but this does not cause us concern. We feel the state needs a state run, state mandated program. We do not feel the fee to be assessed is equitable to the 9 communities that will pay 50% of the program. The top 9 would pay for 55% of the population of Montana, and we feel there are other mechanisms that could be used. We recognize that this could be done in the Administrative Rules Process, but we felt some equity should be established in the statute.

Senator Thayer asked what Mr. Steiner would think of leaving the fees as is, and giving a credit back to the water supply systems that are in compliance and providing their own services? Mr. Steiner said that might work. Senator Waterman wanted to clarify that the purpose of the fees is to generate funds to run this state program, so money for credits might be equitable, but where would lost revenue come from?

Senator Beck asked if the \$135 million to run the Billings system is from tax payers or was any of it from grants? Mr. Steiner said 100% is taxpayer dollars. Senator Beck said coming from a small community, that he did not feel it is equitable that the big cities would be given credits, everyone pays equal or we should kill the bill.

Senator Hammond said that he is determined that this bill is only going to teach, but not help those communities to get the job done.

Senator Bengtson said she has heard so much about state primacy. She isn't sure that Federal primacy might be better than creating a huge bureaucratic regulatory agency that is going to come out and tell people what they already know. If they had the money to do anything about it, they would.

Senator Beck said this threat from the Federal Government has been heard before, and maybe we should see what they come down with. He agreed with Senator Bengtson.

Senator Waterman said that there are several issues that need to

be addressed. The DHES will work on further information or amendments. There are key issues to be discussed" #1 do we want state primacy. There are two states that do not have primacy: Wyoming and they have serious concerns that the state tells them one thing and the EPA says something else, and Indiana is trying to re-establish primacy because it has not worked having given it up. Oregon operated without primacy for about 5 years, and it was a disaster, and they have re-established primacy. This is a key decision we need to make, and this is what we are here for. We have a recommendation by a committee established by the Governor, and she has a number of support letters from water systems in Helena and Billings. Billings is concerned about the fees, but you heard them say they want primacy to stay in the state. Rural water users testified that they want the state to maintain primacy.

Another policy decision we need to make is how do we want to pay for this if we want primacy? Do we want the fees that have been strongly recommended based on the feelings that the General fund increase equates to an increase in taxes. These are decisions we need to make. You've heard comments that the state of Montana would fund 1/3 of this from the General Fund where most states fund about 2/3 of it. This is certainly an option.

Senator Bengtson asked if there was a phase in? Senator Waterman said that we are hopeful that by enacting this program the EPA will accept this. Senator Bengtson said that frankly she was sick of fees, that everything is fees. Natural Resources has \$2 million in fees. Senator Waterman said there are fees everywhere because the feelings are not to increase taxes statewide.

Senator Kennedy wanted to say that it was a pleasure to have Steve Piltcher on the carpet! For four years as he was mayor, Steve had him on the carpet. It's a pleasure to be on the other side.

Senator Waterman asked Senator Beck if he needed additional information on the bill to reach a decision? Senator Beck said no, but if the fees are played with through amendments he will oppose the bill. Senator Waterman said if other proposals for fees or amendments are needed she would work with the DHES, Connie Erickson, etc., so this bill can be worked through.

Senator Hammond said the same thing was done with solid waste disposal, and his constituents have been harassed until they see red when they hear about a state bureaucratic inspector.

Senator Thayer said if we carry through with this bill he would like to see additional language in the statement of intent concerning the existing \$100 million dollars worth of problems. He also thought that each day of a violation constitutes a separate violation at the cost of \$10,000/day civil penalty was unreasonable. Senator Vaughn asked if there is a bill to increase the penalty to \$10,000 under water quality laws? Mr. Piltcher

SENATE LOCAL GOVERNMENT COMMITTEE

March 7, 1991

Page 16 of 16

said that there is bill to increase the water quality penalty from \$10,000 to \$25,000/day. This language in SB-407 is simply copied from water quality laws that state each day constitutes another violation.

Senator Kennedy asked what the EPA penalties actually are? Mr. Piltcher said the EPA can assess up to \$5000 total administrative penalties, and civil penalties can go up to \$25,000/day under the federal law.

Senator Bengtson said she would like to address a cap on the fees. Senator Waterman asked if she wanted it per/hookup or a cap on total amount paid by a public water system? Senator Bengtson said she wanted a cap on the maximum charge per public water system. The DHES and others will work on these figures.

Senator Waterman said that she felt that a certain amount of money is needed to start and operate this program, so the difference must be made somewhere. Senator Bengtson said they could just go slower, spend less. Senator Waterman said the way the bill is written they need money to enforce the regulations. We need to come up with some options: #1 make up lost revenue out of the General Fund, or #2 increase the minimum from \$100 to \$1000 for small systems. We need to give them direction.

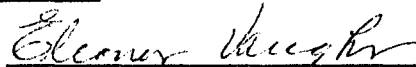
Senator Eck asked if there could be no more than \$1.00/hookup? Senator Waterman said that the bill is based on \$3/connection. Senator Eck said that Billings has more than 75,000 people, and that would be a maximum. Senator Waterman said the \$75,000 from Billings is based on \$3/hookup/year.

Senator Kennedy would like C. Erickson to address the ability of the public water system to pass on these fees without having to go before the PSC for approval. Senator Waterman said that Billings had wanted to be able to pass the fee/connection to the users without going to the PSC for a request.

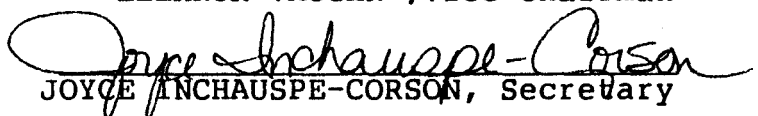
Senator Kennedy said having dealt with water quality bureau that the department is good to work with, and they have never imposed the maximum fee. You are always given the option to do what is right without penalties. Senator Waterman said that the testimony from water users and systems given did not express concern over the penalties. We are addressing water pollution, and the fast clean up of a problem. Senator Bengtson said the concern is how to pay for it.

ADJOURNMENT

Adjournment At: 5:05 p.m.



ELEANOR VAUGHN, Vice-Chairman



JOYCE INCHAUSPE-CORSON, Secretary

EV/jic

LG030791.SM1

DATE MARCH 7, 1991

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-7-91

52 LEGISLATIVE SESSION _____

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X ^{came late}		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.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1991

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Bill No. 182 (third reading copy -- blue), respectfully report that House Bill No. 182 be concurred in.

Signed: _____
Eleanor Vaughn, Vice Chairman

3-8-91

Ad. Coord.

3-9-91

Sec. of Senate

50074680LS11

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1991

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Bill No. 392 (third reading copy -- blue), respectfully report that House Bill No. 392 be concurred in.

Signed: Eleanor Vaughn
Eleanor Vaughn, Vice Chairman

3-8-91
And. Coord.

3-9-91
Sec. of Senate

500746SC.511

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1991

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Joint Resolution No. 7 (third reading copy blue), respectfully report that House Joint Resolution No. 7 be concurred in.

Signed: _____
Eleanor Vaughn, Vice Chairman

MA 3-8-91
And. Coord.

SP 3-8-91
Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-7-91 Bill No. HB-182 Time 3:30

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTON		
SENATOR ECK	X	
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY		
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTON
Chairman

Motion: move to Concure in

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-7-91 Bill No. HJR-7 Time 3:37

NAME	YES	NO
SENATOR BECK		X
SENATOR BENGTON	By X Proby	
SENATOR ECK	X	
SENATOR HAMMOND		X
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON

Secretary

ESTHER BENGTON

Chairman

Motion: move to Concur in HJR-7

51st Legislative Session

SENATE LOCAL GOVERNMENT COMMITTEE

PROXY VOTE

I, Senator Esther Bengtson do hereby
grant my proxy vote to Chairman Bengtson or Secretary Joyce
Inchauspe-Corson as follows:

BILL NUMBER HJR-7

MOTION

Do Pass
Yes X No _____

Do Not Pass
Yes _____ No _____

Indefinitely Postponed
Yes _____ No _____

Tabled
Yes _____ No _____

Date 3-7-91

Esther Bengtson
Signature

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-7-91 Bill No. HB-392 Time 3:45

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTON		
SENATOR ECK	X	
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTON
Chairman

Motion: move to Concure HB-392

Amendments to House Joint Resolution No. 7
Third Reading Copy

Requested by Senator Bengtson
For the Committee on Local Government

Prepared by Connie Erickson
March 6, 1991

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 1

DATE 3-7-91

BILL NO. HJR-7

1. Title, line 8.

Strike: the second "AND"

Insert: ", "

2. Title, line 9.

Following: "MATERIAL"

Insert: ", AND PUBLIC EDUCATION PROGRAMS THAT PROMOTE RECYCLING
BY PRIVATE CITIZENS"

3. Page 2.

Following: line 5

Insert: "BE IT FURTHER RESOLVED, that local governments and
school districts be encouraged to develop public education
programs that promote recycling by private citizens."

(OHES)

Proposed Amendments to SB 407
First Reading Copy

1. Page 1, line 23
Following: "ACT;"
Insert: "AND"

2. Page 1, line 25.
Following: "MCA"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 9, line 19.
Following: "fees"
Insert: "-- department assessment and opportunity for appeal"

4. Page 10.
Following: line 10
Insert: "(4) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the department's fee assessment under this section.

(5) The owner of a public water supply system may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department fee determination under subsection (4). The appeal to the board must include a written statement detailing why the department's fee assessment is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(6) If part of the department's fee assessment is not disputed by an appeal filed pursuant to subsection (5), that part must be paid to the department upon written request of the department."

5. Page 12, line 13.
Strike: "\$1,000"
Insert: "\$500"

6. Page 12.
Following: line 16
Insert: "(7) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, apply to any hearing before the board under this section or [section 4].

7. Page 16, lines 12 and 13.
Strike: section 12 in its entirety

SENATE LOCAL GOVT. COMM.

2
DATE 3-7-91
BILL NO. SB-407

COPY

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 3

DATE 3-7-91

FILE NO. SB-407

Office Memorandum

March 7, 1991

ON 1718

2000

ON 1718

SENATE LOCAL GOVT. COMM.

TO: *Esther Bengtson, Chairman*
Senate Local Government Committee

FROM: Jim Melstad, Public Water Supply Program Manager

SUBJECT: Attached Public Water Supply Task Force Report

At the committee meeting on February 19 in which you considered Senate Bill 407, there may have been some unanswered questions about the bill and about maintaining Primacy for Montana's Public Water Supply Program.

The attached Public Water Supply Task Force Report is a complete summary of what transpired during the four meetings of the Task Force last summer. As you are aware, the Task Force concluded that Primacy should be retained in Montana for the Public Water Supply Program. I realize that you are very busy and may not have time to read this. In any case, the report represents the considerable efforts of the Task Force that led to their final recommendations.

We would be glad to try to answer any questions that you may have regarding the bill and the program. You may contact Dan Fraser, Water Quality Bureau Chief at 444-2406, or myself at 444-4549. Thank you for your consideration.

WHY DID THE PUBLIC WATER SUPPLY TASK FORCE DETERMINE IT WAS IN THE BEST INTEREST OF THE STATE TO RETAIN PRIMACY?

A. Public Health Need:

o Acute health problems:

Documented waterborne disease outbreaks at White Sulphur Springs, Red Lodge, Big Sky & Missoula.

Suspected outbreaks at Choteau, Helena, Butte, Bozeman, Whitefish & Glendive

-These systems are in the top 2-3 % of Montana's PWS's- the "cream of the crop"

-no epidemiological work being performed - >50% of our groundwater systems are very vulnerable to contamination - many surface water treatment plants are doing a poor job - many surface water sources have not treatment other than chlorination -

o Chronic health problems:

-Contamination events involving cancer-causing organic chemicals at Missoula Valley, Helena Valley, Gallatin Valley, Cascade, Lockwood Water Users Assn.

-Very few systems have sampled for organic contaminants and many of our systems are vulnerable to this kind of contamination.

o Compliance problems:

-More than 50% of Montana's community systems have compliance problems
- most of these problems are not particularly significant and can generally be handled by technical assistance and training rather than enforcement.

B. What are the tools government has to address the problems? * see note below.

- o Inspections and sanitary surveys
- o Construction standards and engineering review
- o Operator and administrator training
- o Technical assistance to PWS's
- o Emergency response
- o Public education
- o Technical assistance to owners of private wells
- o Special studies
- o *Tracking compliance with the regulations*
- o *Enforcement*

Preventive
(State)

Reactive
(State and Federal)

* All of these tools are used by the state program. If EPA were to take over they would limit their activities to those two in bold.

REPORT TO DHES, GOVERNOR STEPHENS, AND THE 1991 LEGISLATURE
BY
MONTANA'S PUBLIC WATER SUPPLY TASK FORCE

I. INTRODUCTION

Among the many uses of groundwater and surface water in Montana, the most important is for drinking water. All Montanans have a right to an adequate supply of water that is safe to drink.

Montana has had a Public Water Supply Program since 1907 when outbreaks of waterborne disease and associated deaths moved its legislature to pass the first law regulating public water supplies. Federal regulation of water supplies did not begin until 1974 when Congress passed the Safe Drinking Water Act (SDWA). The SDWA was implemented in 1977 when the Environmental Protection Agency (EPA) promulgated the National Interim Primary Drinking Water Regulations. That same year the DHES was granted primary enforcement authority (primacy) for the federal program. Primacy was desirable because it brought oversight and enforcement of the federal regulations to a state agency. This agency is more accessible and responsive to Montana problems than a federal authority could be. Montana's primacy program is supported by both state and federal dollars.

The Department of Health and Environmental Sciences (DHES) is responsible for administering the Public Water Supply Program in Montana. This program's goal is to assure that water from public systems is bacteriologically, radiologically, and chemically safe to drink. Today this program faces serious new challenges as more toxic contaminants and disease-causing organisms are being found in consumers' water supplies. Accordingly, public concern about the safety of drinking water has grown. In 1986 Congress responded to this public concern with the 1986 amendments to the Safe Drinking Water Act (see Appendix I). These amendments mandate the following:

1. Disinfection of all public systems.
2. Filtration of all surface water systems.
3. Substantial increases in the monitoring of drinking water quality.
4. Establishment of drinking water standards for 83 contaminants by 1992 and nearly 200 contaminants by the year 2000.
5. Establishment of a state wellhead protection program.

contract add 1.0 FTE to the available work force, for a grand total of 13.5 FTE's.

Funding

Confirmed funding for the program in fiscal year (FY) 1990 was \$623,000. Of this funding, approximately \$119,000 (19%) was derived from the state and \$504,000 (81%) from an EPA grant. Because the EPA grant requires matching state funds at a 3:1 ratio, funding of DHES' Subdivision Review and Water/Wastewater Operator Certification programs have been used as "soft" match in recent years. In the Spring of 1990, the DHES was reorganized to combine the Public Water Supply Program and the Subdivision and Operator Certification programs within the Public Water Supply Section. The intent was to manage closely related functions more efficiently and firm up matching funds. These added programs have contributed four additional FTE's to the Public Water Supply Section, but have workloads beyond their staffing levels.

Figure 1 shows the existing workload in each program of the Public Water Supply Section. Our existing staff consists of 18.5 FTE's (16.5 FTE's on staff, 2.0 on contract) with a need for 25.85 FTE's.

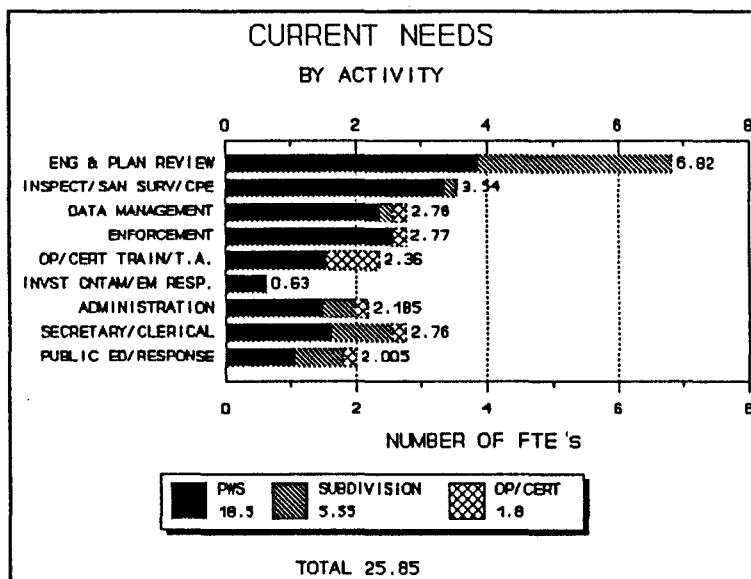


Figure 1

The three programs - Public Water Supply, Subdivision, and Operator Certification - perform the following functions:

- o Inspections/Sanitary Surveys
- o Oversight of Public Water Supply monitoring and reporting
- o Enforcement of laws
- o Regulation development and adoption
- o Review of engineering plans and specifications
- o Subdivision review and approval
- o Operator training and certification
- o Data management and reporting to EPA
- o Program management and administration
- o Technical assistance to operators and administrators
- o Emergency response
- o Special studies
- o Response to requests for assistance from the public

program recently conducted by the National Association of Drinking Water Administrators (ADSWA) has recommended the state cease performing this function for the purveyors because of time and expense to the state program. Monitoring is required by the Safe Drinking Water Act, but the Act does not require collection of the samples by primacy agencies.

Enforcement

When violations of monitoring or reporting requirements occur, program staff assure that water consumers are sufficiently advised of necessary precautions and steps are taken to resolve the violation. In most cases, system owners recognize their responsibilities and correct problems promptly. When problems are not rectified in a reasonable time, the DHES initiates a formal enforcement action. This action consists of a stepped enforcement approach, starting with reminder letters and escalating to a notice of violation, an enforcement conference, and an administrative order. If these steps fail to gain compliance, the owner is referred to the DHES' Legal Division for civil action. Over the past several years, the program's demands for enforcement has overwhelmed available legal resources, making the need for a stronger authority apparent.

Regulation Development and Adoption

The DHES must assure needed standards and regulations are adopted so that necessary requirements can be enforced. Currently, the program is adopting the new federal regulations for eight volatile organic chemicals and public notification. These regulations were supposed to be adopted by January 1, 1989 in order for the state to retain primacy and to ensure receipt of EPA grant funds. The state's failure to meet these new requirements has forced the EPA to notify DHES that formal steps to withdraw primacy are forthcoming unless adequate resources are dedicated to the program.

Review of Engineering Plans and Specifications

The review of plans for proposed construction, extension, or alteration of public water or wastewater facilities is another preventive activity performed by the Public Water Supply Program. The Board of Health and Environmental Sciences is charged with the adoption of minimum design and construction standards to ensure essential water service and to protect public health. Department engineers review plans and specifications for compliance with established standards. The standards typically address such items as depth of well grouting, materials used for contact with potable water, treatment processes, and separation distances between wells and potential sources of contamination. Montana law prohibits the beginning of construction until the DHES grants its approval.

A data-management system developed for personal computers by the state of Alaska is being adapted for Montana's program needs. Over the past 5 years the program has been computer "hardware and software rich" but "expertise poor" because of the inability to obtain staff to use the hardware and software purchased for this system. The recent addition of a computer programmer to the staff and continued technical assistance from Alaska should greatly improve the program's capability in this area.

Program Management and Administration

The duties of this function include:

- o Managing and planning for all three programs.
- o Providing staff for boards and task forces
- o Providing technical assistance to private well owners
- o Budgetary work
- o Writing rules for state and federal regulation implementation
- o Developing, training, and supervising staff
- o Establishing and monitoring compliance schedules
- o Making compliance decisions
- o Preparing departmental legislation.

Technical Assistance to Operators and Administrators

When standards are exceeded or operational problems arise, DHES staff provide information and technical assistance to owners and operators. At treatment plants, training to help the operator determine correct chemical dosages can improve treatment. When bacteriologically unsafe samples are obtained, the staff strives to solve the problem quickly because of the potential for an acute health risk. Assistance with start-up of emergency chlorination or boil-water instructions can be invaluable, especially for small systems. Technical assistance by staff helps to solve problems rapidly and in some instances can avert violations and risks to public health and safety.

Competent operation of surface water treatment plants is especially critical because of surface waters' vulnerability to contamination and the complexity of the treatment process. Most larger surface water plants are able to attract and retain knowledgeable and competent operators. Small systems, however, have great difficulty retaining competent operators. These problems are worsened by managers and administrators unaware of the critical needs of water treatment plant operations.

Because Montana has long recognized deficiencies associated with treatment of surface waters, the program has developed an intensive

III. MONTANA'S REGULATIONS

Montana currently has regulations for 22 contaminants. The number of contaminants each PWS is responsible for monitoring depends upon its size, source, and its designation as a community or non-community supply. Community PWS's are subject to regulation for contaminants which have both acute and chronic health effects while non-community systems have to monitor for only those contaminants which may indicate acute concerns (coliform bacteria, turbidity, and nitrate.)

(See Appendix II for a summary of current regulations and the health effects of the regulated contaminants.)

IV. MONTANA'S UNIVERSE OF PWS's

The inventory of Montana's public water systems includes a grand total of 2,491 systems, 2,119 of which are active at this time. Community PWS's comprise 716 of this total while the remaining 1,403 are non-community systems. (Figure 2)

In terms of size of system versus population served by Montana's PWS's, Figure 3 illustrates that while we have a large proportion of small systems, our few large systems serve the bulk of our population. Over 96% of Montana's community systems serve

MONTANA, 1989
ACTIVE PWS's

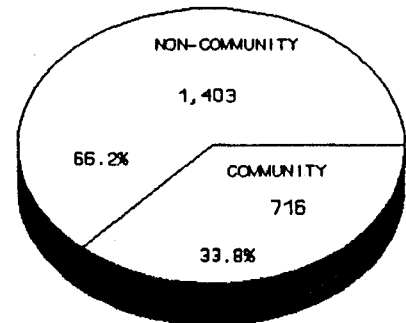


Figure 2

MONTANA, 1989
POPULATION SERVED BY COMMUNITY PWS's

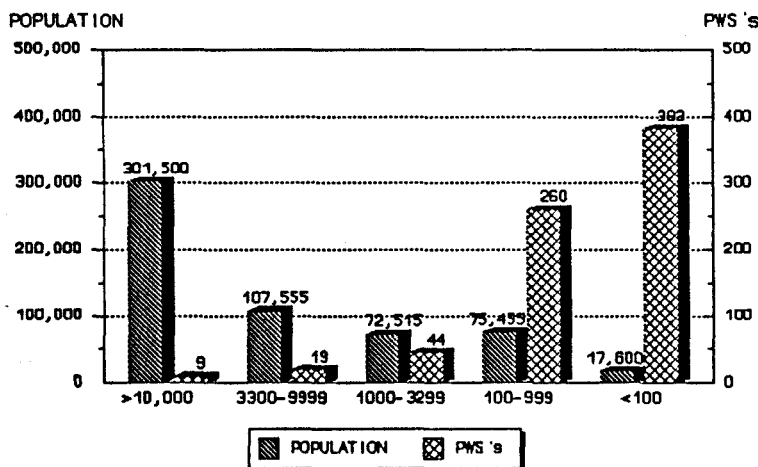


Figure 3

less than 3,300 people and are classified by federal standards as "small." About 383 of these systems (54%) serve fewer than 200 people, and 260 (36%) serve between 100 and 1,000 people. These small systems account for the vast majority of the violations of our current standards and for a variety of reasons, including diseconomies of scale, will suffer most from the impacts of the 1986 SDWA Amendments.

Compliance with Microbiological Standards

Montana has many PWS's which have occasional-to-frequent problems with bacterial contamination. Likewise, many more PWS's fail to monitor for bacteriological quality at the required frequency. Figures 6 and 7 show that the non-compliance in these two areas alone are more than double the national average for violations of all standards.

MONTANA, 1989
COMMUNITY WATER SUPPLIES

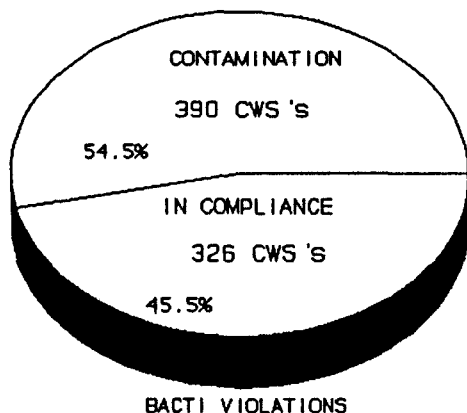


Figure 6

MONTANA, 1989
COMMUNITY WATER SUPPLIES

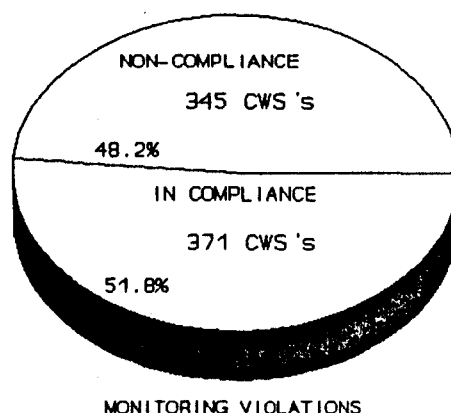


Figure 7

These startling statistics make it clear that Montana's PWS's show significantly more non-compliance than would be expected from the EPA figures. Several factors contribute to this situation, including a general lack of concern by owners and operators of small water systems, the fact that Montana does not require full-time disinfection of groundwater systems, and common usage of shallow and vulnerable water sources. Figure 8 illustrates the vulnerability of Montana Sources in showing the percentages of Montana PWS wells drilled to various depths. Nearly half of these wells are 25 feet in depth or less.

MUNICIPAL WATER SUPPLIES
DEPTH OF SOURCE WATER

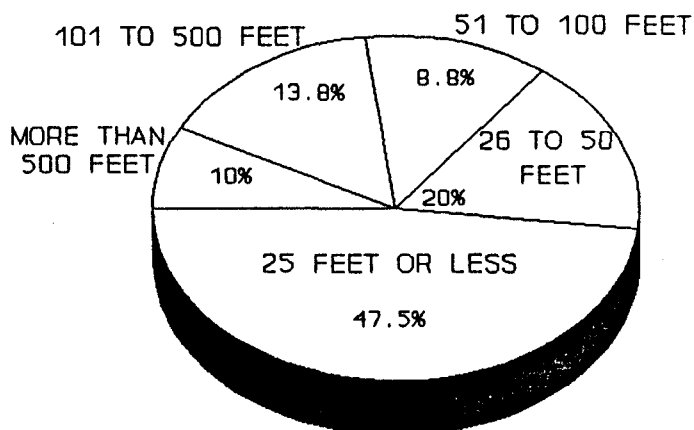


Figure 8

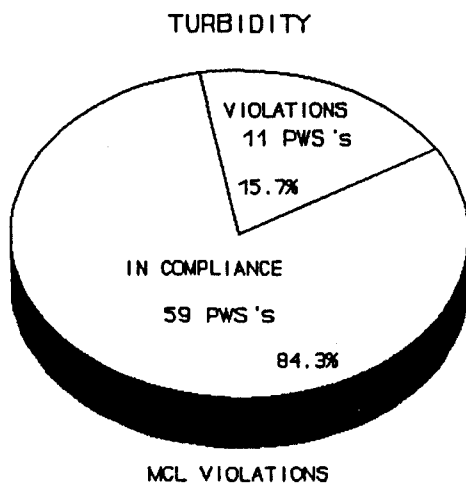


Figure 11

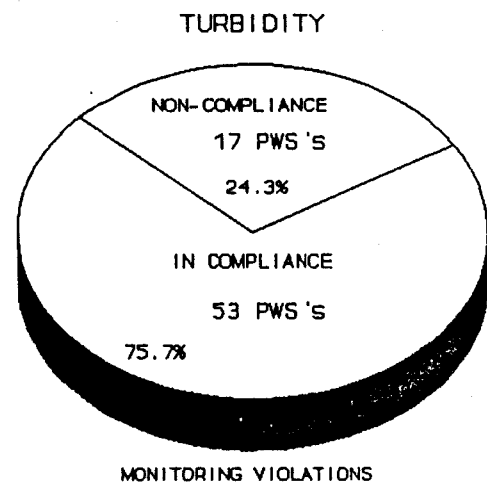
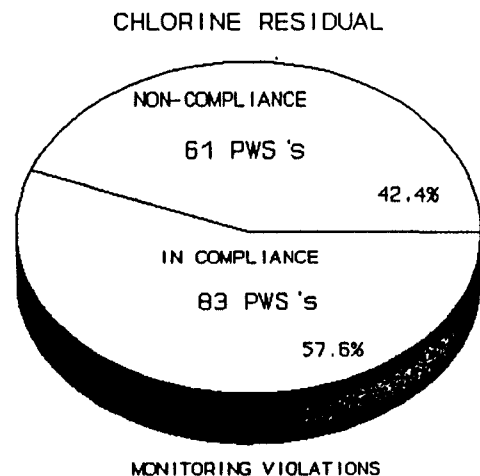


Figure 12

Operation of surface-water treatment plants is complex and requires operators who are very knowledgeable and competent. The best designed and constructed filtration plant will not produce acceptable finished water without constant scrutiny by well-trained, professional operators. Montana's Operator Certification Program assures that operators keep current with the newest regulations and technology. Plant visits by trained DHES staff reinforce proper operating techniques through personal training.

Compliance with Chlorine Residual Requirements

All systems using surface-water are required to disinfect with chlorine and report the results of daily chlorine residual monitoring to the DHES. Also, groundwater systems that have had a record of contaminated samples can be required to chlorinate. Compliance statistics of the 144 community groundwater systems required to chlorinate are shown in Figure 13.



Compliance with Standards for Organic Contaminants

Surface-water systems are required to monitor for pesticides and herbicides. **Figure 13** Systems which serve more than 10,000 people and who chlorinate must monitor for Total Trihalomethanes (TTHM's). Although limited, monitoring has rarely shown problems with contamination by these organic chemicals.

VII. IMPACT OF THE NEW REQUIREMENTS UPON MONTANA'S PUBLIC WATER SYSTEMS

Clearly the new regulatory requirements will have a far-reaching impact upon public water systems. The extensive monitoring done will cost several hundred dollars per year per system. While this cost will present no particular burden to Montana's few large systems, it will be very burdensome to the many small community and non-transient systems.

Under the requirements of the SDWA Amendments, non-transient systems, such as those used by schools, will be treated essentially as community systems and will be responsible for supplying water that is in compliance with those rules governing long-term, chronic health risks. The creation of this new class of PWS will increase the workload and costs of both the program and the PWS's by roughly 35 percent. (Figure 15)

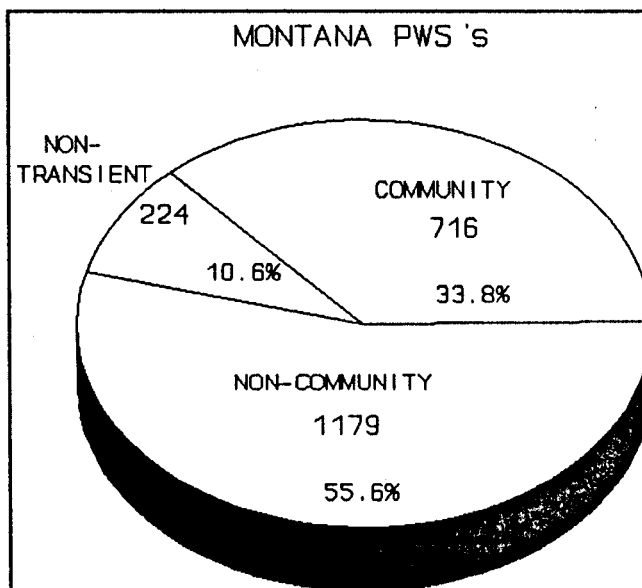


Figure 15

Coliform Rule

Increased coliform monitoring requirements are expected to detect additional problems with the bacteriological quality of some systems. This will be particularly true of non-community systems which now monitor only on a quarterly basis and which may be required to perform monthly coliform monitoring. Additionally, increased check-sampling requirements will increase violations and monitoring costs.

The Surface Water Treatment Rule (SWTR)

Most of the PWS's using unfiltered surface water will likely be required to install filtration plants. This requirement will necessitate large expenditures of funds for capital improvements for 30 to 40 community systems. Many of the existing plants will have to be upgraded to meet the more stringent finished-water requirements of the SWTR, and most existing plants will have to upgrade their operations significantly.

Approximately 30 to 40 non-community systems will be required to switch to groundwater or provide filtration. The state will be required to assess each PWS's water sources to determine which are

Disinfection and Disinfection By-Products

The 1986 Amendments mandate the EPA to write regulations which establish requirements for full-time disinfection of all public water systems. There will also be criteria by which a state will, on a case-by-case basis, be able to waive these requirements. Because of the vulnerability of many Montana sources, the dilapidated condition of the infrastructure comprising many systems, and the poor sampling record of over half the systems, it is expected over 1,000 PWS's will be required to install full-time disinfection and, in many cases, facilities for provision of contact time.

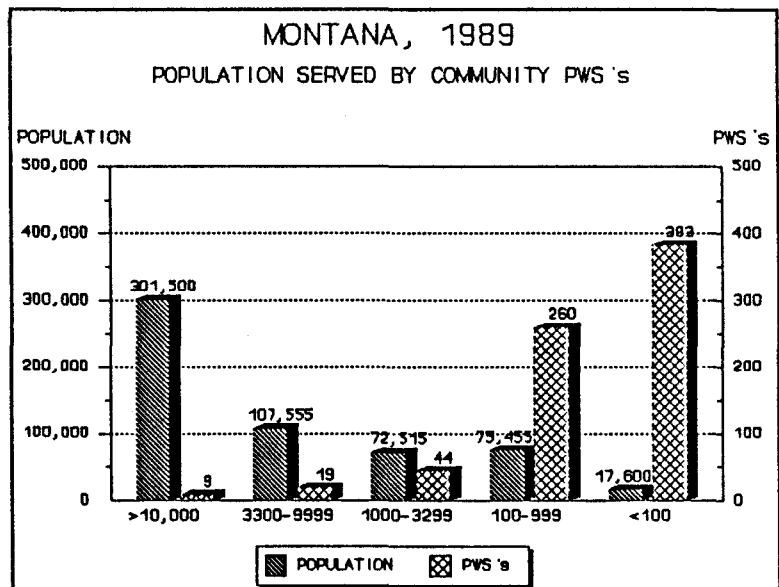


Figure 16

The by-products formed by addition of disinfectants will also be required to be regulated because many of them are suspected of causing chronic health effects. This rule is likely to be the most complex one mandated by the 1986 SDWA Amendments.

Again, it is important to note that the vast majority of Montana PWS's are small systems and will have difficulty meeting the new requirements. (Figure 16) It is therefore essential for planners, local government officials, and regulators to consider the long-term viability of existing and proposed small public water systems.

VIII. IMPACT UPON THE STATE PROGRAM

While not as overwhelming as the compliance problems faced by water purveyors, the vast increase in regulatory requirements, coupled with the complexity of the rules, will place an extreme burden upon the already-understaffed Public Water Supply Program. The following is a brief description of the program required for each major portion of the new requirements.

for elevated lead levels in homes, and no-action levels for pH and alkalinity must be met. The proposed regulations call for extensive monitoring, public education programs, and treatment when the MCL or no-action level is exceeded. Considerable oversight and technical assistance by DHES staff will be essential.

Radionuclides

These regulations are expected to be proposed in 1990 and final in 1991. Monitoring under current regulations has already discovered several potential violations. The new regulations will also cover uranium and radon gas. Limited monitoring indicates many state systems will exceed the radon gas standard expected to be in the 200 to 500 picocurie per liter range. Such problems will necessitate state action, engineering plan review and training, etc.

Sanitary Surveys

Detailed sanitary surveys are the backbone of the state's "preventive" approach to PWS surveillance. These inspections are instrumental in spotting potential problems and correcting them before the water consumer is affected. The frequencies of sanitary surveys are as follows:

Community - Municipal (cities, towns, and so on) - Every year with a detailed inspection every 3 years. Community PWS's using surface water should be inspected more frequently.

Non-Transient non-community (schools, industries, and so on) - Every year with a detailed inspection every 3 years.

Non-community-transient (motels, restaurants, parks, and so on) - Annually by contracted local health departments.

The new requirements resulting from the 1986 Amendments (vulnerability assessment, comprehensive performance evaluation, source water assessments, etc.) will require the state to spend much more time in the field working with water systems.

Monitoring and Analytical Costs

In the past, except for coliform monitoring, DHES has collected inorganic, organic, and radiological samples. In an effort to obtain data concerning the occurrence of volatile organic contaminants, DHES has covered most of the analysis costs for samples collected to date. Because of lack of funds, follow-up monitoring for VOC's is now being done at the water system owner's expense. (Special investigations being conducted to determine the causes of groundwater contamination are often conducted and financed by the DHES's groundwater program.)

Figure 19 shows the most current "best guess" of when each rule will require implementation by primacy agencies.

IX. FUNDING

During Montana's recent economic distress, the program has become increasingly more dependent upon federal grant funds for its existence. This dependency becomes even more conspicuous when one considers federal funds are used to supplement other state programs (Operator Certification and Subdivision Review) that should be self-supporting.

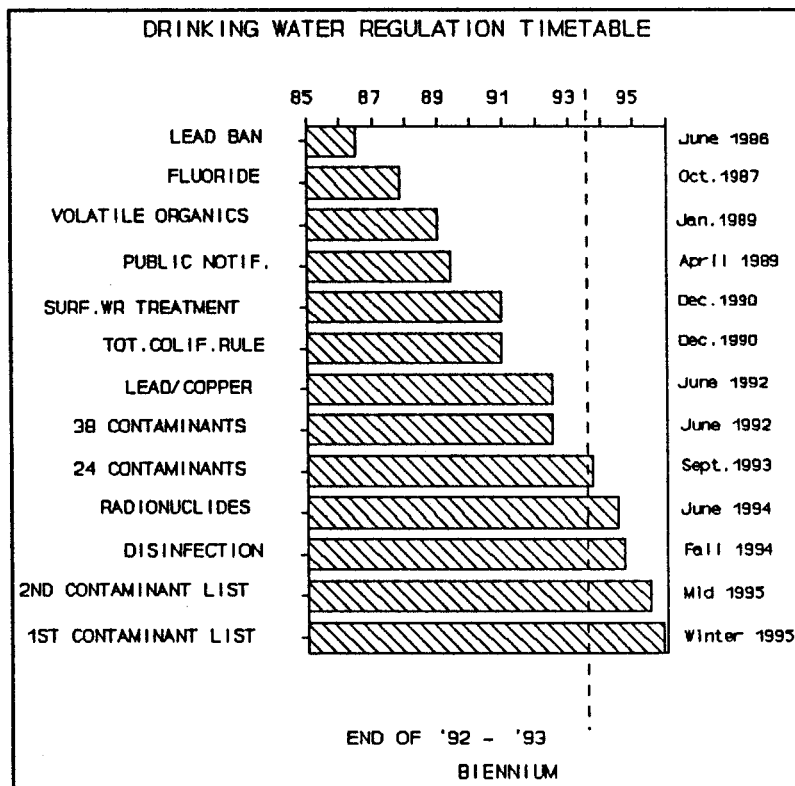


Figure 19

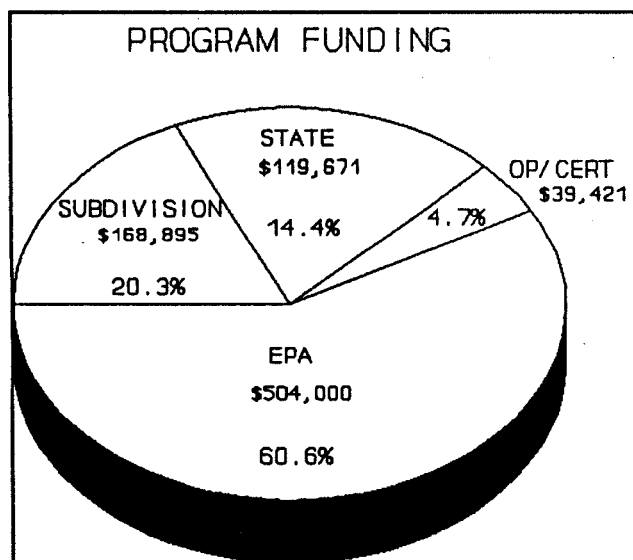


Figure 20

Figure 20 shows the extent to which the program is funded by various sources. While it is expected that the level of federal funding will increase to help pick up part of the burden of the new requirements, it is unlikely the federal government will provide funding for more than half of the program's needs.

of retaining Montana's primary enforcement authority over the federal Safe Drinking Water Act. Although this option requires expansion of the program, it is in Montana's best interest because it provides the state program necessary to protect the public health and uses federal grant monies to help pay for it.

This program would provide:

- o Training and technical assistance to operators and administrators to assist them in their compliance with drinking water laws
- o Sanitary surveys to promote preventive operations of water systems
- o Timely review of plans and specifications for water system improvements or alterations
- o Assistance to utilities monitoring source water and assessing vulnerability
- o Enforcement of regulations
- o Investigations of contamination events and waterborne disease
- o Services and advice regarding general concerns including home treatment units

In the opinion of the task force this program is what Montanans should be provided by their state health agency. It would also meet the requirements for primacy.

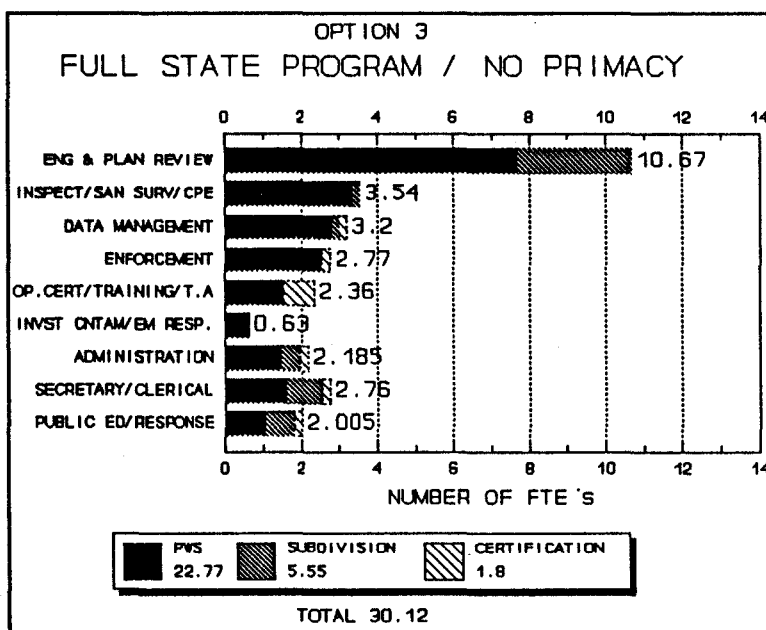
The new federal rules contain provisions whereby consumers must be kept informed of monitoring violations or contamination problems at their public water supplies. As the public becomes more aware of drinking water problems, it is prudent to have a state health department prepared to address their concerns. The Task Force considers anything less than a careful handling of these issues unacceptable. Figures 17 and 18 on page 20 illustrate projected needs for this Full State/Full Primacy Program.

The sole disadvantage of this option is federal dollars will not fund the program in its entirety. Although federal grants are expected to increase as the amendments are implemented, the program will likely not be supported more than 50% by federal monies. Significant increases in staffing and additional sources of revenue must be forthcoming to support this program.

option would also severely limit the state's ability to respond to concerns of private water users and contamination events. Since these activities would not be assumed by EPA, they would either be unaddressed, or local health agencies would have to add staff to provide the services themselves.

Option 3: Full State Program with No Primacy

Under this option current Montana laws regarding public water supplies would be retained, but would not be expanded to adopt the new federal requirements. The DHES would continue its preventive and assistance activities, but would enforce only existing Montana regulations. Water purveyors would have to respond directly to the EPA about compliance issues regarding the federal Safe Drinking Water Act. The state would also continue to provide training and would respond to contamination events and public inquiry since these are appropriate functions of a state health department. Resource needs would be about 25% greater than current program needs.

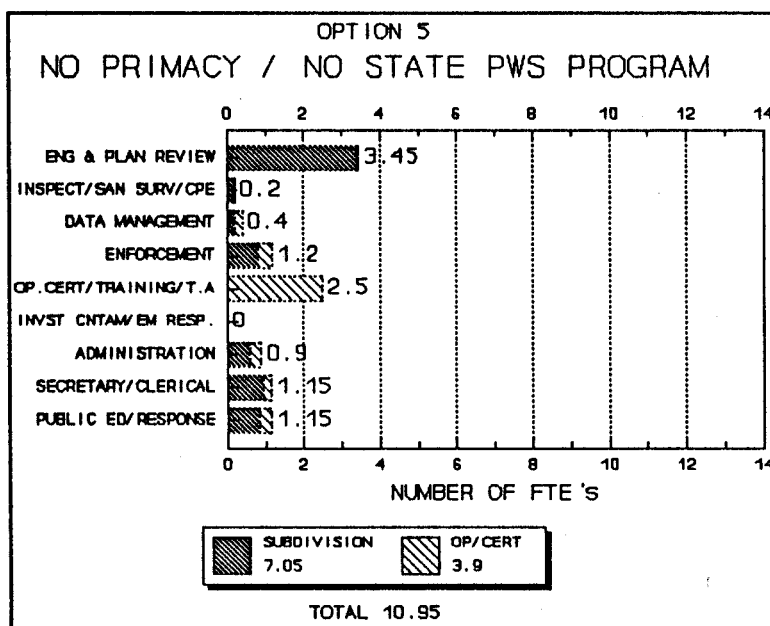


The drawbacks of this option include loss of federal grant money, since Montana would not retain primacy. The state would then have to pick up the entire cost of the program. The Task Force also believes public pressure would eventually force Montana to adopt the federal regulations because utilities and consumers would not

of Montana citizens. Although retention of training and technical assistance was strongly supported, regulatory authority at the federal level was not desired and was expected to be confusing to purveyors. In addition, loss of primacy would also remove federal funding sources for the program. Utility costs would rise as PWS's would be responsible for vulnerability assessments and source-water determinations. The Task Force believed that monetary savings did not justify endangering public health and a regression in Montana drinking water laws.

Option 5: No Primacy and No State Public Water Supply Program

This option would require repealing the existing Public Water Supplies, Distribution and Treatment law. The state would cease its technical assistance and regulation of public water supplies. Regulatory authority over Subdivision review and Operator Certification would remain intact. Operator Certification, however, would be reduced to administration of the program only, with no training provided. The Subdivision Program would consist of review and limited on-site inspection. All public inquiry, contamination response, and technical assistance would be referred to other agencies.



This option was rejected because it does not offer a responsible role for the DHES, and it severely jeopardizes public health. All federal funding would be lost, and functions previously performed to support the Subdivision Review and Operator Certification

Figure 23 provides a staffing comparison of staffing needs between the recommended interim program and the projected needs for the long-term comprehensive program.

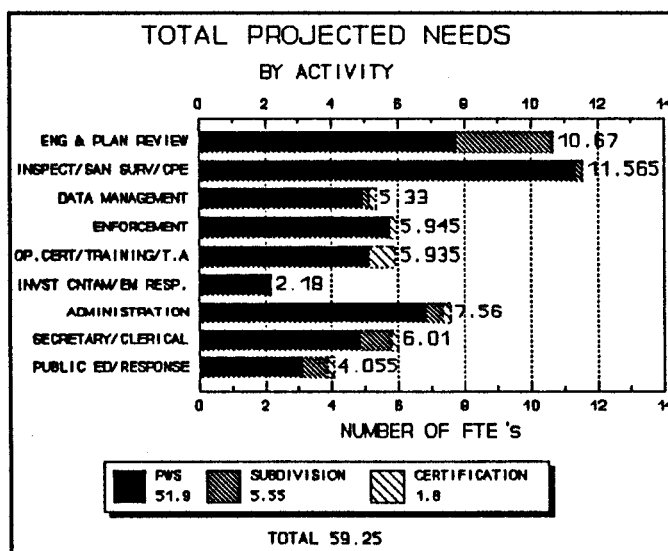
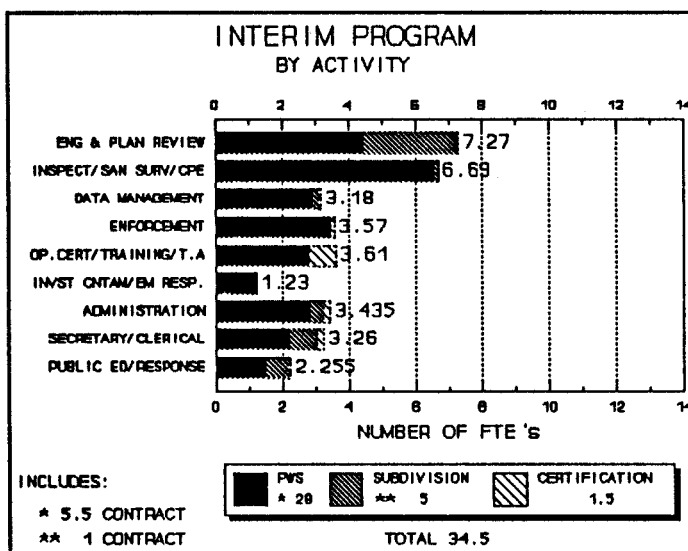


Figure 23

Of the 34.5 FTE's required for the Interim Program, 6.5 could be provided by pass-through funding to local governments, consultant contracts, or contracts with organizations such as Midwest

XII. TASK FORCE RECOMMENDATIONS

The Public Water Supply Program Task Force provides the following recommendations for consideration by the Department of Health and Environmental Sciences, Governor Stan Stephens, and the 1991 Legislature.

1. The state must provide a comprehensive Public Water Supply Program designed to minimize and prevent health hazards associated with drinking water. This program would be based upon the state's historical "preventive" activities and the requirements of the federal Safe Drinking Water Act.
2. The Public Water Supply Section should be staffed and funded to provide for the following by June 30, 1993:

<u>Public Water Supply</u>	<u>Subdivisions</u>	<u>Operator Cert.</u>
DHES 22.5 FTE	4.0 FTE	1.5 FTE
Contracts 5.5 FTE	1.0 FTE	0 FTE
Total 28.0 FTE	5.0 FTE	1.5 FTE

Grant Total 34.5 FTE

3. The Sanitation in Subdivisions Act, MCA 76-4-105, should be amended to remove the \$48.00 per parcel maximum fee, thereby allowing higher fees.

Rules should be adopted to increase fees for subdivision review to support an additional 1.0 FTE above current staff level.

4. The Public Water Supply Act should be amended to give the Board of Health and Environmental Sciences the authority to adopt rules by which the department can collect fees for services. These rules would include fees for engineering plan review and a fee to be assessed against each public water system based upon the number of service connections to that system.

Funds raised by these fees should be used to supplement existing funding of the Public Water Supply Section in order to support the 34.5 FTE recommended in No. 2.

When services are provided by local governments, fees collected by the department, less costs of collection, must be returned to the local governments.

5. This Task Force should reconvene in July of 1991 and July of 1992 to reassess the status of the public water supply section and make further recommendations for consideration at the 1993 legislative session.

APPENDIX I

SUMMARY OF THE 1986 AMENDMENTS TO THE SAFE DRINKING WATER ACT AND THE NEW NATIONAL PRIMARY DRINKING WATER REGULATIONS

The 1986 Safe Drinking Water Act (SDWA) Amendments have made sweeping changes to the SDWA which include the requirement for EPA to issue new national primary drinking water regulations (NPDWRs) for 83 contaminants. The act also requires EPA to publish a priority list of new contaminants that may require future regulation, write rules regarding filtration and disinfection, prohibits the use of lead in public water systems, establishes wellhead protection programs and makes other procedural and terminology changes.

MAJOR STATUTORY REQUIREMENTS

- * The Administrator must publish maximum contaminant levels goals (MCLGs) and promulgate national primary drinking water regulations (NPDWRs) for 83 contaminants, according to the following schedule:
 - 9 of the contaminants not later than June 19, 1987. (done, + required monitoring of 51 unregulated contaminants)
 - 40 of the contaminants not later than June 19, 1988. (38 proposed in May of 1989 - also includes proposal for monitoring of another 114 unregulated contaminants.)
 - 34 of the contaminants not later than June 19, 1989. (the Coliform Rule became final June 29, 1989.)
- * The Administrator may substitute up to seven contaminants found in these lists, if they are more likely to be "protective of public health." (done, see notes on following lists)
- * Not later than January 1, 1988 and at three-year intervals thereafter, the Administrator must publish a list of contaminants known or anticipated to occur in public water systems which may require regulation. (done, see list on last page)
- * At least 25 MCLGs and NPDWRs must be proposed within 24 months and promulgated within 36 months after publication of each list (first of these is due in 1991).
- * Each MCLG must be set at the level at which "no known or anticipated adverse effects on the health of persons occur" and which allows an adequate margin of safety. MCLG's for carcinogens must be set at 0.0.
- * Each NPDWR must specify a MCL for that contaminant "which is as close to the maximum contaminant level goal as is feasible". MCLG and prepared MCLs are to be promulgated simultaneously.
- * Granular activated carbon (GAC) is specified as "feasible" for the control of synthetic organic chemicals. Any treatment techniques found to be the "best available" for the control of synthetic organic chemicals must be at least as effective as granular activated carbon.
- * The Administrator has the authority to promulgate a national primary drinking water regulation that requires the use of a treatment technique instead of establishing a contaminant level, if it is not economically or technologically feasible to ascertain the level of that contaminant.

CONTAMINANTS REQUIRED TO BE REGULATED

UNDER THE SDWA OF 1986

(83 contaminants, 25 of which are currently regulated)

(bold type denotes those contaminants currently regulated by MT)

Volatile Organic Chemicals

Trichloroethylene	Vinyl chloride	Trichlorobenzene
Tetrachloroethylene	Methylene chloride	1,1-Dichlorobenzene
Carbon tetrachloride	Benzene	trans-2,2-Dichloroethylene
1,1,1-Trichloroethane	Chlorobenzene	cis-1,2-Dichloroethylene
1,2-Dichloroethane	Dichlorobenzene .	

Microbiology and Turbidity

Total coliforms	<u>Giardia lamblia</u>	Standard plate count
Turbidity	Viruses	<u>Legionella</u>

Inorganics

Arsenic	Silver (removed)	Vanadium (removed)
Barium	Fluoride	Sodium (removed)
Cadmium	Aluminum (removed)	Nickel
Chromium	Antimony	Zinc (removed)
Lead	Molybdenum (removed)	Thallium
Mercury	Asbestos	Beryllium
Nitrate	Sulfate	Cyanide
Selenium	Copper	*Nitrite (added)

Organics

Endrin	Adipates	1,2-Dichloropropane
Lindane	2,3,7,8-TCDD (Dioxin)	Pentachlorophenol
methoxychlor	*Aldicarb Sulfene (added)	Pichloram
Toxaphene	*Aldicarb Sulfoxide	Dinoseb
2,4-D	(added)	Ethylene dibromide (EDB)
2,4,5-TP	Ethylbenzene (added)	Dibromomethane (removed)
Aldicarb	Heptachlor (added)	Xylene
Chlordane	1,1,2-Trichloroethane	Hexachlorocyclopentadiene
Dalapon	Vydate	THMs (now on priority list
Diquat	Simazine	as individual compounds)
Endothall	PAHs	*Heptachlor epoxide
Glyphosate	PCBs	(added)
Carbofuran	Atrazine	*Styrene (added)
Alachlor	Phthalates	
Epichlorohydrin	Acrylamide	
Toluene	Dibromochloropropane DBCP	

Radionuclides

Radium 226 and 228	Uranium	Radon
Beta particle and photon radioactivity	Gross alpha particle activity	

List 2: Monitoring required only for systems vulnerable to contamination by these compounds. Compounds require some specialized handling.

Ethylene Dibromide (EDB)
1,2-Dibromo-3-Chloropropane (DBCP)

List 3: The primacy agent decides which systems would have to analyze for these contaminants, which includes compounds that do not elute within reasonable retention time using packed column methods or are difficult to analyze because of high volatility or instability.

1,2,4-Trimethylbenzene	n-Butylbenzene	Tertbutylbenzene
1,2,4-Trichlorobenzene	Naphthalene	Secbutylbenzene
1,2,3-Trichlorobenzene	p-Isopropyltoluene	Fluorotrichloromethane
n-Propylbenzene	Isopropyl benzene	Dichlorodifluoromethane

* Composite sampling of up to five wells will be allowed.

* Repeat monitoring: every five years but a new list of contaminants will be specified.

* Phase in per size of system as in the proposal. Monitoring for large systems will start October 1, 1987.

* If no contaminants are detected in the first quarter's sampling, the state may not further sampling.

The 40: SOCs-IOCs-Microbials
(due in June of 1988)

SOCs

Tetrachloroethylene	Carbofuran	Pentachlorophenol
Lindane	Alachlor	Ethylene Dibromide
Methoxychlor	Toluene	Xylene
Toxaphene	Epichlorohydrin	Trans-1,2,-
2,4-D	PCBs	Dichloroethylene
2,4,5-TP	Acrylamide	o-Dichlorobenzene
Aldicarb	DBCP	Chlorobenzene
Chlordane	1,2-Dichloropropane	

IOCs

Arsenic	Chromium	Mercury
Asbestos	Copper	Nitrate
Barium	Lead	Selenium
Cadmium		

MICROBIALS

Total Coliforms	Turbidity	Heterotrophic Plant Count
<u>Giardia Lamblia</u>	Viruses	<u>Legionella</u>

SUBSTITUTES

Ethylbenzene	Styrene	Aldicarb Sulfoxide
Heptachlor	Nitrite	Adlicarb Sulfone
Heptachlor Epoxide		

Appendix II**MONTANA'S CURRENT
PRIMARY DRINKING WATER STANDARDS**

Contaminants	Health Effects	MCL ¹	Sources
Microbiological			
Total Coliforms (Coliform bacteria, fecal coliform, streptococcal, and other bacteria)	Not necessarily disease producing themselves, but can be indicators of organisms that cause assorted gastroenteric infections, dysentery, hepatitis, typhoid fever, cholera, and others; also interfere with disinfection process.	1 per 100 milliliters	human and animal fecal matter
Turbidity	Interferes with disinfection	1 to 5 NTU	erosion, runoff, and discharges
Inorganic Chemicals			
Arsenic	Dermal and nervous system toxicity effects	.05	geological, pesticide residues, industrial waste and smelter operations
Barium	Circulatory system effects	1	
Cadmium	Kidney effects	.01	geological, mining and smelting
Chromium	Liver/kidney effects	.05	
Lead	Central and peripheral nervous system damage; kidney effects; highly and pregnant women	.05 ²	leaches from lead pipes and lead-based solder pipe joints
Mercury	Central nervous system disorders; kidney effects	.002	used in manufacture of paint, paper, vinyl chloride, used in fungicides, and geological
Nitrate	Methemoglobinemia ("blue-baby syndrome")	10	fertilizer, sewage, feedlots, geological
Selenium	Gastrointestinal effects	.01	geological, mining
Silver	Skin discoloration (Argyria)	.05	geological, mining

MONTANA'S CURRENT
PRIMARY DRINKING WATER STANDARDS

Contaminants	Health Effects	MCL ¹	Sources
Carbon tetrachloride	Possible cancer	.005	common in cleaning agents, industrial wastes from manufacture of coolants
p-Dichlorobenzene	Possible cancer	.075	used in insecticides, moth balls, air deodorizers
1,2-Dichloroethane	Possible cancer	.005	use in manufacture of insecticides, gasoline
1,1-Dichloroethylene	Liver/kidney effects	.007	used in manufacture of plastics, dyes, perfumes, paints SOCs
1,1,1-Trichloroethane	Nervous system problems	.2	used in manufacture of food wrappings, synthetics fibers
Trichloroethylene (TCE)	Possible cancer	.005	waste from disposal of dry cleaning materials and manufacture of pesticides, paints, waxes and varnishes, paint stripper, metal degreaser
Vinyl chloride	Cancer risk	.002	polyvinylchloride pipes and solvents used to join them, waste from manufacturing plastics and synthetic rubber
Total trihalomethanes (TTHM) (chloroform, bromoform, bromodichloromethane, dibromochloromethane)	Cancer risk	.1	primarily formed when surface water containing organic matter is treated with chlorine

February 21, 1991

PROPOSED AMENDMENT TO SB 407

OPTION 3:

Amend New Section 4(1) to read as follows:

NEW SECTION. Section 4. Board to prescribe fees. (1)

The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part.

The annual fee for a public water supply system ~~must be based on the number of connections to the public water supply system, although the minimum fee for any system is \$100.~~ shall bear a direct and proportional relationship between the demand for a service by a public water supply system and the department's cost of providing it. Public water supply systems may, without the need for the public hearing required under Section 69-7-111, automatically raise their rates to recover their costs of paying all fees prescribed under this chapter.