

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on January 11, 1993, at 1:05 p.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Don Bianchi, Chair (D)  
Sen. Cecil Weeding, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
Sen. Bob Hockett (D)  
Sen. Tom Keating (R)  
Sen. Ed Kennedy (D)  
Sen. Bernie Swift (R)  
Sen. Chuck Swysgood (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)  
Sen. Jeff Weldon (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Paul Sihler, Environmental Quality Council  
Leanne Kurtz, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 97  
Executive Action: SB 67

##### **Announcements/Discussion:**

Chair Bianchi announced that toxic waste burning presentations by the Montana Environmental Information Center (MEIC) and Montanans Against Toxic Waste Burning have been postponed, probably until 1/22. He noted that the Department of Health and Environmental Sciences (DHES) would appear on 1/13 to discuss the hazardous waste burning laws and the permitting process.

Chair Bianchi stated that Sen. Hockett had asked if the Committee

would postpone executive action on SB 67, as he is conducting further research. Chair Bianchi announced that the Committee would hold executive action on SB 67 on 1/13.

He stressed that the informational presentations would not include debate and Committee members would be the only individuals allowed to ask questions.

### HEARING ON SB 97

#### Opening Statement by Sponsor:

Sen. Hertel, SD 15, stated that the purpose of SB 97 is to transfer ownership of the Lewistown Ditch Canal Project from the Department of Natural Resources and Conservation (DNRC) to the canal's water users association.

He said that HB 814, passed in 1991, allowed the DNRC to dispose of state-owned water projects. The law (85-1-211) names 11 different canal projects which DNRC will attempt to dispose of by June 30, 1995, but the Lewistown Ditch Canal Project was omitted from the original list.

Sen. Hertel stated that DNRC has expressed its willingness to transfer the project to the Lewistown Ditch Water Users Association. He noted that all 10 of the water users on the ditch have signed a petition in favor of the transfer.

The association's secretary has informed Sen. Hertel that the association has assumed most of the upkeep costs of the project. Sen. Hertel noted that the state has been responsible for some of the expense, and the transfer of ownership would eliminate those costs.

Sen. Hertel urged passage of SB 97, stating that 85-1-211 allows for transfer of ownership, that the water users unanimously favor the transfer, and that costs to the state would be eliminated.

#### Proponents' Testimony:

Gary Fritz, Administrator of the Water Resources Division, DNRC, stated that the bill is being introduced at the request of DNRC and the Lewistown Ditch Water Users Association.

Mr. Fritz stated that a DNRC oversight resulted in the omission of the Lewistown ditch from HB 814. The water users had expressed to the DNRC their "serious intent and desire to have the state turn the ownership of the project over to them."

Mr. Fritz described the ownership transfer process, including submission of a petition. He noted that the water users would be able to veto the transfer by a vote of 30 percent, and if the

users decide that they do not want the project transferred to them, the transfer can occur only by an act of the legislature. Mr. Fritz submitted a copy of his testimony for the record (Exhibit #4).

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Mr. Fritz introduced Mel McBeath, Project Engineer who oversees operation and maintenance of the water projects. Mr. Fritz noted that two engineers work for Mr. McBeath, one of whom has been assigned nearly full time to the transfer of projects to local water users; the other responds to needs of water user associations. He stated that the DNRC considers the ownership transfers a high priority.

Sen. Keating asked about the full time employees (FTEs) involved in the process. Mr. Fritz noted that all the water users associations owe the state money to repay the original cost of building the projects and one individual is employed to keep track of those funds.

Mr. Fritz explained that water user fees are deposited into an account to offset the state's cost of water development. That is supplemented by the interest income from the Resource Indemnity Trust (RIT).

Sen. Doherty asked about the fee schedule, the specifics of what is transferred and potential benefits to the state. Mr. Fritz replied that the water users are assessed two fees: an operation and maintenance charge that the association keeps; and the repayment of initial state costs of the project. He noted that the costs vary from \$1 to \$5 depending on the project.

Mr. Fritz discussed incentives to encourage water users to assume project ownership. If the users assume project ownership, then the state will pay for operation and maintenance costs for 1 year. If the water users decline ownership, the Department will assess them the full administrative costs of the project (estimated at \$1 per acre). He noted that if a few projects decided against the transfer, they would only be assessed costs that the department determined were relevant to the specific projects.

Mr. Fritz noted that all of the state's interests in the projects (rights of way, improvements, turnouts, the canal itself, diversions, and the water rights) would be transferred to the local water users association. He said that the DNRC's draft appraisals indicate that the projects are not worth much money.

Mr. Fritz and members of the Committee discussed the particulars of state versus private ownership, fee title, right of way, easements, deeded land, and public access. Mr. Fritz noted that the DNRC acquires and disposes of land on a regular basis.

Mr. Fritz discussed clear title and title insurance, which he noted is expensive. He stated that DNRC, in some instances, couldn't guarantee clear title. He noted that the water users will have to decide whether they are satisfied with DNRC's assessment of the land's status.

Sen. Grosfield stated that three canals in the bill are in his district, and stressed that the canal companies need to understand up front what their administrative costs will be.

Mr. Fritz and Mr. McBeath explained the problems with determining exact administrative costs of specific projects, but noted that DNRC is almost ready to release preliminary costs.

Mr. Fritz and Mr. McBeath said that 2/3 of the water users on a system must sign the petition to transfer a project, and the "users that represent 30 percent of the outstanding stock of the corporation" can veto the plan of transfer.

#### Closing by Sponsor:

Sen. Hertel asked the Committee to look favorably on SB 97.

#### Other Committee Business:

After a 5 minute break, Chair Bianchi stated that the Committee would hear a presentation on one side of the subdivision issue. He introduced Janet Ellis, lobbyist and Program Director for the Montana Audubon Council, noting that he invited the Montana Board of Realtors to present their perspective, but they were unable to attend.

Ms. Ellis stated that the Audubon Council hired Carter Calle, a graduate student in environmental studies at the University of Montana, to research and document problems with the current subdivision law. She noted that the Council has taken no position on any particular legislation. Mr. Calle will be completing a report in the next couple weeks, which he will submit to the Committee.

Mr. Calle's presentation consisted of overhead projections. He

provided a hard copy of the information for the record (Exhibit # 1). He provided data showing the reviewed and unreviewed subdivided acreage in Missoula, Gallatin, and Lake counties since 1973.

Mr. Calle passed around documents illustrating the different types of subdivision advertising. A question and answer session followed Mr. Calle's presentation.

Sen. Swift said he does not believe that Mr. Calle has "any valid data relative to density" of the tracts.

Sen. Keating suggested that the data regarding subdivided land would be more valid if it were compared to the total number of acres in each county.

Mr. Calle stated that all divisions of land must be reviewed for septic purposes, but nothing requires a land developer to indicate to a prospective buyer that the property was located on a flood plain.

The Committee members discussed taxation of different land classifications.

Sen. Hockett asked that the Committee postpone executive action on SB 67 and distributed pages 3 and 4 of the bill (Exhibit #2) which he questions. He also distributed information (Exhibit #3) provided by "Keep Montana Clean and Beautiful" regarding the DHES's role as a "clearinghouse for information on waste reduction, reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility." Sen. Hockett said he is contemplating an amendment to remove all of subsection 9 from the SB 67.

Chair Bianchi announced that the Committee would hold executive action on SB 67 and SB 97 on 1/13.

**ADJOURNMENT**

**Adjournment: 2:40 p.m.**



SEN. DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk

# ROLL CALL

SENATE COMMITTEE Natural Resources DATE 1/11/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. McCernan	X		
Sen. Swift	X		
Sen. Swysgood	X		
Sen. Treit	X		
Sen. Weeding	X		
Sen. Weldon	X		

## I. Introduction

1. Give background info on yourself
2. Researching and documenting the problems of unreviewed subdivisions.
3. Presentation will focus on three major areas:
  1. Why is the current subdivision law not effective?
  2. What are the problems caused by the weak law?
  3. What can we do to fix the problems?

## II. The Subdivision Law

### 1. What is it supposed to do?

1. The subdivision law regulates the division of land in order to:

1. Prevent the overcrowding of land,
2. Lessen congestion on streets and highways,
3. Provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress and other public requirements,
4. Require development in harmony with nature

### 2. How is it supposed to do it?

1. The subdivision law requires a local review board to assess a subdivision based on the following criteria:

1. The basis of need for the subdivision
2. Expressed public opinion
3. Effects on agriculture
4. Effects on local services
5. Effects on taxation
6. Effects on the natural environment
7. Effects on wildlife and wildlife habitat
8. Effects on the public health and safety

### 3. Why isn't it working?

1. The law allows for several exemptions from review. Most of the exemptions are innocuous but there are three that represent a serious problem.

1. Twenty acre exemption - by definition, any division of land 20 acres or larger isn't a subdivision and is therefore excluded from review.
2. Occasional sale - the law exempts one sale of a division of land in any twelve month period.
3. Family conveyance - the law exempts divisions of land when the land is given or sold to an immediate family member.

### ~~4. What is the result?~~

~~1. The best way to illustrate the results these exemptions is to use a hypothetical example. A person with a 300 acre farm sells off 200 acres to a developer (not reviewed - 20 acre exemption). The developer immediately divides it into five 20 acre parcels and sells them (not reviewed - 20 acres). One~~

Overhead

Overhead

Overhead

3



~~parcel is bought by a man who then sells 10 acres to his brother (not reviewed - family conveyance). Both brothers sell 5 acre parcels to raise money to build houses (not reviewed - occasional sale). The result is a de facto subdivision with eight households where before there was only one.~~

2. This example isn't outrageous. Rattlesnake example.

5. How pervasive is the use of these exemptions.

1. Annually, 90% of all the subdivision in Montana is not reviewed

~~2. In 1990 in Missoula county, 5585 acres were subdivided. Only 167 acres were reviewed.~~

Handouts  
if appropriate

III. The Problems of Unreviewed Subdivision

1. Unreviewed subdivisions have both environmental and economic impacts associated with them.

1. Problems for counties

1. Poorly designed roads

1. Since there is no review, there is no requirement that roads be built to county standards.

1. Roads are usually not maintained and are unsafe, particularly in winter.

2. Sometimes ownership of the road is unclear.

1. No homeowners association - Broken Promises by developer to maintain roads

2. Road built on private land w/ no easement - Flathead

3. Road deeded to city or county - Billings

2. Often the residents become so frustrated with the road that they demand that the local government repair the road. If the government does, it is usually with taxpayer money.

1. In Gallatin County, \$150,000 was spent to improve a 13 mile dirt road leading to an unreviewed subdivision. They spend another \$15,000 a year maintaining that road

2. Sometimes, the county maintains a road in error and then after setting a precedent, has to fight an ugly battle to stop servicing the road. - Billings

2. Rural development occurs outside of existing infrastructure. Besides road maintenance, residents of these unreviewed and unplanned subdivisions demand services such as fire and police protection. They want school buses for their children.

3. Demand for services without a proportional contribution to the tax base.

1. 20 acre parcels are taxed as agricultural land which is considerable less than residential.

Overhead

Overhead

1. In Park County there are 1560 20 acre tracts that contribute \$9500 to the tax base. If taxed as residential tracts they would contribute over \$300,000.

4. All of this undermines efforts at planning and efforts to controll growth. Development occurs in a scatter shot fashion rather than in orderly and efficient manner. How can a local government do any meaningful planning for the future?

1. One extreme case of financial burden on a local government: Miles city has an unreviewed 20 acre development that was advertised nationally and targeted towards low income people. Many sold everything they had and moved to Montana with the dream of a new life. When the arrived they weren't able to find work. Now at least 30 of them are stuck in Miles City and living on welfare. The city often buys one way bus tickets out of town for those too poor to afford them.

**2. Problems for buyers**

1. Without review there is no disclosure. People buying such property often find:
1. No mineral rights - Hidden Springs
  2. No utility easement
  3. No access to property
  4. No water or poor water quality
  5. No building sites on property. (example - parcels in the Flathead that are all in the floodplain)
  6. Inadequate drain fields for septic tanks
  7. Inadequate roads

**3. Problems with air and water quality**

1. Poorly built roads cause stream sedimentation and air pollution due to dust and erosion.
2. The areas capacity for septic systems may be exceeded contaminating the water supply.

**4. Safety Problems**

1. Rural fire fighters and emergency medical technicians complain of:
1. Roads that are too steep, too narrow, too muddy or otherwise too dangerous for them to use their emergency vehicles on.
  2. Roads with no signage
  3. Roads with duplicate names or no names at all
  4. No water source
  5. No precautions taken in high fire risk areas (i.e. fireproof shingles)

**5. Problems for the agriculture community**

1. People moving to rural areas don't understand what they are getting into
1. They don't appreciate their fence maintenance and weed control obligations

Overhead

Overhead

Overhead

2. They complain about noise and odors
3. They complain about hours of operation
4. They complain about livestock moving
5. They bring pets that kill or harass livestock
2. Valuable open range that ranchers depend on is being broken up and fenced off.
  1. In Jefferson county, ranchers requested and got an emergency zoning ordinance that restricts non-farm and non-ranch homes to one for every 640 acres. It also banned any further subdivision or residential development.
3. As rural areas become urbanized, property values go up making farming and ranching less viable. Unreviewed subdivision is changing the face of Montana's agricultural communities

#### 6. Problems for wildlife

1. The most popular areas for development are along rivers and streams, in fertile valleys bottoms and in the foothills. Unfortunately, these are the areas that support the greatest diversity of flora and fauna.
  1. Development in these area destroys habitat and permanently alters the ecosystem:
    1. Riparian areas are being cleared.
    2. Winter ranges of large free-ranging animals like deer and elk are being broken up.
    3. Wildlife corridors important for seasonal migration are being closed off.
  2. All of these things are putting added pressure on wildlife.
2. People move to the country in order to get back to nature. But when wildlife start acting like wildlife they get very upset. Human-wildlife conflicts are skyrocketing.
3. The 20 acre exemption exacerbates this problem by spreading people and their impacts on wildlife over a larger area. People aren't clustered together with a natural buffer zone left between them and the animals.
  1. Grizzly bears, skunks and raccoons and other animals are attracted by trash carelessly left outside.
  2. Deer and elk find their natural forage displaced and so they adapt by eating other things like gardens and landscaping.
  3. Mountain lions are attracted by the deer and elk. They often wind up killing a pet or worse a human.
  4. In each instance the offending wildlife are either relocated or killed.
4. The Dept. of Fish Wildlife and Parks find themselves spending more & more staff time and money responding to complaints about nuisance

Overhead

wildlife which takes resources away from much more important tasks.

1. They have an animal damage control fund paid for by hunting licenses that was originally intended to reimburse farmers for crops damaged by wildlife. Now they find themselves using that money to replace damaged shrubs and gardens that have been eaten. The irony isn't lost on hunters who are losing hunting lands to 20 acre development.

#### IV. Summary

1. It isn't difficult to see how these problems affect everyone.

1. Taxpayers are subsidizing bad development
  2. Wildlife are losing valuable habitat
  3. The environment is being degraded
  4. Montana is losing the qualities that make it unique
2. The most difficult thing to accept is that the subdivision law encourages all of this. Adequate review would eliminate or at least mitigate a lot of these problems.
1. Opponents of strengthening the law claim that it will stifle development and cost property owners money.

#### V. What can we do to change the law?

1. The Montana Audubon Council will lobby hard for subdivision reform in the 1993 session.
  1. Janet did a great job last time and the bill that would have strengthened the law came from within just two votes of passing.
  2. There is an excellent chance that the law can be changed in 1993 session.
2. This project is an important of the preparation for the next session. We are also working on building a coalition of groups and individuals interested in reform.
3. Audubon members can help.
  1. We need current pictures of 20 acre parcels for sale from around the state. We must emphasize that this is a statewide issue!
  2. We need real estate magazines offering 20 acre parcels.
  3. We need horror stories of problems that have occurred in your area.
  4. We need your letters and phone calls during the legislative session.

1 facility;

2 (e) providing procedures for the quarterly collection  
3 of the solid waste management fee provided for in 75-10-115;  
4 and

5 (f) providing guidelines for integrated waste  
6 management;

7 (j) provide financial assistance to local governments  
8 for front-end planning activities for a proposed solid waste  
9 management system which is compatible with the state plan  
0 whenever financial assistance is available;

1 (k) provide technical assistance to persons within the  
2 state for planning, designing, constructing, financing, and  
3 operating;

4 (a) a solid waste management system in order to ensure  
5 that the system conforms to the state plan;

6 (b) integrated waste management programs; and

7 (c) collection, disposal, reduction, and educational  
8 programs for household hazardous waste and conditionally  
9 exempt small quantities of hazardous waste as defined in  
0 Rule 16.41.402, Administrative Rules of Montana;

1 (5) provide front-end organizational loans for the  
2 implementation of an approved solid waste management system  
3 whenever funds for loans are available;

4 (6) enforce and administer the provisions of this part;

5 (7) administer loans made by the state under the

1 provisions of this part;

2 (8) approve plans for a proposed solid waste management  
3 system submitted by a local government; and

4 (9) serve as a clearinghouse for information on waste  
5 reduction and reuse, recycling technology and markets,  
6 composting, and household hazardous waste disposal,  
7 including chemical compatibility.

8 75-10-104. (Effective July 1, 1993) Duties of  
9 department. The department shall:

10 (1) prepare a state solid waste management and resource  
11 recovery plan as required by 75-10-807 for submission to the  
12 board;

13 (2) prepare rules necessary for the implementation of  
14 this part for submission to the board, including but not  
15 limited to rules:

16 (a) governing the submission of plans for a solid waste  
17 management system;

18 (b) governing procedures to be followed in applying for  
19 and making loans;

20 (c) governing agreements between a local government and  
21 the department for grants or loans under this part;

22 (d) establishing, for the purpose of determining the  
23 solid waste management fee to which a facility is subject  
24 under 75-10-115 or 75-10-118, methods for determining or  
25 estimating the amount of solid waste incinerated or disposed

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 1/11/93

BILL NO. 67

SB 67 includes the provision that the Montana State Department of Health & Environmental Services (DHES) serve as a *"clearinghouse for information on waste reduction, reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."* This is not needed because many public and private clearinghouses already exist to answer questions from the public. The one thing these groups can't do is inspect landfills and enforce existing laws and regulations. DHES should concentrate its resources on protecting the public health and environment through enforcement of existing laws and regulations.

The 1991 legislature passed a law that increased landfill fees so that DHES could hire new inspectors and increase training of landfill operators. Increased fees are paid by citizens when they dispose of their trash. Citizens should get what they pay for, but not be expected to pay for duplication of services. Nor should government agencies compete with private industries, such as the recycling industry.

Many groups already provide public education about solid waste, and have formed the Montana Waste Education Coalition with the help of the Montana State University Extension Service, to share and further the dissemination of information. A partial list of groups involved are: Keep Montana Clean & Beautiful, Bozeman Community Recycling Coalition, Beartooth RC&D, Northern Plains Resource Center, Cascade County Extension Office, Montana Environmental Information Center, Montana Office of Public Instruction, and many others.

Keep Montana Clean & Beautiful has published two recycling directories and is in the process of producing a "1993 Montana Recycling Directory." The Directory lists every recycling center, its location, days and hours of operation, and types of material accepted. They have developed six fact sheets on solid waste topics such as "Office Paper Recycling," "Alternatives to Household Hazardous Waste," etc. that have been distributed to 50 extension offices.

Other examples of the type of public education already taking place include the Beartooth RC&D work with the MSU Extension Service to develop a Montana addendum to Washington State's "Away with Waste" program, a waste education curriculum. Three teacher training sessions have taken place at Eastern Montana College, Montana State University and Flathead Community College. Plans are underway for the program to reach many people through existing conservation district curricula, Montana Educators Association, 4-H Enrichment Program, vocational agricultural programs, weekend workshops, continuing education program (OPI approved), church camps, sports camps, Home Schooling Association, public interest groups such as the League of Women Voters, Kiwanis, Lions, Rotary, etc.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 3  
DATE 1/11/93  
BILL NO. 67

TESTIMONY OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
ON SENATE BILL 97, FIRST READING

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

JANUARY 11, 1993

*A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE CANAL  
PRIVATIZATION PROGRAM TO INCLUDE THE LEWISTOWN DITCH;  
AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE."*

The department supports this bill amending the canal privatization program to include the Lewistown Ditch. The Lewistown Ditch is one of 33 active irrigation projects that are owned by the department, and managed and operated by water users' associations. These projects consist of either reservoirs, a combination of canals and reservoirs, or ditches that convey water directly from a river or stream to nearby agricultural lands. The Lewistown Ditch falls within this latter category.

This water project disposal program is the outgrowth of a recommendation by the Montana Ambassadors, a group of businesspeople from around Montana who were charged by Governor Stephens with suggesting areas where the state could privatize some of its functions. Among their recommendations was that of having the department turn over the ownership of its active irrigation canal projects to the private sector.

Responding to this recommendation, the 1991 Legislature passed a bill that named eleven department-owned canal projects as candidates for transfer into private ownership, giving a preference to the existing water users' associations. At the time, the Lewistown Ditch was not among the canal projects slated for the transfer effort. Recently, however, all of the water users associated with the project have requested the department to work with them in transferring the project's ownership. The proposed legislation, if enacted, will provide the department the legal basis for honoring that request.

Under the canal privatization program, the department must notify the water users of its intent to pursue transferring the ownership of their project. If, by petition, the water users respond positively to the notice, the department works with them to develop a project transfer plan. Following completion of the plan, the water users vote on whether to conclude the transfer. If they do not elect to accept the transfer of the project by June 30, 1995, the law provides that the department will charge the association for its costs associated with administering the project.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 4  
DATE 1/11  
BILL NO. 97

Currently, water users associated with the Lewistown Ditch owe the state about \$1,000 as repayment for the initial project construction cost. However, as an incentive to participate in the canal transfer effort, the law provides that the department may allow a severance payment equal to one year's expense of operating and maintaining the project. In the case of the Lewistown Ditch, this payment has been estimated to be about \$800 and would be applied toward retiring the debt owed the state. The total cost to the state of transferring the project to private ownership would be about \$900 -- the \$800 severance payment plus a \$100 expense for an appraisal of the project.