

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 17, 1995,
at 3:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. Mack Cole
Sen. Bill Wilson

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: SB 382, HB 478

EXECUTIVE ACTION ON HB 478

Motion: SEN. MIKE FOSTER MOVED TO ADOPT REP. STORY'S AMENDMENTS
NO. hb047801.ate AS CONTAINED IN EXHIBIT 1.

Discussion:

Todd Everts, Environmental Quality Council, explained the
amendments to the committee members.

SEN. TOM KEATING asked if there were counties that didn't have
conservation districts. **Laurie Zeller, Conservation Districts
Bureau, DNRC**, replied there were a few areas where they do not
have conservation districts.

Vote: MOTION TO ADOPT AMENDMENTS NO. hb047801.ate, CARRIED UNANIMOUSLY.

CHAIRMAN GROSFIELD explained amendment no. hb047801.amc, as contained in **EXHIBIT 2**.

Don MacIntyre, Attorney, DNRC, said that while the districts' boundaries may cover all perennial flowing streams, there are perennial flowing streams that there may not be a need to cover. The amendment as correctly worded would require the conservation districts to take a positive action for every perennial flowing stream in Montana. He said the sponsor and the conservation districts agree that there were some streams that were not perennial flowing streams with significant attributes, and suggested modifying the amendment to read, "except if the stream or river has been designated by conservation district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102." That way districts would only have to deal with a small number of streams.

SEN. JEFF WELDON asked **Mr. MacIntyre** if state law provided for rule-making for conservation districts. He replied currently the law does provide that the conservation districts could develop rules. They follow an ordinance procedure, similar to the procedure that administrative agencies of the state use. However, the DNRC would adopt a model rule and the conservation districts' board members would then use it to develop their own rules.

Motion: SEN. WELDON MOVED TO ADOPT AMENDMENT NO. hb047801.amc WITH THE SUGGESTED CHANGES: inserting "except" before "if", and inserting "not" before "having."

Discussion:

SEN. KEATING said it would seem the amendment would make it difficult for an irrigation project to make a change. **CHAIRMAN GROSFIELD** said that current law says that if you were going to do a project on a stream, a permit would be required.

CHAIRMAN GROSFIELD said a number of districts have already determined the streams they would cover. He asked if those who have already gone through the process would have to do it again, if the amendment was adopted. **Mr. MacIntyre** said there probably would be rule-making anyway. For those streams that were intermittent, they could delete them with the amendment. He said the word "conservation" probably was not needed.

CHAIRMAN GROSFIELD clarified that the amendment before the committee reads, "except if the stream or river has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102."

Vote: MOTION TO ADOPT AMENDMENT NO. hb047801.amc WITH THE PROPOSED CHANGES, CARRIED UNANIMOUSLY.

Motion: SEN. VIVIAN BROOKE MOVED TO CONCUR IN HB 478 AS AMENDED.

Discussion:

SEN. WELDON asked if the conservation districts were comfortable with the bill as amended. CHAIRMAN GROSFIELD said yes.

Vote: MOTION TO CONCUR IN HB 478 AS AMENDED, CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 382

CHAIRMAN GROSFIELD asked for agency comments.

Tim Baker, Counsel for the State Superfund Program, said he had a brief overview of the state superfund law that he prepared for the committee to help them understand the changes that have been proposed. He said that the State Superfund law, also known as CECRA, "is triggered when there is a release or threatened release from a facility, of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, welfare, and safety or the environment." He said after that the department conducts a cleanup, or orders other liable parties to do the cleanup. See explanation in **EXHIBIT 3**.

Bob Robinson, Director, Department of Health and Environmental Sciences said voluntary cleanup amendments should be passed and become part of the Superfund law. Mr. Robinson reviewed some of the department's concerns and some proposed amendments with the committee.

Mr. Robinson said DHES and the Governor oppose SB 382 because it substantially undermines a liability scheme that currently provides for an effective cleanup program with minimal litigation and transaction costs. While negotiations with industry representatives have addressed their concerns with remedy selection and voluntary cleanup portions of the bill, DHES and the Governor remain opposed to Sections 1-5 and 7-9 of the bill, which undermine the CECRA liability scheme. **EXHIBIT 4**.

{Tape: 1; Side: B}

Mr. Robinson reviewed their proposed amendments with the committee members as contained in **EXHIBIT 4**.

CHAIRMAN GROSFIELD asked Chris Tweeten, Department of Justice if he would comment on amendment 108. He replied they didn't think the liability scheme should be changed. If it was changed, it would be essential for that language to be in the bill.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS RELATED TO THE VOLUNTARY CLEANUP PLANS AND CLEANUP STANDARDS, WHERE THE INDUSTRY AND THE DEPARTMENT WERE IN AGREEMENT.

Discussion:

CHAIRMAN GROSFIELD said it was his understanding that the amendments that everyone agreed upon, were the amendments in Exhibit 4 indicated by double shamrocks, namely amendment no's. 40-44, 54-106, and 108. EXHIBIT 4.

CHAIRMAN GROSFIELD said there were a total of 108 amendments to consider, and it seems that it would be easier to segregate them.

SEN. B. F. "CHRIS" CHRISTIAENS said the bill with all the amendments was so confusing, he wondered if the Montana Consensus Council couldn't do a study over the next biennium.

SEN. WELDON said to Mr. Robinson that he had talked about a conversation he had with the Governor concerning the bill and how it related to the Consensus Council. Mr. Robinson said he visited with the Governor as to a possibility for studying the relationship to the funding of the RIT, perhaps looking at why it was created and how it was being used. It goes beyond just the Superfund, it goes to appropriation decisions and priorities that the Legislature has evolved to since the RIT was created.

SEN. WELDON said the bill was problematic, but he appreciated all the work that the department and interested parties have done on the amendments. It seems that the Consensus Council or the EQC could undertake an interim study.

Substitute Motion/Vote: SEN. WELDON MADE A SUBSTITUTE MOTION TO TABLE THE BILL. MOTION FAILED 3-6 ON A ROLL CALL VOTE.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS FROM EXHIBIT 4 FOR SECTION 6, AND FOR SECTIONS 10-18.

Discussion:

SEN. BROOKE asked Carol Fox, Manager of the State Superfund Program, if the sections that were just moved were workable in the Superfund program. She replied that Sections 10-18 addressed voluntary cleanup and they could live with those. Section 6 was the remedy selection, and the department made some compromises and they were okay.

Vote: MOTION TO ADOPT AMENDMENTS IN SECTION 6, AND SECTIONS 10-18, CARRIED 6-3 WITH SENATORS KEATING, BROOKE, AND WELDON VOTING NO.

{Tape: 2; Side: A}

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. sb038203.amc AS CONTAINED IN EXHIBIT 5.

SEN. FOSTER said in addition to those amendments that relate to the two topics which were just passed, he would move these amendments and ask the department to comment on them.

Mr. Everts said the amendments that were just passed deal with cleanup standards and the voluntary plans. These amendments were amendments to the amendments.

Leo Berry, Attorney, said amendments no. 1,4,5,6, and 7 apply to the cleanup standards and the voluntary remedies. They were consensus amendments that they encourage the committee to adopt.

Mr. Everts explained to the committee where the amendments fit into the Gray Bill.

SEN. CHRISTIAENS asked if there were any more amendments than what they have already seen. **CHAIRMAN GROSFIELD** said yes. **SEN. CHRISTIAENS** said he would like to see all of the amendments put into the Gray Bill, including the conceptional amendments. He said he would like to see one final version where everything was in place. **CHAIRMAN GROSFIELD** said they cannot get a bill printed until the amendments were adopted. Amendments to the amendments had been done in other committees.

SEN. CHRISTIAENS said why doesn't the committee adopt all the amendments and then put the bill into a final form, because he didn't understand what was happening with the amendments.

Mr. Berry said it was just a matter of how the committee has chosen to proceed through the bill. One way would be to adopt all the amendments and then argue about particular parts of the bill. The committee had chosen to go part by part and that makes sense.

SEN. BROOKE said she would oppose all of the action on SB 382, because the subject needs more work, discussion, and input from the Legislature.

Substitute Motion/Vote: **SEN. FOSTER MADE A SUBSTITUTE MOTION TO ADOPT AMENDMENTS NO. 1,4,5,6, AND 7 from Exhibit 5. MOTION CARRIED 6-3 WITH SENATORS BROOKE, CHRISTIAENS, AND WELDON VOTING NO.**

Motion: **SEN. FOSTER MOVED TO ADOPT AMENDMENTS 2, 3, AND 8, FROM EXHIBIT 5 AND ALL OF THE GRAY BILL.**

SEN. WELDON said on the sheet that **Mr. Robinson** provided, he estimated that over the next 10 years approximately \$48 million in valid claims on the Environmental Quality Protection Fund may accumulate but cannot be paid. He asked **John Tubbs** if he agreed with that statement. He replied he agreed with the department's analysis, and their numbers match the departments in terms of cash flow into the account. **SEN. WELDON** said it says that additional revenue would have to be raised for possible

reimbursement claims. He asked Mr. Tubbs from what source. He replied the DNRC and other agencies that get RIT funding were concerned about that. Currently the bill creates approximately a \$4 million hole in agency funding in the next biennium.

Vote: MOTION TO ADOPT AMENDMENTS NO'S. 2,3, AND 8, AND ALL OF THE GRAY BILL FAILED 6-4.

Motion: SEN. FOSTER MOVED TO DO PASS SB 382 AS AMENDED.

Discussion:

SEN. KEATING asked if the Draft Discussion No. 2, aside from those amendments that were approved, was substantially different from the bill. CHAIRMAN GROSFIELD answered yes.

Mr. Berry said that joint and several liability was stricken from the original bill. If you pass the bill as amended, joint and several liability would no longer be part of Montana law.

SEN. KEATING said that under current law, joint and several liability says that anyone that has anything to do with the liability regardless of how much of it they caused, can be held responsible for 100% of it. What we were trying to do in the Draft Discussion No. 2 was, to modify the liability to make it applicable to the person responsible for that liability. If any of those were unable to be found or unable to pay, their portion would be paid out of the orphan fund. Those parties responsible would be responsible for their proportionate share of cleanup, but not everyone's share.

SEN. KEATING said that sounds like a pretty reasonable amendment. The idea of sticking one party for the whole problem, although they didn't cause the whole problem, is unfair. He said they should get the responsible parties so the others wouldn't have to pay more than their share.

SEN. CHRISTIAENS said one of the reasons why he did not support that was, that under the orphan share, it means the taxpayers.

SEN. KEATING said the department was saying there were a bunch of holes out there, but they haven't identified the responsible parties. If there was \$50 million out there in cleanup costs, it may be for legitimate orphan holes anyhow.

{Tape: 2; Side: B}

Mr. Robinson responded that he asked the Superfund people to go back and look at the existing claims that they have. There were 271 Superfund sites. 51 of those are high priority nonmining sites. They estimate that \$18 million will be attributable to orphan shares. The bill only applies to 90% of that so it comes to \$16.2 million. The Department of State Lands did the same thing. They came up with 10 sites that were high priority abandoned mine sites. The DSL estimates the cost of cleanup

between \$5 million to \$10 million. They did the same thing with underground storage tanks. They have approximately \$56 million of cleanup against orphan shares.

Mr. Berry said they don't know how the department came up with the \$56 million. He said they would disagree with the department's estimates. The two high ranking projects of DSL were Corbin Flats and Joslyn Street tailings. The DSL estimates \$5 million to \$10 million to clean up each of those sites. The owner of Corbin Flats estimates \$1.8 million to \$5 million. **Mr. Berry** said he hired a consultant to give him a cost estimate of Joslyn Street tailings. Depending upon what remedy was used it would be between \$100,000 to \$1 million. Attaching a \$5 million price tag to that site was a real stretch.

SEN. KEATING said those sites had been there for decades and haven't posed any threat to public health. **Mr. Berry** said the problem was when it rains on the tailings it washes the metals into the groundwater. He didn't think there was any threat to anyone, but the environment was being impacted.

SEN. WELDON said rather than 6% of the interest going into the RIT fund, it would be about 21%. **Mr. Tubbs** referred to the flow charts of the RIT proceeds and interest for 1997 and 1999.

EXHIBIT 6. (Those flow charts were reviewed at the hearing)

SEN. WELDON asked how a proportionate share of liability was determined. **Tim Baker, DHES** said the department would be required to determine proportionate liability through the courts. If the department issued an order to one of the liable parties, that party would have the ability to go to court and challenge the order, and maintain that it was only liable for a proportionate part of the cleanup. The department would have to try to identify as many liable parties as possible.

SEN. WELDON asked what money would be used to do a cleanup. **Mr. Robinson** replied if that was defined as an emergency, there would be \$.5 million that could be drawn upon. If there wasn't any risk to the environment or public health, nothing would be done.

SEN. KEATING asked **Mr. Robinson** what does CERCLA do. He replied that CERCLA was the federal Superfund. **SEN. KEATING** asked **Mr. Robinson** what they used the \$3.4 million of RIT funds for. **Mr. Robinson** replied that was for operating expenses of the Superfund in their remediation division. \$250,000 of that was earmarked for an emergency cleanup. In fiscal year 1996 and 1997 there was \$25,000 projected per year. That \$25,000 matches on a 90%-10% ratio which would generate about \$225,000 in federal grant dollars for the Superfund. \$94,000 goes into the leaking underground storage tank program for those that were not subject to the release compensation funds. \$171,000 goes into the state drinking water program. \$165,000 goes into the state groundwater program. \$295,000 goes into the water quality management program. \$85,000 for water pollution control. \$28,000 for

administration support. In the hazardous waste management program there was \$560,000. In the regular underground storage tanks program, about \$54,000.

SEN. TVEIT asked for a brief explanation of what the committee actually had done with putting in, taking out, and all the amendments.

Mr. Everts responded that the committee amended in voluntary cleanup standards from the Gray Bill into the introduced version of the bill. The bill as it is now, strikes joint and several liability. The funding issues were still in the bill. Basically what you have is, the bill as introduced with the amendments that were added on voluntary cleanup and the cleanup standards.

CHAIRMAN GROSFIELD said he did not like joint and several liability, because it was grossly unfair. That is what is in place now, but he was also troubled about jerking the funding from the variety of programs we have heard about. That will be very difficult for the Legislature to deal with. He said he was not in favor of eliminating joint and several liability like the bill does, but felt we should try to get away from that eventually, and going back to the kind of liability that the bill tries to point toward.

{Tape: 3; Side: A}

Substitute Motion: CHAIRMAN GROSFIELD MADE A SUBSTITUTE MOTION STRIKING SECTIONS 1-5, SECTIONS 7-9, SECTIONS 19-21 OF THE ORIGINAL BILL, ADDING AMENDMENT NO. 108 FROM THE DEPARTMENTS AMENDMENTS, AND ADDING A NEW SECTION THAT READS: "THE DHES, WITH LEGISLATIVE OVERSIGHT FROM THE EQC, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH RESPECT TO CLEANUP OF STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY AND ANY RELATED FUNDING NECESSARY TO CLEAN UP STATE CECRA SITES. THE DEPARTMENT SHALL SUBMIT A REPORT AND LEGISLATIVE PROPOSALS THAT RESULTED FROM THAT PROCESS TO THE 55TH LEGISLATURE."

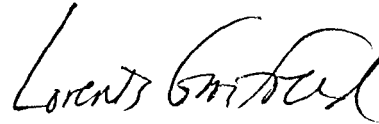
SEN. KEATING said basically what the amendment would do would have voluntary cleanup standards and a study. **Mr. Berry** said that would also change the cleanup standards in the mini Superfund.

Vote: MOTION TO ADOPT CHAIRMAN GROSFIELD'S PROPOSED AMENDMENT, CARRIED 6-3 WITH SENATORS WELDON, FOSTER, AND BROOKE VOTING NO.

Motion/Vote: SEN. KEATING MOVED TO DO PASS SB 382 AS AMENDED. MOTION CARRIED 6-2 WITH SENATORS CHRISTIAENS AND BROOKE VOTING NO.

ADJOURNMENT

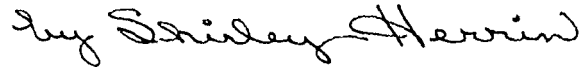
Adjournment: 6:30



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary



LG/TR

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DATE 3-17-95

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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 478 (third reading copy -- blue), respectfully report that HB 478 be amended as follows and as so amended be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 2, line 5 and 6.

Strike: "AN ADVERSE" on line 5

Insert: "a"

Strike: "DUE" on line 5 through "SEDIMENTATION" on line 6

2. Page 2, line 7 and 8.

Strike: "customary" on line 7 through "facilities" on line 8

3. Page 2, lines 9 through 12.

Strike: subsections (i) and (ii) in their entirety

Insert: "(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.
(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102."

4. Page 2, line 13.

Following: "banks"

Insert: "except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102"

5. Page 3, line 5.

Following: "notice of the"

Insert: "proposed"

6. Page 3.


Following: line 9

Insert: "(4) The district may authorize a representative to accept notices of proposed projects."

7. Page 3, line 12.

Following: "notice of a"

Insert: "proposed"

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

631159SC.SPV

8. Page 3, line 13.

Following: "district"

Insert: "or the district's authorized representative"

Strike: "proposed"

Following: "project."

Insert: "If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors."

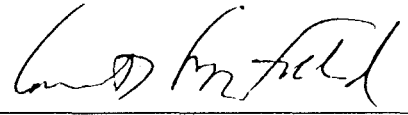
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SENATE STANDING COMMITTEE REPORT

Page 1 of 14
March 18, 1995


MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 382 (first reading copy -- white), respectfully report that SB 382 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, lines 4 and 5
Strike: "NATURAL" on line 4 through "LAWS" on line 5
Insert: "THE DEGREE OF CLEANUP REQUIRED FOR REMEDIAL ACTIONS;
CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS;
REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE PROCESS
THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY
AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND
SITES"
Strike: "SECTIONS" through "75-10-711," on line 5
Insert: "SECTION"
2. Title, lines 6 and 7.
Strike: "75-10-715," on line 6
Strike: "75-10-722, 75-10-724, AND 85-1-604," on line 6
Strike: "AN" on line 6 through "AND" on line 7
3. Page 1, line 11 through page 13, line 20.
Strike: Sections 1 through 5 in their entirety
Renumber: subsequent sections
4. Page 13, line 24.
Strike: "10"
Insert: "2"
Strike: "16"
Insert: "10"
5. Page 13, line 27.
Following: "environment"
Strike: "that is consistent with this section"
6. Page 14, lines 3 through 26.
Following: "~~e~~" on line 3
Strike: "shall" on line 3 through "considered." on line 26
Insert: "
: (a) except as provided in subsection (4), shall require
cleanup consistent with applicable state or federal environmental

 Amd. Coord.
27 Sec. of Senate

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Amendments to House Bill No. 478
Third Reading Copy

Requested by Rep. Story
For the Committee on Natural Resources

Prepared by Todd Everts
March 15, 1995

1. Page 2, line 5 and 6.

Strike: "AN ADVERSE" on line 5

Insert: "a"

Strike: "DUE" on line 5 through "SEDIMENTATION" on line 6

2. Page 2, line 7 and 8.

Strike: "customary" on line 7 through "facilities" on line 8

3. Page 2, lines 9 through 12.

Strike: subsections (i) and (ii) in their entirety

Insert: "(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102."

4. Page 3, line 5.

Following: "notice of the"

Insert: "proposed"

5. Page 3.

Following: line 9

Insert: "(4) The district may authorize a representative to accept notices of proposed projects."

6. Page 3, line 12.

Following: "notice of a"

Insert: "proposed"

7. Page 3, line 13.

Following: "district"

Insert: "or the district's authorized representative"

Strike: "proposed"

Following: "project."

Insert: "If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors."

Amendments to House Bill No. 478
Third Reading Copy

DATE 3-17-95

BILL NO. HB-478

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Martha Colhoun

March 17, 1995

1. Page 2, line 13.

Following: "banks"

Insert: "if the stream or river has been designated by
~~conservation~~ district rule as having significant aquatic and
riparian attributes in need of protection or preservation
under 75-7-102"

ANALYSIS OF SB 382

BACKGROUND

In 1980, Congress enacted CERCLA (Superfund) to address a legacy of contaminated sites. CERCLA has three purposes. First, notification of a spill or release of a hazardous substance. Second, creation of a fund to respond to a spill or a release. And third, development of a plan to cleanup a spill or a release.

In 1985, the Montana legislature enacted a state superfund law (CECRA) to address sites within the state. The legislature patterned CECRA after CERCLA. CECRA is triggered when there is a release or threatened release from a facility of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, welfare, and safety or the environment.

The statutory goals of CECRA are to protect human health and the environment, to have liable persons perform cleanup activities, and if a government entity performs the cleanup, to have a liable person pay for those cleanup activities.

SB 382 and Senator Harp's amendments affect CECRA's (1) Liability scheme, (2) Degree of cleanup and remedy selection, and (3) Voluntary cleanup plans. The Department of Health and Environmental Sciences' amendments strike sections 1 through 5 of the bill that amend the liability scheme and remedy selection provisions of CECRA. The department's amendments generally revise the voluntary cleanup provisions of the bill.

1. Liability

CECRA and CERCLA impose liability for releases of hazardous or deleterious substances based on a person's relationship to a contaminated property and not necessarily by that person's actions. Presently, these statutes impose a strict, joint, and several liability scheme. Senator Harp's amendments make the following changes:

Definitions:

- changes the definition of disposal to an affirmative act causing or contributing to a

discharge and therefore changing the liability scheme from strict liability to liability based on an affirmative act, § 2 (4), [p. 7]

- adds aggregate liability, which allows a liable party to subtract the orphan share from its total liability, § 2 (1), [p. 7]
- adds orphan share which is the share of liability attributed to a party that cannot be found, § 2 (10), [p. 9]
- adds reasonably anticipated future uses, used mostly to determine the degree of cleanup based on the local land use requirements of an area, such as zoning, § 2 (14), [p. 11]

Reimbursements and Penalties - Proceedings - Defenses:

- strikes "jointly and severally" creating a new liability scheme called proportionate liability, § 5 (1)(a), [p. 20]
- creates an exemption from liability under CECRA for persons purchasing a facility before May 22, 1989, § 5 (1)(b), [p. 21]

2. Degree of Cleanup / Remedy Selection

Presently, CECRA requires that a contaminated site be cleaned up so that the site may comply with applicable federal and state environmental requirements. CECRA allows the department to consider cleaning up the site to the extent that the site may also comply with substantive state and federal requirements. In approving a remedial action, the department has to select a remedial action that at a minimum protects the public health, safety, and welfare and the environment, using cost effective and permanent solutions. Moreover, the department may require financial assurance from the liable party to ensure the maintenance of the site. Senator Harp's amendments make the following changes:

- strikes language that required the department to protect at a minimum public health, § 6 (2)(e), [p. 28]
- still requires cleanup consistent with applicable federal and state environmental requirements, § 6 (2)(a), [p.29]
- still allows the department to consider federal and state substantive environmental requirements, § 6 (2)(b), [p. 29]
- requires the department to select remedial actions considering:
[pp. 29, 30]
 - * present and reasonably anticipated future uses, § (2)(c)

- * technical practicability, § 6 (2)(c)(iii)
- * treatment technologies, § 6 (2)(c)(iv)
- * cost effectiveness, § 6 (2)(c)(v)
- * community acceptability, § 6 (3)

- allows the department to select a remedy that does not meet applicable federal and state environmental requirements under certain circumstances, § 6 (4)(a) through (e), [p. 30]

3. Voluntary Cleanup Plans

This is a new section that allows and encourages voluntary cleanup of facilities where releases of hazardous or deleterious substances exist.

Eligibility

- facilities where CECRA has already been triggered, § 12 (1), [p. 38]
- except [p. 38]
 - * National Priorities List (NPL) sites, § 12 (1)(a)
 - * facility for which an order or consent decree has been issued, § 12 (1)(b)
 - * facility subject to agency order or judicial action regarding a release of a hazardous substance, § 12 (1)(b)
 - * facility where the release is regulated by the Underground Storage Tank Act, § 12 (1)(d)
- The department may agree to accept a plan for the above exceptions. However, the department may not accept a plan for an NPL site. § 12 (2), [p. 38]
- The department may address complexities in an administrative order or consent decree. § 12 (3), [p. 39]
- If an applicant disagrees with the department's decision regarding a plan, the applicant may request a hearing before the board. § 12 (4), [p. 39]

Requirements

- legal description and map of relevant features of facility, § 14 (2)(a), [p. 41]
- operational history, including ownership of facility, § 14 (2)(e), [p. 41]
- current and reasonably anticipated future uses of the facility and the adjacent properties, § 14 (2)(f), [p. 41]

- compliance history of facility, § 14 (2)(j), [p. 42]
- remediation proposal requirements, § 14 (3)(a) through (f), [p. 42]

Public Participation

- the department shall publish a notice of proposed voluntary cleanup plan and provide 30 days for written comments, § 15 (1) through (5), [pp. 43, 44]

Approval

- the department shall review an application and provide a completeness notice, § 16 (1), [p. 44]
- the department shall notify applicant if plan is approved or disapproved, § 16 (2), [p. 44]
- the department shall approve a plan if the plan meets the requirements of § 14 (eligibility) and attains the degree of cleanup required in 75-10-721 (degree of cleanup), § 16 (5), [pp. 45, 46]
- the department may not approve a plan that will take longer than 24 months to complete, § 16 (7), [p. 46]

Closure

- this section strikes language releasing an applicant from liability, § 18 (1), [p. 48]
- written notice that a petition for closure is approved must include specific language, § 18 (3), [pp. 49, 50]

3/17/95

SUMMARY OF DHES CONCERNS WITH SB382, BASED ON 3/15/95 GREY BILL

provided by Bob Robinson, Director
Montana Department of Health and Sciences

DHES and the Governor oppose SB382 because it substantially undermines a liability scheme that currently provides for an effective cleanup program with minimal litigation and transaction costs. While negotiations with industry representatives have addressed our concerns with remedy selection and voluntary cleanup portions of the bill, DHES and the Governor remain opposed to Sections 1-5 and 7-9 of the bill, which undermine the CECRA liability scheme.

The following is an outline of the Administration's position on the 3/15/95 grey bill version and on language we understand will be provided to the Committee by industry representatives today based on a 3/17/95 negotiation session. Most of industry's amendments pertaining to the funding and liability provisions fall under what we call "damage control." DHES considers these "damage control" amendments, marked below with a shamrock (*), as necessary should the liability changes proposed in Section 5 remain in the bill.

* pp. 5 - 7, amendments 4-11: [RIT reallocation and EQPF/abandoned mines funding]: These changes increase allocation of the RIT interest to the Environmental Quality Protection Fund (EQPF) and a new abandoned mine reclamation account to partially offset the increased funding liability to the State for orphan and insolvent shares. DHES maintains that the increase in funding is inadequate compared to the increased funding liability (refer to Bob Robinson's 3/15/95 estimate of fiscal impacts). These changes also decrease the RIT interest allocation to the renewable resource and reclamation and development state special revenue accounts.

* p. 7, amendment 12: [Definition of aggregate liability]

p. 7, amendments 13 and 14: [Definition of disposal] DHES urges the Committee to delete the new definition of disposal. The CECRA program currently uses the definition of disposal contained in the hazardous waste management statutes. The definition offered by proponents creates ambiguity by inserting the language "affirmative act causing or contributing to", and will increase litigation. The definition of disposal is important because owners or operators of the facility "at the time of disposal" are among the persons liable under CECRA. If the proponents are successful in severely limiting the liability of current owners/operators, the liability of owners/operators "at the time of disposal" will be critical to the effectiveness of the program.

DHES has not had time to evaluate the impact of a 3/17/95 proposal to amend this definition; however, should this definition remain, then DHES supports the 3/17/95 proposed addition to this definition that will address some of DHES' concerns regarding tank and barrel sites.

Amendments to Senate Bill No. 382
First Reading CopyDATE 3-17-95BILL NO. SB-382Requested by Sen. Harp
For the Committee on Natural ResourcesPrepared by Martha Colhoun
March 17, 1995

1. Page 6, line 12.

Insert: "

(14) "Reasonably anticipated future uses", means likely future land or resource uses considering local land and resource use regulations, ordinances, restrictions, or covenants; historical and anticipated uses of the facility; patterns of development in the immediate area; and relevant indications of anticipated land use from the owner of the facility and local planning officials."

Renumber: subsequent subsections

2. Page 17, line 2.

Following: "part."

Insert: "Claims for reimbursement may not include interest, legal fees and legal costs, or damages for injury to, destruction of, or loss of natural resources. All claims for reimbursement are subject to and dependent on future appropriations to the fund."

3. Page 10, line 17.

Following: "part"

Insert: "

(10)(a) Whenever the department acts pursuant to 75-10-712 and this section and the department is unable to determine the identity of any liable persons, the department shall give notice to the current owner of the property that it is seeking access to take remedial action. The department may then file a notice of the right to claim a lien against the property.

(b) If the department expends environmental quality protection funds to remediate the property or reimburse other parties and the department determines, based on an appraisal by an independent qualified appraiser, that the work has resulted in a significant increase in the fair market value of the property, the department may file a lien against the property.

(c) If the department files a lien against the property, the department shall, within 6 months, file a lien statement specifying:

(i) the value of the property before commencing the action;

(ii) the value of the property after the work has been completed;

(iii) a listing of the appraisal upon which the values in subsections (10)(c)(i) and (10)(c)(ii) are based and the location where those appraisals may be examined; and

(iv) the amount of environmental quality protection funds expended.

(d) The amount of the lien must be the lesser of either the value of the property upon completion of the remediation or the amount of funds actually expended by the department.

(e) If a lien is filed, the department shall send, by certified mail, copies of the lien, the statement of costs, and the appraisals to the property owner of record.

(f) Within 60 days after the department files the lien, the owner of the property may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds expended by the department or to determine the increase in the market value of the property as a result of the department's action. If the court's determination of the lien amount differs from the lien filed by the department, that amount must be recorded with the department's statement.

(g) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part. Interest on the lien accrues at the rate of 10% annually and may not be compounded."

4. Page 14, lines 3 through 26.

Following: "~~(e)~~" on line 3

Strike: "shall" on line 3 through "considered" line 26

Insert: "

: (a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) may consider substantive state or federal environmental requirements, criteria, or limitations that are relevant to the site conditions; and

(c) shall select remedial actions, considering present and reasonably anticipated future uses, that:

(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and the environment;

(ii) are effective and reliable in the short-term and the long-term;

(iii) are technically practicable and implementable;

(iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration to institutional and engineering controls; and

(v) are cost-effective.

(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criteria, or limitation under any one of the following circumstances:

EXHIBIT NO. 5DATE 3-17-95BILL NO. SB-382

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the applicable requirement, criteria, or limitation.

(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human health and the environment than other remedial action alternatives.

(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from an engineering perspective.

(d) The remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

(e) Compliance with the requirement would not be cost-effective.

(5) For purposes of this section, cost-effectiveness must be determined through an analysis of incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into account the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total anticipated cost of operation and maintenance activities."

5. Page 19, line 26.

Following: "75-10-721."

Insert: "Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 24 months after department approval to complete."

6. Page 20, lines 1 and 2.

Following: "conditions"

Strike: "on the property"

Insert: "at the facility"

Following: "that" on line 2

Strike: "exist as of"

Insert: "are known to the department at"

Following: "time of"

Strike: "submission of the application"

Insert: "department approval"

Following: "voluntary"

Strike: "cleanup plan"

Insert: "remediation proposal"

7. Page 20.

Following: line 5

Insert: "

(8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or substantially change the scope of the approved plan, the applicant shall promptly notify the department. The department may require the applicant to submit an amendment to the approved plan to address the unforeseen

conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to [section 12(3)]." ~~58-382~~
Renumber: subsequent subsections

8. Page 23, line 6.

Strike: "date"

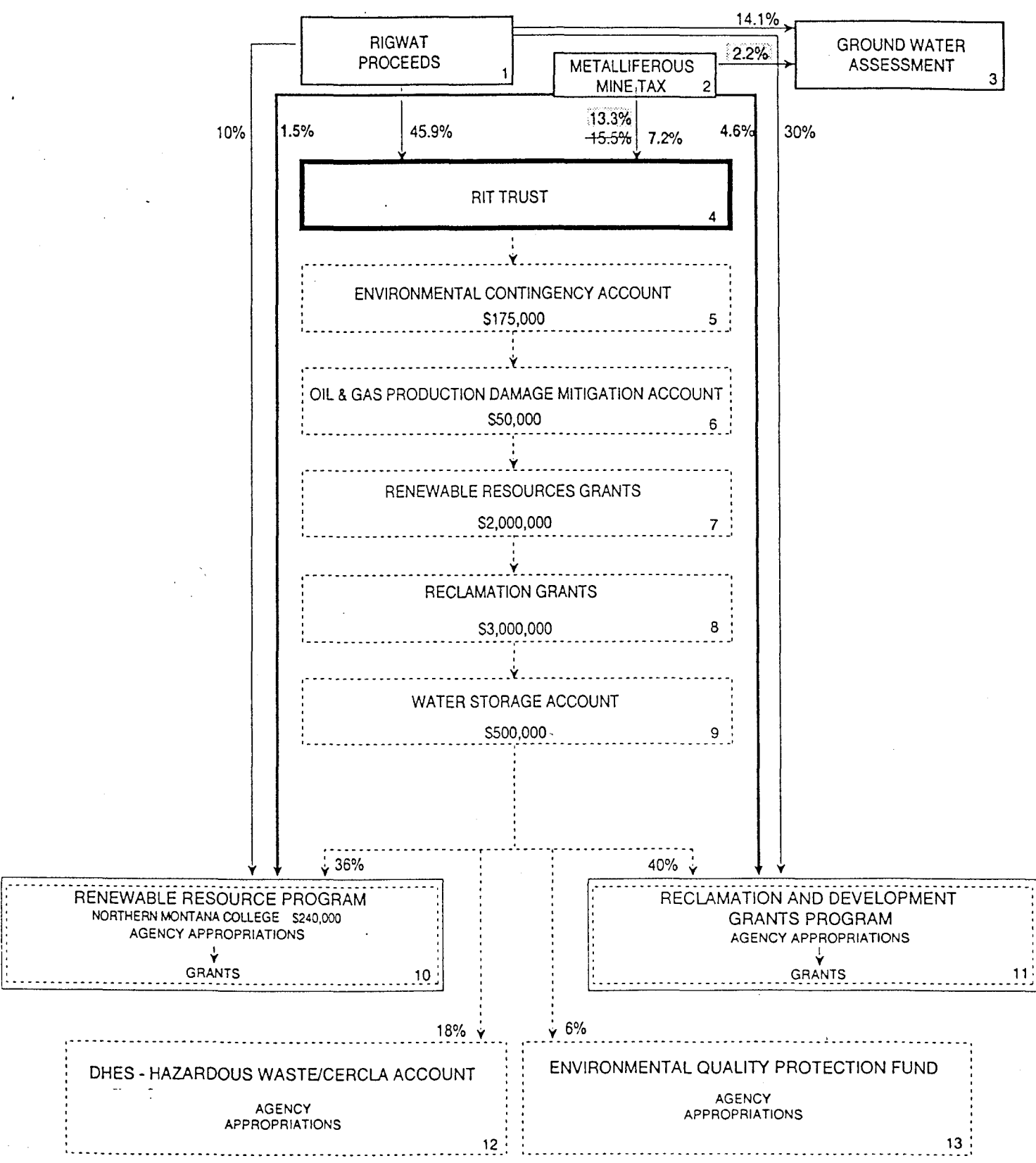
Insert: "dates"

Strike: "[This act] is"

Insert: "(1) [Section 1] is effective July 1, 1997.

(2) Except as provided in subsection (1), [this act] is"

ALLOCATION OF RIT PROCEEDS AND INTEREST 1997 Biennium



RIGWAT PROCEEDS, RIT TRUST INTEREST EARNINGS, AND EXPENDITURES
1997 Biennium

DATE 3-17-95
BILL NO. SB-382

RIGWAT PROCEEDS PROJECTIONS	RIGWAT Proceeds	Metal Mine Tax Proceeds 15.5%	Deposits To RIT Trust	Trust Balance	Metal Mine Total
FY 95	\$2,979,674	\$797,469	\$2,463,107	\$91,776,719	
FY 96	3,041,004	872,800	2,268,621	94,045,340	5,630,968
FY 97	3,030,203	823,029	2,213,892	96,259,232	5,309,865

RIT TRUST INTEREST EARNINGS PROJECTIONS	FY96	FY97	TOTAL
	7,701,221	7,750,857	15,452,078

TOTAL 1997 BIENNIAL ALLOCATION OF RIT INTEREST EARNINGS		\$15,452,078
Environmental Contingency Account		\$175,000
Oil & Gas Production Damage Mitigation Account		50,000
Renewable Resource Grant & Loan Program		2,000,000
Reclamation & Development Grants		3,000,000
Water Storage Account		500,000
TOTAL BIENNIAL APPROPRIATIONS		5,725,000
AMOUNT AVAILABLE FOR FURTHER DISTRIBUTION		9,727,078

Distribution of Remaining Interest Earnings

Account	Renewable Resource	Reclamation & Development	Hazardous Waste/ CERCLA	Environmental Quality Protection	TOTAL
Percent Distribution of RITT Interest	36%	40%	18%	6%	100%

Beginning Balance	\$673,742	\$0	\$968,414	\$1,300,000	\$2,942,156
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Revenues					
RIT Interest	\$3,501,748	\$3,890,831	\$1,750,874	\$583,625	\$9,727,078
RIGWAT Proceeds	607,121	1,821,362			\$2,428,483
Debt Service Sweep (04011 and 04008)	919,444				919,444
RRD Loan Repayments	238,900				238,900
Interest (STIP)			80,000		80,000
Cost Recoveries				688,816	688,816
Administrative Fees	10,000				10,000
State Owned Project Revenue	919,290				919,290

Total Funds Available	\$6,870,245	\$5,712,193	\$2,799,288	\$2,572,441	\$17,954,167
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Appropriation					
Montana State University, Northern	240,000				240,000 SA
DNRC Centralized Services Division	875,245	154,001			1,029,246 A
DNRC Conservation and Resource Development	1,288,981	1,203,004			2,491,985 A
DNRC Water Resources Division	1,737,137	1,997,129			3,734,266 A
Reserved Water Rights Compact Commission	131,638	534,199			665,837 A
DNRC State Water Projects	2,190,000				2,190,000 A
DSL Reclamation Division		2,081,837			2,081,837 A
DSL Central Management		78,085			78,085 A
DHES Environmental Division			2,794,711	1,976,174	4,770,885 A
DHES Radon		50,000			50,000 A
Governor's Office -- Flathead Basin Commission	80,082				80,082 A
Water Court	1,038,389				1,038,389 A
NRIS - State Library	322,007	285,036			607,043 A
Environmental Quality Council		28,083			28,083 A
Pay Plan					0

Total Appropriations	\$7,903,479	\$6,411,374	\$2,794,711	\$1,976,174	\$19,085,738
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Projected Biennium Ending Balance	(\$1,033,234)	(\$699,181)	\$4,577	\$596,267	
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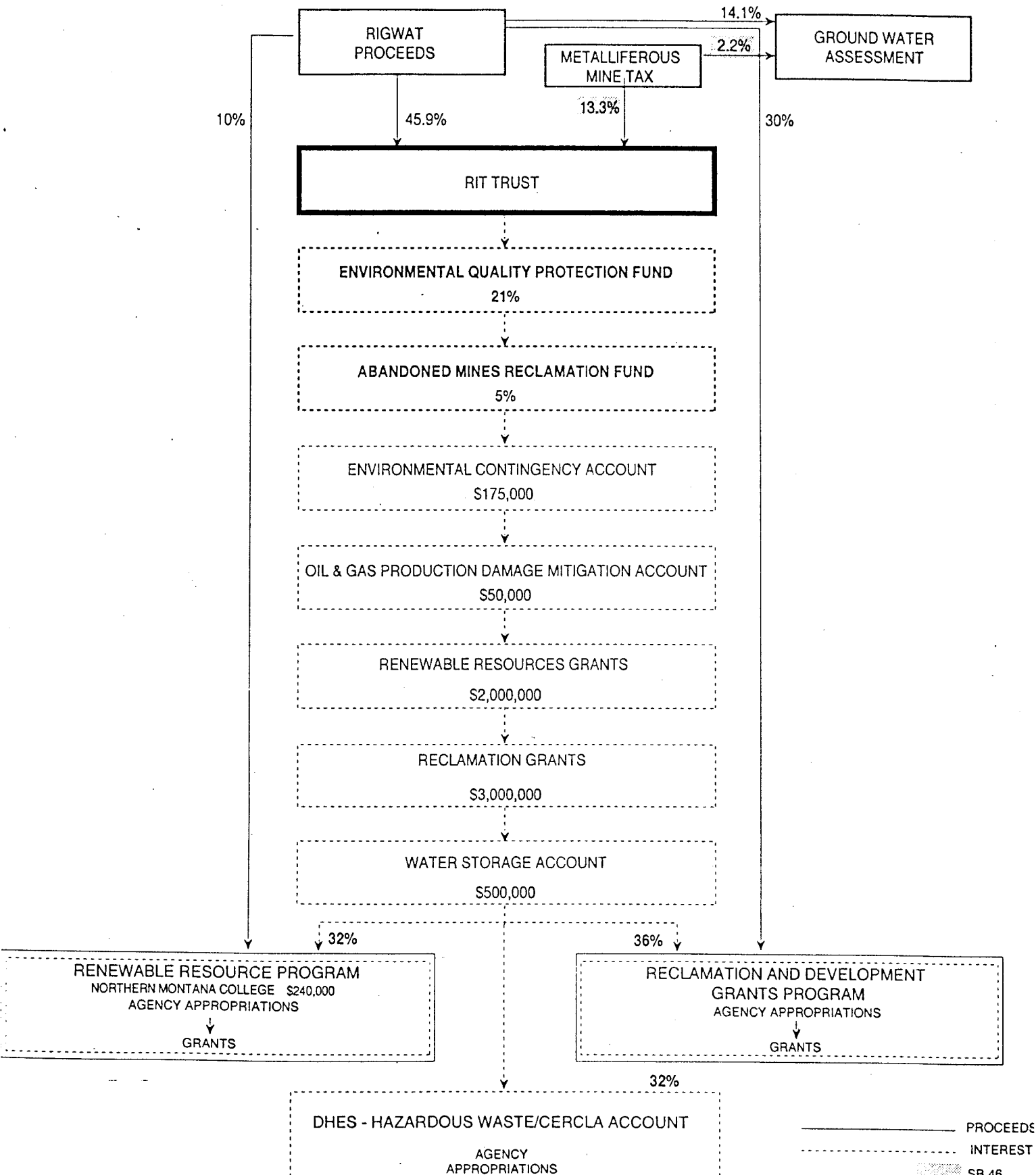
Potential Allocation of Metal Mines Tax	\$169,583	\$508,749			
MSU/Northern - annual appropriation	(240,000)				
Lost interest revenue	(16,006)	(17,784)	(8,003)	(2,668)	(\$44,460)
Projected Balance with Allocation of Metal Mine Tax	(\$1,119,657)	(\$208,217)	(\$3,426)	\$593,599	

Ending fund balance RRGL + RDG (1,732,415)
Ending fund balance with metal mine tax RRGL + RDG (1,327,873)

A - Appropriations reflect subcommittee action
SA - Statutory Appropriation

ALLOCATION OF RIT PROCEEDS AND INTEREST

1999 Biennium

DATE 3-17-95
FILE NO. SB-382

LEGISLATIVE NATURAL RESOURCES
 EXHIBIT NO. 6
 DATE 3-17-95
 NO. SB-382

RIGWAT PROCEEDS, RIT TRUST INTEREST EARNINGS, AND EXPENDITURES
 1999 Biennium

RIGWAT PROCEEDS PROJECTIONS	RIGWAT Proceeds	Metal Mine Tax Proceeds 15.5%	Deposits To RIT Trust	Trust Balance
FY 97	3,030,203	823,029	2,213,892	\$96,259,232
FY 98	3,030,203	823,029	2,213,892	98,473,124
FY 99	3,030,203	823,029	2,213,892	100,687,016

Metal Mine Tax (100%)
5,309,865
5,309,865

RIT TRUST INTEREST EARNINGS PROJECTIONS	FY98	FY99	TOTAL
	7,703,657	7,763,086	15,466,743

TOTAL 1999 BIENNIUM ALLOCATION OF RIT INTEREST EARNINGS \$15,466,743

ENVIRONMENTAL QUALITY PROTECTION	21.0%	3,248,016	
ABANDONED MINES LAND RECLAMATION	5.0%	773,337	
Environmental Contingency Account		\$175,000	
Oil & Gas Production Damage Mitigation Account		50,000	
Renewable Resource Grant & Loan Program		2,000,000	
Reclamation & Development Grants		3,000,000	
Water Storage Account		500,000	
TOTAL BIENNIAL APPROPRIATIONS		9,746,353	
AMOUNT AVAILABLE FOR FURTHER DISTRIBUTION		5,720,390	

Distribution of Remaining Interest Earnings

Account	Renewable Resource	Reclamation & Development	Hazardous Waste/ CERCLA	TOTAL
Percent Distribution of RITT Interest	32%	36%	32%	100%

Beginning Balance	\$0	\$0	\$4,577	\$4,577
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Revenues				
RIT Interest	\$1,830,525	\$2,059,340	\$1,830,525	\$5,720,389
RIGWAT Proceeds	606,041	1,818,122		2,424,162
Debt Service Sweep (04011 and 04008)	919,444			919,444
RRD Loan Repayments	238,900			238,900
Interest (STIP)			80,000	80,000
Cost Recoveries				0
Administrative Fees	10,000			10,000
State Owned Project Revenue	919,290			919,290

Total Funds Available	\$4,524,200	\$3,877,462	\$1,915,102	\$10,316,763
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Appropriation				
Montana State University, Northern	240,000			240,000
DNRC Centralized Services Division	875,245	154,001		1,029,246
DNRC Conservation and Resource Development	1,288,981	1,203,004		2,491,985
DNRC Water Resources Division	1,737,137	1,997,129		3,734,266
Reserved Water Rights Compact Commission	131,638	534,199		665,837
DNRC State Water Projects	2,190,000			2,190,000
DSL Reclamation Division		2,081,837		2,081,837
DSL Central Management		78,085		78,085
DHES Environmental Division			2,794,711	2,794,711
DHES Radon		50,000		50,000
Governor's Office -- Flathead Basin Commission	80,082			80,082
Water Court	1,038,389			1,038,389
NRIS - State Library	322,007	285,036		607,043
Environmental Quality Council		28,083		28,083
Pay Plan				0

Total Appropriations	\$7,903,479	\$6,411,374	\$2,794,711	\$17,109,564
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Projected Biennium Ending Balance	(\$3,379,279)	(\$2,533,913)	(\$879,609)	
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Potential Allocation of Metal Mines Tax	\$164,606	\$493,817		
MSU/Northern - annual appropriation	(240,000)			
Lost interest revenue	(14,227)	(16,006)	(14,227)	(2,489,760)
Projected Balance with Allocation of Metal Mine Tax	(\$3,468,901)	(\$2,056,101)	(\$893,836)	

Ending fund balance RRGL + RDG (5,913,192) A - Appropriations reflect subcommittee action
 Ending fund balance with metal mine tax RRGL + RDG (5,525,002) SA - Statutory Appropriation

Environmental Quality Protection	ABANDONED MINES LAND RECLAMATION
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Beginning Balance	\$596,267	\$0
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Revenues		
RIT Interest	\$3,248,016	\$773,337

Cost Recoveries	490,000	
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Total Funds Available	\$4,334,283	\$773,337
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Appropriation		
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DSL Reclamation		773,337
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DHES	1,976,174	
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Total Appropriations	\$1,976,174	\$773,337
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Projected Ending Balance	\$2,358,109	\$0
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MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-17-95 BILL NO. SB-382 NUMBER 1

MOTION: To Table SB-382

FAILED 6-3

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN		X

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-17-95 BILL NO. SB 382 NUMBER 2

MOTION: To Adopt Amendments

No 2, 3, 8

FAILED 6-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE		X
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN		X