

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on January 9, 1997, at
10:00 a.m., in Room 331

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 28, 1/6/97; SB 40, 1/6/97;
SB 42, 1/6/97; SB 46, 1/6/97
Executive Action: SB 40 DO PASS; SB 46 REFERRED
TO JUDICIARY COMMITTEE

HEARING ON SB 46

Sponsor: SEN. MIKE SPRAGUE, SD 6, BILLINGS

Proponents: None

Opponents: None

CHAIRMAN DON HARGROVE announced that the Committee would consider SB 46 first. He indicated that he had spoken with SEN. MIKE SPRAGUE, Sponsor, as well as with SEN. BRUCE CRIPPEN, Chairman, Senate Judiciary Committee, and that it is their opinion this bill should be referred to that Committee. He stated he would, however, leave it up to this Committee's judgement, and asked SEN. SPRAGUE to give an opening statement on SB 46.

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD 6, BILLINGS indicated that SB 46 is a bill to seize the driver's license of a youth who is delinquent or in need of supervision. He pointed out that the bill contains language which specifically states the parent or guardian of the youth can recommend to the court or juvenile authorities that the youth's license be seized and that, on page 3 of the bill, a paragraph was added which states "seizure of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time. Upon seizure, the probation officer shall notify the department of justice of the reason for and time period of the seizure. The department of justice may not divulge information relating to the seizure to any person or entity outside the law enforcement community and shall expunge the seizure from the records when the seizure period terminates."

He indicated that this bill is a result of an 18-month study of the Youth Court Act by the Juvenile Justice Subcommittee. He reported that the Youth Court Act offers guidance to judges on how to have fair and equal prosecution of crimes, but that the Subcommittee found that is not necessarily the case, citing examples from interviews he conducted at Pine Hills relating to crimes committed by the youths and the punishment they received. He added that this bill is an outcropping of testimony in Subcommittee hearings that parents need to be given more control and more authority. He related a hypothetical situation of a 16 year old male, 6'6" telling his single parent, a woman 5'2", that he does not have to listen to her, that he is bigger than she is, and she consequently loses control.

SEN. SPRAGUE pointed out that this is an empowerment kind of thing, that the Subcommittee keeps hearing "early intervention", and there is a need to impress on youths that this kind of behavior can not continue, that they need to use all the tools at their disposal to make youths understand this is not a game they are playing. He reported that, in interviews with youths at Pine Hills, they discovered that these juveniles do not consider being confined at Pine Hills or going to jail a threat, that it is more of a merit badge to them, but they also discovered that a driver's license is their most sacred possession. He added that a youth who follows the rules, gets his punishment and goes through the probationary period should not have to live with the consequences of his mistakes forever, that it should not stay on his record.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN HARGROVE asked SEN. SPRAGUE where this bill comes from. SEN. SPRAGUE responded it came from him.

SEN. BILL WILSON apologized for being late to the hearing, and asked if he had missed the testimony of proponents and opponents. CHAIRMAN HARGROVE informed him that the Committee will have to consider if it is appropriate that SB 46 be in the Senate State Administration Committee. He indicated that the Sponsor suggested, and the Chairman of the Senate Judiciary Committee agreed, that SB 46 should probably be referred to that Committee. SEN. SPRAGUE added that, because there had already been public notice of the hearing, he was obligated to offer his opening statement.

SEN. VIVIAN BROOKE indicated that she would concur with the opinion that SB 46 be referred to the Senate Judiciary Committee.

SEN. DELWYN GAGE noted that sometimes bill assignments are made so as to spread the load between committees more evenly, and that SEN. CRIPPEN had indicated they will have a tremendous load this session. CHAIRMAN HARGROVE pointed out that he had spoken with SEN. CRIPPEN, and he had agreed that this bill should be assigned to that Committee.

SEN. SPRAGUE indicated that there will be seven additional bills from the Juvenile Justice Subcommittee, and that this is one of the smaller ones.

CHAIRMAN HARGROVE noted that Committee Rules dictate bills should be consolidated, whenever possible, and then called for a motion on the bill.

Motion/Vote: SEN. BROOKE moved that SB 46 BE REFERRED TO SENATE JUDICIARY COMMITTEE. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 28

Sponsor: SEN. JOHN HERTEL, SD 47, MOORE

Proponents: Eric Feaver, Montana Education Association
Terry Minow, Montana Federation of Teachers

Opponents: David Senn, Teachers Retirement Board
Loran Frazier, School Administrators of Montana
Don Waldron, Montana Rural Education Association

Opening Statement by Sponsor:

SEN. JOHN HERTEL, SD 47, Moore, explained that SB 28 is an act to make sure that one member of the Teachers' Retirement Board is a classroom teacher, and defines the term "classroom teacher". He pointed out that the Teachers' Retirement Board consists of six members appointed by the Governor; the Superintendent of Public Instruction, two public members, one retired teacher and two members from the teaching profession. He indicated that SB 28 would require that at least one of the two members from the

teaching profession be someone who is actively instructing pupils in a self-contained classroom. **SEN. HERTEL** pointed out that the Governor could appoint an active classroom teacher to the Board but that it does not always happen that way, that this bill would assure an active teacher would be appointed to the Board, and they feel there is a definite need to have this kind of expertise and representation on the Board.

Proponents' Testimony:

Eric Feaver, Montana Education Association, stated that SB 28 is not an implied or explicit criticism of gubernatorial appointments, nor is it criticism of any current member of the Teachers' Retirement Board, that it simply guarantees at least one member of the Teacher's Retirement Board will be an active classroom teacher. He indicated that opponent testimony might suggest that active teachers can apply for appointment to the Board and that administrators are teachers so they can represent teachers. He noted that opponent testimony might also point out that teachers have served on the Teachers' Retirement Board in the past, adding that this is true but there is not one now, and there has not been an active classroom teacher on the Teachers' Retirement Board for six to eight years.

Mr. Feaver then stated that opponents may testify that the Governor's hands should not be tied to specific qualifications, but that it seems incongruous to the Montana Education Association that there is not one single teacher on the Teachers' Retirement Board and that membership on the Board requires, in addition to two members from the public and a retired member, two active members, neither of whom currently are teachers. He further indicated that opponent testimony may suggest that service on the Teachers Retirement Board requires special expertise, but pointed out that among the 10,000 to 12,000 teachers eligible for appointment to the Board, they should be able to find someone well qualified to represent all active members, including teachers. He noted that it seems incongruous that the Teachers Retirement Board currently has no teacher on it. He then stated that an amendment may be offered to change the composition of the Board in relationship to the Superintendent of Public Instruction, and indicated that he would be very cautious, but that they may be amenable to that amendment if it leads to the guarantee of a teacher on this Board.

Terry Minow, Montana Federation of Teachers, reiterated that this bill does not come as a result of dissatisfaction with the TRS Board, that it is an attempt to clarify and improve upon the statute setting out the makeup of the TRS Board. She noted that there is an obvious omission in that nowhere is it stated that a classroom teacher who is currently teaching must serve on the TRS Board. She stated that a classroom teacher should serve on the TRS Board to represent the thousands of teachers who contribute to the TRS System every month, and who rely upon the decisions of the TRS Board to provide for their financial security after their

retirement. **Ms. Minow** added that she understands there is a possible compromise in the works and that, regardless of the final form of the bill, she would urge the Committee to insure that classroom teachers are represented on the TRS Board.

Opponents' Testimony:

David Senn, Teachers' Retirement Board, stated that the Board is not opposed to classroom teachers serving on the Board, that classroom teachers have served on the Board in the past, and the Board does not understand the need to more specifically define the criteria used to appoint members. He pointed out that, of the four professional members presently on the Teachers Retirement Board, two are active, participating members still in the profession, although they are currently employed as administrators, and that there have been teachers in those positions in the past. He added that the Superintendent of Public Instruction is a member of the Teachers' Retirement System serving on this Board, and there is a retired member who was an active member of the Teachers' Retirement System, in addition to the two members representing the public. He stated that current law gives the Governor the ability to look at a broad range of individuals with knowledge and expertise they can bring to the Board, and the qualities necessary to be eligible to serve on the Board are not unique to administrators, nor to teachers, but are qualities the Governor needs to consider in his appointment of Teachers' Retirement Board members.

Mr. Senn stated that these amendments will further segment or restrict the membership who can fill a position on the Board, and asked if they should include other segments of the profession such as the University System, the English Teachers, the Math Professors, and so on. He pointed out that it would then become a question as to whether they are representing teachers, or their individual constituencies. He urged that the Committee give SB 28 a do not pass recommendation, then asked that executive action be postponed until the proposed amendments have been finalized.

Loran Frazier, School Administrators of Montana, indicated that the Committee needs to ask themselves if the present process is flawed. He pointed out that the Governor has an opportunity to select the best people to serve on the Teachers' Retirement Board and asked, if there are presently no teachers on the Board, how many teachers submitted a letter of application, noting that the administrators did submit letters of application and were selected. He then indicated that if the Committee is in favor of SB 28, he would like to recommend some amendments, one of which would be that at least not more than one of the two appointees be from the teaching profession, and possibly that the other one should be an administrator.

Don Waldron, Montana Rural Education Association, stated that, if they start deciding who is going to be appointed, and tying the Governor's hands, he would suggest that a member be appointed to

represent rural schools which, although only about 10% of the total population, is a large number of school districts. He indicated that this is an illustration to point out that, if the qualifications of two Board members is restricted, then perhaps they need to look at the qualifications for all six members, noting that he did not think that is what the Committee would really want to do.

{Tape: 1; Side: A; Approx. Time: 10:23 a.m.; Comments: None.}

Questions From Committee Members and Responses:

SEN. WILSON asked **Mr. Feaver** what the duties of the Board are. He asked him to describe the bulk of their activities, relate how often they meet and if they are compensated.

Mr. Feaver responded that **David Senn** could better describe those activities.

Mr. Senn replied that the Teachers' Retirement Board meets quarterly and is charged with the responsibility of administering the Teachers' Retirement System, which involves approval of retirement benefits, noting that the most difficult benefit they have to approve is disability benefits, which is determining whether someone is mentally or physically incapacitated and can not perform their duties. He added that they are also in charge of the administration of the expenses of the Board, that they receive \$50 per day for each day they meet or serve in that capacity, as well as reimbursement at state rates for meals, lodging and travel expenditures.

SEN. GAGE asked **SEN. HERTEL** who requested this bill. He responded that it was the Montana Education Association.

SEN. GAGE then asked what is the difference between a Class 1, Class 2 or Class 4 teaching certificate. **Mr. Feaver** responded that a Class 2 certificate is an entry-level teaching certificate and that, after three to five years and with an advanced degree, a teacher might move into a Class 1 certificate. He added that a Class 4 certificate is a vocational teaching certificate.

SEN. THOMAS asked **Mr. Waldron** if the problem is that administrators are being appointed in lieu of faculty members.

Mr. Waldron replied that, in the last appointment, two administrators were selected to serve on the board, noting that he had never noticed it before, although there have been teachers in those positions in the past. He added that he felt sure the Governor did not intentionally try to keep teachers out of it, and that he can understand the teachers would be unhappy not to have one of their people on the Board, but he does not think the bill is necessary that, over the years, this has been handled well by the Governor.

SEN. WILSON asked **Mr. Feaver** the same question. **Mr. Feaver** responded that this is the Teachers' Retirement Board, that the majority of the people who are embraced by the work of the Teachers' Retirement Board are teachers, and that there are no teachers serving on that Board. He added that he did not remember a time when both active members of the Board were teachers, but that it would seem pretty straight forward that, if it is the Teachers' Retirement Board, it probably should have a teacher on it. He noted that, from an administrator's point of view, and under law, they are the equivalent of teachers, but that is not always true in every instance.

SEN. WILSON asked **Mr. Senn** if a determination regarding disability requires the Board to evaluate medical information and make a decision, and asked him to expand on that. **Mr. Senn** responded that there are several steps involved. He indicated that, when an application for disability is received explaining why the individual can not continue in their profession, the Board requests information from the employer regarding specific duties which the individual is unable to perform, and if the employer has worked with that individual and made any accommodations. He added that the Board then requests the medical information, and works with the physician to evaluate the situation and make a decision as to whether or not the individual can continue in the performance of those duties.

CHAIRMAN HARGROVE asked **Mr. Frazier** if there would be a down-side to both members being active classroom teachers. **Mr. Frazier** replied that the teachers and administrators on the Board all have the same common goal, they are actively participating to do the best they can for the retirement system, and he has not seen a down-side either way.

CHAIRMAN HARGROVE asked **Mr. Feaver** if the bill is asking to have at least one person on the Board who will be affected by the retirement system but, so far, is not. **Mr. Feaver** replied that administrators and teachers are all affected by the work of the retirement system. **CHAIRMAN HARGROVE** clarified his question, and asked if they are talking about someone who is actively employed, not yet retired, and not affected yet in terms of the retirement system.

Mr. Feaver responded that is correct, that the composition of the Board currently requires two active members and one retired member. He noted that, of the two current active members, one is a principal in Billings and the other is a superintendent in Culbertson, and that the retired member was an administrator, as well. He stated that there is a difference in the vision of teachers and administrators, that they do not see the world in the same fashion; they do not see their salary and compensation in the same fashion, they do not see their retirement in the same fashion. He pointed out that proposals come before the Teachers' Retirement Board which are specific to administrators, where a teacher's voice would be useful, noting that this balance is

necessary and not having a teacher position guaranteed on the Board leaves the Board, in his opinion, somewhat open to question as to whether teachers have a say in the matter.

CHAIRMAN HARGROVE noted that the Committee will delay executive action on the bill, and asked **Mr. Frazier** if he planned to present amendments. **Mr. Frazier** responded that he would get the amendments to the Committee.

CHAIRMAN HARGROVE asked **Mr. Senn** if he intended to present amendments. **Mr. Senn** replied that the Teachers' Retirement Board will be meeting via conference call tomorrow morning, that he intended to recommend amendments relating to the Superintendent of Public Instruction and that, if approved by the Board, he will offer the amendments.

SEN. GAGE asked **Mr. Senn** if a teacher can elect not to be part of the retirement system. **Mr. Senn** responded no, that membership in the Teacher's Retirement System is mandatory for all public school teachers.

Closing by Sponsor:

SEN. HERTEL stated that the Teachers' Retirement Board is a very important group which serves many members, and pointed out that all the boards he has had an association with have specific requirements for membership. He indicated that the Teachers' Retirement Board is no exception, but one additional requirement is needed, that there should be a person on the Board who is actively teaching so that the classroom teacher is represented. He added that this bill merely guarantees that one of the Board members fits this category, noting that he would be anxious to see what the proposed amendments are.

HEARING ON SB 40

Sponsor: SEN. DELWYN GAGE, SD 43, CUT BANK

Proponents: Connie Griffith, Administrator, Accounting and Management Support Division, Department of Administration

Opponents: None

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, CUT BANK indicated that SB 40 is at the request of the Department of Administration, and that **Connie Griffith, Administrator, Accounting and Management Support Division**, will explain the bill.

Proponents Testimony:

Connie Griffith, Administrator, Accounting and Management Support Division, Department of Administration explained that the Accounting and Management Support Division includes the debt collection program for the State of Montana. She indicated that SB 40 will add the Internal Revenue Service in the definition of "agency" in statute for debt collection purposes. She explained that, in the last session, they were authorized to work with counties and local governments in collecting delinquent property taxes, and that the IRS currently contracts with the Debt Collection Program to collect delinquent income taxes in an offset system whereby the State automatically offsets debts against payments due from the state to individuals or companies. She stated that, currently, because they are not included in that definition, they are required to pay a fee which is negotiated with the State, and they have to get an appropriation for that purpose. She added that, if the IRS is included in the definition of "agency", they could pay the commission or percentage of debt collected, as do other agencies and local governments, and it would be easier for the Federal government to contract with them as well as bringing in additional revenue to the debt collection program, which would be offset by a reduction in the percentage commission charged to participants, and state agencies and local governments would be able to pay a smaller fee.

Ms. Griffith then pointed out that this bill will also eliminate the need to transfer balances in excess of \$10,000 to the General Fund at the end of the biennium, noting that there never is a balance in excess of \$10,000 because they are required in statute, 17-4-106 to offset excess revenue by a reduction in commission.

{Tape: 1; Side: A; Approx. Time: 10:37 a.m.; Comments: End of Tape 1, Side A.}

She added that they no longer report write-offs to the Budget director, and this bill will also eliminate the requirement to report write-offs.

Opponents Testimony: None

Questions From Committee Members and Responses:

SEN. BROOKE referred to page 1, line 20, and asked Ms. Griffith to explain why the term "State Auditor" has been stricken and replaced with "Department". Ms. Griffith replied that the debt collection program used to be under the State Auditor's office, and the change was inadvertently not included in the last bill.

VICE CHAIRMAN MESAROS asked for clarification of the correction and SEN. BROOKE explained it was to reflect the change from the State Auditor's office to the Department of Administration.

Closing by Sponsor:

SEN. GAGE had no closing remarks.

Motion/Vote: SEN. GAGE moved that SB 40 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON 42

Sponsor: SEN. AL BISHOP, SD 9, BILLINGS

Proponents: Patrick Graham, Director, Department of Fish, Wildlife and Parks
Jim Muscat, Ophir School District #72
Jerry Scott, Ophir School District #72
Bob Kiesling, Helena
Stan Meyer, Chairman, Fish, Wildlife and Parks Commission
Ron Marcoux, Rocky Mountain Elk Foundation

Opponents: None

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, BILLINGS, stated that SB 42 was requested by the Department of Fish, Wildlife and Parks to allow the Department to exchange or sell small parcels of land of less than 10 acres and less than \$20,000, adding that current law requires the Department to conduct a bidding process and this bill would eliminate that requirement for small parcels. He indicated that proponent testimony would explain the situation involving a Gallatin Canyon school which needs to expand and is surrounded by land owned by the Department of Fish, Wildlife and Parks.

Proponents' Testimony:

Patrick Graham, Director, Department of Fish, Wildlife and Parks, explained that SB 42 would allow for a more timely and efficient disposal of surplus land, as well as for the timely resale of lands purchased in fee title on which the Department only wishes to hold an easement. He added that this bill will also allow the proceeds of sales of Department lands to be used for other worthwhile projects, would clarify the procedures under which the Department could exchange lands or interest in lands, and would make a technical change concerning their form of deeds.

He indicated that, under current law, the process for all sales of Department lands requires public notice and a bidding process, which makes otherwise worthwhile projects very difficult and sometimes impossible for the Department to achieve, and that this proposal is consistent with the authority the Department of Transportation currently has to transfer lands to other

government agencies at fair market value, or for the direct sales of parcels less than 10 acres or under \$20,000 in value.

Mr. Graham indicated that, in addition to the example **SEN. BISHOP** mentioned, there are other incidences where there has been an encroachment or a problem with the boundary, that the logical person in a position to acquire the property would be the neighboring landowner, and a bidding process does not make sense. He pointed out that new subsection (7) would be added to 87-1-209 to clarify the authority and process for land exchanges, and that this new provision is patterned after what the Department of Transportation is allowed to do by statute. He added that Section 2 will amend 87-1-601, Section 5, to provide an incentive for the Department to resell lands purchased in fee title by allowing them to reuse proceeds from sales of lands to purchase other easements. He explained that, in situations where the Department only wants a conservation easement but the seller will not offer anything other than a sale in fee title, and the Department acquires the land, any proceeds from the resale of that property must go into the maintenance trust account. He then indicated that, in order to keep the money in the conservation easement program, they get involved in land exchanges, using the example of a transaction near Miles City which took over four years to complete. He noted that this is a complex process, it is time consuming and limits the number of people which can be involved. He indicated that, by making this change, they would be able to roll the money from the sale of fee title land back into account it came from and can be used to acquire conservation easements. Testimony attached (**EXHIBIT 1**).

He then pointed out a technical change which would clarify the form of the Department's deed in all land transactions to make it consistent with their other transactions.

Jim Muscat, School Board Member, Ophir School District # 72, testified that the Ophir School has outgrown their building, that they are surrounded on all three sides by Department of Fish, Wildlife and Parks land and have been trying for three years to acquire a small parcel of that land on which to expand. He pointed out that, currently, the Department is required to go through the bidding process and sell to the highest bidder, noting that would probably not be the school district. He stated that SB 42 would streamline the process whereby another public entity could acquire land from the Department, adding that the only logical reason for the Department to sell this land is for the school's expansion.

Jerry Scott, School Board Trustee, Ophir School District # 72, stated that he enthusiastically supports SB 42, specifically Section 1, Subsection (3), which would allow the Department to sell small parcels to governmental agencies. He indicated that the land surrounding the Ophir School has been the subject of trade discussions with several other parties, noting that it is interesting that everyone involved in these discussions has

acknowledged and agreed that, at some point in time, the Ophir School should acquire the land. He noted that, due to the bureaucratic difficulties and processes when the Federal government as well as state government are involved, they are sitting there with a bond issue which has passed, drawings and a school breaking at its seams, but they can not get the few acres of land needed to expand.

Bob Kiesling, Helena, stated that, as a land conservation consultant, he has represented a number of private landowners in transactions and conservation easement projects with the Department of Fish, Wildlife and Parks, and that he would like to make some general comments regarding the Department's processes. He pointed out that whenever a public agency is in the land business, much of those transactions occur in the private marketplace which creates a mix of public agency rules, procedures and processes overlaid on the private marketplace, and that often the results do not turn out well for the public interests being served. He stated that putting together a good land program requires a balancing act of adequate public scrutiny and good conformance with the agency's mission and goals, and that it should also be fair so that neither the Department nor the private landowner end up with an unfair advantage. He added that, at the same time, the land program should not unnecessarily shackle the agency, and that often the procedures the Department is required to follow have that practical effect to the point where the agency is inefficient, ineffective and unable to smoothly perform in that marketplace. He pointed out that SB 42 is not a major overhaul of the Department's processes, that it enhances the Department's ability to perform certain land transactions, it will increase the efficiency and effectiveness with which the Agency can conduct it's land programs, and does not sacrifice the fundamentals of fairness to all parties.

Stan Meyer, Chairman, Fish, Wildlife and Parks Commission, stated that the Commission spends a fair amount of time exploring what constitutes legislative intent for the Department and the Commission, and they believe that intent would be carried out, and the public would be better served, by adopting SB 42. He added that they would be able to handle land transactions more expeditiously and in a way more desirable to fishermen and hunters, and then cited the example of the Seiben land transaction where the Department acquired a large easement by donation from the family, and there was an additional 2210 acres the family wanted to sell in fee title, which the Department purchased as the only other alternative was to subdivide it, and the family did not want that to occur. He indicated that now the Department is faced with trying to find a conservation buyer for that property, and this would be very much facilitated by the passage of SB 42. He pointed out that they did not believe this would be giving up any authority or the public process, noting that they understand and agree with public scrutiny which is a continuing safeguard that legislative intent and the public interests are being served.

Ron Marcoux, Rocky Mountain Elk Foundation, stated that he believes the exchange provision would be in the best interests of the State and the wildlife populations that the Department have the flexibility to exchange their properties for other valuable wildlife properties, or use funds from the sale of property to acquire high-value wildlife property.

{Tape: 1; Side: B; Approx. Time: 10:57 a.m.; Comments: None.}

Questions From Committee Members and Responses:

SEN. GAGE asked Mr. Graham if either of the limitations can be met; if it can be less than 100 acres or not more than \$100,000 in value.

Mr. Graham responded that is correct.

SEN. GAGE asked if the Department could split a 20 acre parcel, if they felt the need to sell just one 10 acre parcel, and get under the provisions of the bill.

Mr. Graham responded that it is possible, although they had not thought about it, that this is specifically designed for individual transactions, adding that, if it was packaged in such a way as to try to avoid legislative intent, they would certainly have to question it. He pointed out that if, for example, they sold 20 acres to the school in Gallatin Canyon and, 10 years from now, assuming the Department still owned the remainder of the land, if the school needed another 20 acres, he did not think they would be prohibited from selling the additional parcel.

SEN. GAGE noted that Mr. Graham had indicated in testimony that, under current law, worthwhile land transactions are somewhat difficult if not impossible to achieve, and asked him to give an example of an impossible situation.

Mr. Graham responded that "impossible" may be a little strong but that, in some cases, the adjacent landowner fears losing what they have, if it is bid out, and are, therefore, better off if the Department keeps the property. He cited the example of a landowner who built a garage on the corner of Department property.

SEN. GAGE indicated he understood the point, then asked Mr. Graham, in the case of the Ophir School, what would happen if they were able to sell the land to the school, but an adjacent landowner objected.

Mr. Graham responded that there are checks and balances, that they conduct an environmental assessment, which is a process involving public comment and, if approved, it goes before the Fish, Wildlife and Parks Commission, which is also a public process whereby the public has an opportunity to voice their concerns, and that the five-member public body of Montana

citizens decides whether or not they think this is an appropriate transaction for the Department to make. He added that in this case it would not trigger a Land Board review but, for any other transaction, the trigger is 100 acres or \$100,000.

SEN. GAGE referred to testimony that the Ophir School would not be able to meet the highest bid for the property, and asked **Mr. Graham** what the difference might be on what they may get from the School District as opposed to what the highest bid might be.

Mr. Graham responded that the Department owns a large section of land in that area that they are interested in selling or exchanging to acquire lands with more wildlife value. He indicated there have been objections to the larger land transaction so, in that particular case, someone may bid on the whole package and the School District would have to depend on the buyer being willing to sell them that parcel at some reasonable value. He added that the Department's intention would be to establish fair market value through an appraisal, which would be the value at which the transaction would occur.

SEN. GAGE asked the School District representatives if this bill should be made effective upon passage and approval, or if an October 1 effective date would be sufficient.

Mr. Marcoux responded that they would be very interested in an immediate effective date. He added that they are against the wall on a timeline, that they are about to sell bonds on the expansion, nothing that the new building could be squeezed onto the land they currently own, but there would be no room left for a sports field or playground.

SEN. GAGE asked **Mr. Meyer** or **Mr. Graham** if they could see some advantage to putting an immediate effective date on the bill.

Mr. Graham responded they would have no objection and that, in fact, it would expedite that particular project.

VICE CHAIRMAN KEN MESAROS referred to page 2 of the bill, and pointed out that testimony from the School District would indicate this is intended for other government entities, but that the new language on line 10 states "and may convey department lands and waters for full market value to other persons without regard". He asked **Mr. Graham** if this expands it beyond other government entities.

Mr. Graham responded that there are two parts to that. He explained that the limitation on size and dollars is for sales to private individuals, such as the landowner who built a garage on Department land. He added that transfers of land to another government entity are not limited as to size or value, that they would be allowed to transfer lands at fair market value.

VICE CHAIRMAN MESAROS indicated that, last session, there was a lot of concern regarding more public notice and involvement in land sales or development, that it appears this bill would eliminate public notice, which is a detour from the major concerns discussed in the last session, and asked **Mr. Graham** why they are eliminating the public notice.

Mr. Graham asked **VICE CHAIRMAN MESAROS** if he could be more specific. **VICE CHAIRMAN MESAROS** referred to page 2, line 9, "lands and waters for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c)", and pointed out that (b) and (c) refer to public notice and advertising.

Mr. Graham responded that the environmental assessment process requires public notice, and that interested persons would have an opportunity to comment on the transaction at that time. He pointed out that subsections (3)(b) and (3)(c) relate to the requirement for public notice for bids, but that this would be a transaction at fair market value and there would be no bidding process or invitation for competitive proposals, that they would be evaluating a single proposal under an environmental assessment. He reiterated that there would be an opportunity for public comment, that the environmental assessment process is announced through the newspaper, which would be public notice. He added that the environmental assessment process is not set out in this legislation, that it is set out in Department rules under which the Commission operates.

VICE CHAIRMAN MESAROS referred to page 3, regarding exchanges involving more than 100 acres or \$100,000 in value which would trigger review by the Land Board, and asked **Mr. Graham** if the Department could have ten exchanges at \$99,000 each which would be reviewed just by the Commission, without further review by the Land Board.

Mr. Graham responded that this is the current limitation which the Department and the Commission operate under, and this bill is not proposing to change that.

VICE CHAIRMAN MESAROS pointed out that it does not limit the number of exchanges, that there could be an undefined number of exchanges within departments, and that these exchanges would only be reviewed if they exceed the \$100,000 in value.

Mr. Graham stated that he is not aware of any land transactions, other than fishing access sites, which have not gone before the State Land Board, that with land values what they are today, it is difficult to consummate a transaction which is under \$100,000 in value.

VICE CHAIRMAN MESAROS referred to page 4, line 13, new language which reads "Subject to appropriation by the legislature, money", and continued on lines 14 and 15 "may be used by the department

to acquire other real property suitable for the department's purposes and programs." He pointed out that there has been previous legislative intent surrounding use of these funds to concentrate on the maintenance of existing property and limit expansion of property held by the State, and asked **Mr. Meyer** to comment on that.

Mr. Meyer indicated he was not sure he understood the question, and asked if **VICE CHAIRMAN MESAROS** was concerned if the Department is doing an adequate job of maintaining existing property.

VICE CHAIRMAN MESAROS stated that he believed there was some concern as well as legislative intent to place more emphasis on the maintenance of existing property, and limiting expansion of property held by the Department.

{Tape: 1; Side: B; Approx. Time: 11:12 a.m.; Comments: End of Tape 1, Side B.}

Mr. Meyer responded that there has been some discussion, but that the legislative intent, as he interpreted it, and certainly Governor Racicot's directive, was to pursue habitat enhancement and protection, particularly through conservation easements. He added that, in a conservation easement, the maintenance and upkeep of the property is still the private property owner's responsibility, noting that they do receive criticism for the condition of some fishing access sites, particularly regarding weeds. He indicated that the Department has an active weed control program, and it is subjective to look at the property and say they do not adequately maintain it.

SEN. THOMAS asked **Mr. Meyer** if this legislation would allow the Department to go forward on the Seiben land transaction, or if it even fit within the bill.

Mr. Meyer replied that it fits within the bill, and deferred to **Mr. Graham** to answer the question. **Mr. Graham** responded that this would be covered on page 3, new Subsection (7), which does not set a limitation on the size or dollar amount of value on land they resell.

SEN. THOMAS indicated that the problem which this bill addresses is the land the Ophir School District needs, and asked **Mr. Graham** why this is taking so long and exactly what the situation is there.

Mr. Graham replied that perhaps **Jerry Wells, Administrator, Field Services Division, Department of Fish, Wildlife and Parks**, could answer that question as the head of the unit which deals with the Department's lands.

Jerry Wells, Administrator, Field Services Division, Department of Fish, Wildlife and Parks reported that the parcel in question,

referred to as Section 17, is land which has been identified as surplus property for some time, adding that some federal funds were used to acquire the land which is a complication. He indicated that a variety of people in the Gallatin Canyon area are interested in acquiring this property, and others would like to see it remain in public ownership as it provides open space. He added that the Department as well as the community recognize that the needs of the Ophir School District certainly should be taken care of, but the only way they can dispose of the property is through an exchange. He explained the process the Department is going through regarding proposed land transactions in the Gallatin Canyon, adding that it could result in litigation which would further delay the transaction for the Ophir School District, noting that the extremely high value of the property in this area has created an unusual and difficult situation.

SEN. THOMAS asked **Mr. Wells** if the Department could not sell 10 acres to the Ophir School District. **Mr. Wells** responded that, under existing statute, they can not sell the land without going out to bid. He further stated that, through the bidding process, the Department could potentially sell the land to the Ophir School District if they were the highest bidder.

SEN. THOMAS asked **David Niss** if the bill could be amended so as to authorize the land sale to the Ophir School District, which appears to be the problem. **Mr. Niss** asked if he was referring to only this parcel and this school district. **SEN. THOMAS** replied yes, addressing the subject matter of this school district. **Mr. Niss** responded that it would create a large Fourteenth Amendment issue.

CHAIRMAN HARGROVE indicated that the competitive bidding process is designed to protect the taxpayer, and asked **Mr. Graham** if they could dispense with that portion of the normal process without creating problems from other sectors or persons wanting the same exemption.

Mr. Graham indicated that the Constitution requires that they get fair market value for the lands, which they propose to continue doing. He added that they are not trying to avoid the process or cut any sweet deals in terms of what is paid for the property, that the buyer will be required to pay the fair market value, noting that it is the uncertainty within the bidding process that makes it difficult for this type of land transaction.

CHAIRMAN HARGROVE asked what would the fair market value be in the case of the Ophir School District. **Mr. Graham** responded that would be determined by a certified appraiser.

SEN. GAGE asked **Mr. Graham** if the environmental assessment process requires that adjacent landowners get notice, or if the only notice is through the newspapers.

Mr. Graham responded that HB 526 requires that they give notice to adjacent landowners, but that in other cases they are not required to however. He added that this is the way the Department does business as a matter of practice, although he does not believe they are required to do so.

SEN. GAGE asked **Mr. Graham** if he would object to language being added which would require that adjacent landowners receive notice. **Mr. Graham** responded no.

SEN. GAGE indicated that he was on the Coal Tax Oversight Committee some years ago when representatives of the Department of Fish, Wildlife and Parks requested that the language be amended so that some of the coal tax money they receive for the acquisition of land be diverted into a fund to maintain the property currently held. He stated that, at the time, he told those representatives that, if they had excess land holdings they could not maintain, he would request a bill to earmark those funds for maintenance only, noting that the response was that they only wanted some maintenance funding. He then reported that, within a very few months, the Department made three more property purchases.

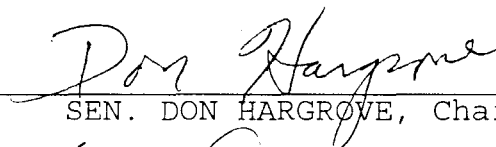
Mr. Graham stated that 20% of the major funding account for land acquisitions must go into maintenance, that 10% goes to a trust fund and 10% goes directly into the operations budget of the Department for maintenance. He reported that the trust fund, alone, has close to \$4 million and that this bill would not change that fund. He indicated that on holdings in fee title, the department has ongoing maintenance expenditures. If the property is sold as a conservation easement, the responsibility for maintenance transfers to the new owner, and this is why there is no motivation to increase the maintenance fund above the 20%, which is more than adequate to meet the current needs of the Department.

Closing by Sponsor:

SEN. BISHOP thanked the Committee for a good hearing. He then pointed out that land transactions by the Department must also be approved by the Commission, that these are public meetings with public notice given, and the public would have an opportunity at that time to comment on proposed transactions. He added that this bill was not designed to solve just the one problem, that there are other situations which would be easier for the Department to handle if this bill were passed.

ADJOURNMENT

Adjournment: 11:30 a.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

DH/MM