

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 13, 1997, at 1:00 P.M., in Room 405

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed for SB 50, SB59 and SB72 are verbatim.

Committee Business Summary:

Hearings & Dates Posted: SB50, SB59, SB72; January 8, 1997
Executive Action: Committee Rules and SB1

HEARING ON SB50

Sponsor: SENATOR TOM KEATING, SD 5, Billings

Proponents: Larry Brown, Northern Montana Oil & Gas Association
Gail Abercrombie, Executive Director, Montana
Petroleum Association

Opponents: None

Opening Statement by Sponsor: SENATOR TOM KEATING, SD 5, Billings. He requested favorable consideration of SB 50. He passed around sample forms of contracts dealing with oil and gas leases. This is the contract between grantor and grantee or

lessor and lessee. He also referred to release forms of oil and gas: 1) Single lease form; 2) Blanket release form. Historically, in our oil and gas industry in Montana, the operators who were acquiring oil and gas leases from mineral owners throughout the state would record those leases as a single contract. The contract between the lessor and lessee is a single contract and that has to be recorded in the County Courthouse. At some point, maybe the lessee who has a number of leases in a certain prospect, decides that the prospect is defunct and they wish to release those oil & gas leases. Rather than file a single release of every lease, they could file a blanket release, as it's called. It was a single statement of release and an attachment of a schedule of all the leases to the release form. The releases would have the lessor, the lessee, the date of the lease, the description of the lands and the book and page referenced to the recorded lease. Sometimes people think releasing is to lease it again and in this case, release means dropping, meaning terminating. In Section 82-201, the operator is required to drop the lease when the lease terminates and lessee is required to file a release of record in the courthouse or be subject to a penalty. This process went smooth until one of the operators sent a blanket release of oil & gas leases to Sweetgrass County and they said that according to a legal opinion from the County Attorney, blanket releases of mortgages were not allowed by the statute and therefore she was rejecting the blanket release of oil & gas leases. It appeared that there was some difficulty in determining the difference between a mortgage release and an oil and gas release. Some counties were following the attorney's opinion, that under certain codes the blanket assignment of mortgages was not allowed and we could not do blanket releases of oil & gas leases. Most clerk and recorders from oil & gas counties preferred to have a blanket release because it took up less space, it was less work and the cross referencing made indexing easier. The bill makes the recordation process in the clerk and recorders office acceptable for the release with more than one oil and gas lease referenced. He asked for the committee's favorable concurrence.

Proponents' Testimony:

Larry Brown, Northern Montana Oil & Gas Association, expressed their support for this bill and asked if the committee could consider a few changes in Section 1, page 1, Line 22- 23. This is regarding the language in the written notice from the lessor. The change would strike "as guilty" and insert "may be guilty" of a misdemeanor punishable by a fine of up to \$250.00 for willingly violating the law. He stated that members are concerned about being deemed immediately guilty if they fail to submit their appropriate paperwork due to circumstances that might warrant a longer period of time than 30 days. Again, he expressed appreciation for being able to testify and support the bill.

Gail Abercrombie, Executive Director, Montana Petroleum Association. She appreciated SENATOR KEATING bringing this clarification to the statute so industry can return to that method that has worked well for so many years. She had not known anyone in the past to express a problem with Section 3. However, consideration of that is worthy of the committee's perusal.

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN LORENTS GROSFIELD asked Todd Everts about the statutory construction on the language "guilty" versus "may be guilty." Mr. Everts answered that he would have to take a look at the language and get back to him. CHAIRMAN GROSFIELD asked the same question of SENATOR FRED VAN VALKENBURG. He said it was fairly standard language in many places in the entire code. He felt that it's still a matter of the County Attorney having to prove something beyond a reasonable doubt so he would just leave it as it is.

SENATOR BEA MCCARTHY asked if "Blanket Release" meant that a whole parcel may be released a section at a time? SENATOR KEATING said the phrase "blanket release" refers to a single instrument releasing a number of oil & gas leases in their entirety. He added that once in a while someone will include a partial release in a blanket release.

Closing by Sponsor:

SENATOR KEATING said the testimony regarding the misdemeanor language was a surprise. He didn't have a problem with the language or the structure unless the bill drafters thought it did.

HEARING ON SB 59

Sponsor: SENATOR CHARLES SWYSGOOD, SD 17, Dillon.

Proponents: Chris Tweeten, Chair for Montana Water Rights
Compact Commission
Senator Mack Cole, SD 4
Attorney General Joe Mazurek
George Ochenski, Confederated Salish Kootenai Tribes
of the Flathead Nation
Bud Clinch, Director of Department of Natural
Resources and Conservation
Mike Murphy, Montana Water Resources Assn.
John Bloomquist, Montana Stockgrowers Assn.

Opponents: None

Opening Statement by Sponsor:

SENATOR CHUCK SWYSGOOD, SD 17, Dillon, stated that Senate Bill 59 extends the period for suspension of adjudication proceedings during negotiations of federal Indian and Non-Indian reserved water rights. This bill is extending the time frame for the Reserved Water Rights Compact Commission from July 1, 1999 when it is due to expire, to July 1, 2005. He gave a brief background of the Reserved Water Rights Compact Commission. It was established in 1979 and there are 9 members appointed by the Governor, the House, the Senate, and the Attorney General's office. It is part of a state wide general stream adjudication and it negotiates with the federal agencies and the Indian Tribes on their reserve water rights instead of a litigation process. There are three compacts which have been submitted to the Legislature and approved: the Ft. Peck Reservation; the Northern Cheyenne; and the National Park Service. Hopefully, this session there will be three compacts before the Legislature for approval. Negotiations have been taking place with the BLM, US Fish & Wildlife, and Rocky Boy.

Proponents' Testimony:

Chris Tweeten, Chief Deputy Attorney General, State of Montana, Chairman of the Reserved Water Rights Compact Commission, stated that he had been appointed, originally by Attorney General Mike Greeley, and now by Attorney General Mazurek to serve as the Attorney General representative on the Compact Commission. The commission consists of nine members, one member appointed by the Attorney General, four appointed by the Governor, four Legislators, (two from each House appointed by the Leadership of the respective Houses). In addition to himself, the current members of the Compact Commission are **SENATOR SWYSGOOD**, Vice Chairman **Bob Thoft**, former member of the House, now serving on the Commission as an appointment of Governor **Racicot**, **REP. ROB STORY**, **REP. EMILY SWANSON**, **Gene Etchart** of Glasgow, **Tara DePuy**, who is the County Attorney in Park County, and **Jack Salmond** who ranches up around Choteau. As **SENATOR SWYSGOOD** has indicated, three compacts will be up for consideration by the Legislature but we have negotiations still remaining with three out of the seven Indian tribes and the Forest Service. He then passed out a fact sheet that covers some information with respect to the Compact Commission and copies of letters from negotiating participants urging the Legislature to act favorably in **SENATOR SWYSGOOD'S** bill. **(EXHIBITS 1,2,3,4)** In addition, the Compact was authorized to inform the committee that the United States Dept. of Interior supports this legislation and urges the extension of the Compact Commission in order to complete the business that's left in an orderly way. The compacting process was invented by the Legislature in 1979. **Mr. Tweeten** said Montana is the only state that approaches federal reserved water rights negotiations in the way that we do. In most states, Federal reserved water rights are resolved through litigation. Sometimes that litigation is settled, sometimes it goes to court. The poster child for litigation in this area is the Wind River Adjudication in Wyoming

which has consumed dozens of years of time and millions of dollars of money on behalf of the State of Wyoming, on behalf of private water users, and on behalf of the United States Government. We try to reach an orderly settlement through the negotiation process. It gives us the opportunity to not only come up with a quantification of the water rights that are at issue, but also to address issues of Administration that are so important in insuring that the process culminates in something that's going to be workable for the water users on the ground. I think we've been quite successful in the agreements we've reached so far in making sure that the agreements are workable and result in a complete resolution of the legal issues that otherwise are resolved in court. The process we believe, has shown itself to be extremely valuable. It has saved the state untold hundreds of thousand of dollars of litigations costs. We've also established in the course of these negotiations, a new basis for understanding with the Indian tribes in Montana. This is a circumstance that's difficult to put a monetary value on but is very important for us in Montana as we strive to find ways to live together with our Native American neighbors. We would urge your favorable consideration of this legislation. We think that the 6 year extension is necessary to make sure that we have adequate time to complete the work that is set out for us.

SENATOR MACK COLE, SD 4, Hysham, In my previous life I worked for the Department of Interior and was chairman for some of the negotiating teams for the Bureau of Indian Affairs. The statements I'd like to agree with and wholeheartedly support of **Mr. Tweeten** are that if we do not extend this we are going to be in litigation. In litigation, the only people who benefit are the consultants and the attorneys. The people that are on the committee and the staff people have shown a willingness to negotiate out agreements. In the long run, I think that it has benefited the State of Montana a great deal. I believe that the Northern Cheyenne negotiations are a fine example where benefits were gained by both sides, the Indian tribes and the State of Montana. I support this bill very much.

Attorney General Joe Mazurek. In my former life as a State Senator, I served as a member of the Reserved Water Rights Compact Commission for almost 12 years. I was the negotiating chair on the Northern Cheyenne settlement. I think **SENATOR COLE** really hit the nail on the head with respect that this is a money saving bill in terms of the long range handling of water rights in the state. The priority for federally reserved water rights generally in the case of a reservation, dates from the date the reservation was created. Many reservations were created before there were non-Indian farmers and ranchers who may have been using that water. The benefit of negotiations is that we're able to look at a water basin comprehensively and as a result of negotiations, we're able to protect non-Indian water users. They've been willing to protect Non-Indian water users in exchange for other considerations given to the tribes in the negotiations. In the Northern Cheyenne, for example, we were

able to provide additional quantities of water and resolve the liability risk to the state. I would encourage you to extend the Compact Commission. They have three new Compacts which will likely be before you and all of those save the cost of litigation. This is a long term money saving bill and I hope you will extend the life of the Commission.

George Ochenski, Confederated Salish & Kootenai Tribes: I am just here to check that the Chairman received the letter of support from the Tribal Council and it's been added in the record.

Bud Clinch, Director of the Dept. of Natural Resources: In addition today, I'm speaking on behalf of the Governor and for the reasons previously articulated I stand in support of this and urge your passage.

Mike Murphy, Montana Water Resources Assoc. The Association does wish to go on record in support of Senate Bill 59. While we do have some concerns in regard to the timing from the standpoint of the general overall adjudication process. We do feel very much so that the negotiation process versus litigation is certainly the way to go. We do support Senate Bill 59.

John Bloomquist, Mt Stockgrowers Assoc., I served in the interim on the Water Adjudication Advisory Committee which was established as a result of some legislation passed last session. On Wednesday, you're going to hear a bill which has some of the recommendations of that particular committee. One of the recommendations the committee also endorsed was extending the compacting process to July 1, 2005. I just like to point out for this committee that the Adjudication Advisory Committee, which looked at several issues, endorses this concept.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR KEATING: On line 14 & 15, the sentence reads "This suspension is effective until July 1, 2005 as long as negotiations are continuing or adjudication of a completed compact is being sought." Does that mean if there is a suspension of negotiations and all of the current compacts that have been completed have been ratified, is that effectively a termination?

Mr. Tweeten: The language refers (agency by agency and tribe by tribe) to negotiations that are in progress. We will be in negotiations with Ft. Belknap, the Crow Tribe, the Confederated Salish Kootenai Tribe and the United States Forest Service. As to each of those entities, their obligations to file claims in the adjudication process is suspended while we remain in formal negotiation with them over settlement of their water rights and while the water rights compact that we may have agreed to is going through the ratification process in the Legislature. In

the event that those negotiations break down, the obligation is on one party or the other to then make a formal declaration that the negotiations have terminated. Which is what we did several years ago with respect to negotiations with the Blackfeet Tribe. We notified the Water Court at that point when negotiations had broken off and as a result, their obligation to file their claims with the Water Court within 60 months was triggered. **SENATOR KEATING:** In other words, as long as the parties are negotiating in good faith, then the suspensions of the requirement that they file their rights remains suspended and the minute they break off negotiations somebody gets notified that there is no negotiations and it's up to them to file their claims. **Mr. Tweeten:** That is correct.

Closing by Sponsor:

SENATOR SWYSGOOD: I just want to briefly close by telling this committee as a member of the Commission I want to express how fortunate we are to have a dedicated and qualified staff that works with these negotiations. It's immensely complex, time consuming, and grueling. My hats are off to those that are in the trenches doing the work. They spend a great deal of time and effort in bringing about these compacts that will eventually save the State money because we don't have to go through litigation. It is a process that is recognized by all agencies in the State as one they would like to see continue. Mr. Chairman, I thank you and close.

{Tape: 1; Side: A; Approx. Time Count: 1:35; Comments: .}

HEARING ON SENATE BILL 72

Sponsor: SENATOR KEN MESAROS, SD 25, Cascade

Proponent: Allen Cox, Director for Natural Resource
Information System at State Library
Mike Murphy, Montana Water Resource Association

Opponents: None

Opening Statement by Sponsor:

SENATOR KEN MESAROS, SD 25, Cascade: You have before you today SB72 at the request of the Environmental Quality Council (EQC). This is an act formalizing the operation of water information system within the Natural Resource Information System (NRIS) at the State Library. NRIS houses the Montana Water Information System. Legislation establishing the Water Data Management System was originally directed to the Department of Natural Resources and Conservation (DNRC). In 1986 the DNRC and the NRIS agreed to cooperate in creating the Water Information

System specified in the legislation. As indicated on the fiscal note the NRIS have been providing the water information system since the program was created. This legislation simply clarifies the language as to who is actually providing that service. Functions of the Environmental Quality Council in the committees and activities program would not be substantially altered or increased by the requirement of this bill. There is no fiscal impact. The EQC, the Natural Resource Information System, and DNRC are all affected by this legislation. I believe all parties support this. There are others here who can explain it in more detail. At this time I would turn it over to them and reserve the right to close.

Proponents' Testimony:

Allen Cox, Director of the Natural Resource Information System, As SENATOR MESAROS stated, this bill is essentially is a clean up of language. The Department of Natural Resources was given the responsibility to set up a water data management system in 1987. We at NRIS effectively did that within our program working quite closely with the DNRC. They were on the original advisory committee to establish the program and we coordinated this over the years, and on their behalf, they've regularly reported to the Environmental Quality Council as required by statute. What this bill does, the way it affects each agency, is that: NRIS will report to EQC, instead of the Department of Natural Resources;

For the Dept. of Natural Resources, the bill essentially eliminates those responsibilities from their statutes;

For the State Library, it moves those responsibilities into our statute.

As Senator Mesaros stated, there's no fiscal impact. Essentially what we're funded to do out of our budget in HB 2 is to operate the system. We feel this clarifies and aligns the responsibility and requirement to do this with the agencies that's actually doing it. We are in full support of this, along with the Dept. of Natural Resources, the Environmental Quality Council and the State Library Commission.

Mike Murphy, Montana Water Resources Association:

I would just like to go on record in support of this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR KEATING to Allen Cox: Under the duties in 90-15-201(4) it says "identification of data acquisitions storage and retrieval methodology that are economical and efficient that minimize or eliminate that duplication of data bases and that utilize computer networking." That elimination of duplication of data bases, does that mean you notify the various organizations that are gathering information if there is an overlap or notify them if there is a duplication of effort?

Allen Cox: We work very hard to try to coordinate among the agencies to try to avoid duplication, but in reading our statute, I'm not aware of any statutory requirement. We try to undertake some coordination activities through cooperation and voluntary effort.

SENATOR KEATING: By the same token, if someone else is gathering data and putting it into storage for public use, then are you, in order to avoid duplication, not doing that same thing?

Allen Cox: We do very little data collection. What we do try to do is a clearing house function - gain access to the data sources that someone else is collecting. The principal data that we actually collect in the whole system would be our natural heritage data. We are the only ones really collecting that to the extent that it's being collected. We really don't collect water data. We try to either point people to the right place where it is or in some cases, we might get a copy of it to facilitate access.

SENATOR KEATING: Water data was my concern because we have three or four water projects going on at some expense to the State and wanted to make sure we weren't duplicating.

SEN. KEATING: Would you define Natural Heritage.

Allen Cox: The Natural Heritage Program is a program to collect information on the state's bio-diversity. It really focuses on rare, endangered, sensitive or unique plants and animals. It does not collect information on game species or on agricultural products. It looks at those elements in our bio-diversity that no one else really has any responsibility to collect information on. That program has been in existence since 1985 within the State Library. It's that unique bio-diversity information.

SENATOR KEATING: Do you get requests then from the Federal level for the information that you have on our Natural Heritage here in Montana?

Allen Cox: We get requests from all sectors. The federal sector for the Heritage Program probably accounts for 30% of the requests. Probably another 40% are state agencies and the remaining 30% are a mix of private companies & individual citizens.

SENATOR KEATING: There is a possibility then, that some of the Natural Heritage items that we have in this state that you have on record could be subject to the Bio-Diversity Treaty that the United Nations is attempting to get passed in the United States?

Allen Cox: I have to say I'm not very familiar with that treaty. We've had no direct interaction with that treaty at all. Our information as a library is open to anyone for access to the information. Our job really is to get that information out. What anyone, whether it's a state agency, federal agency or individual, does with that data is not our concern.

SEN. KEN MILLER: Do you know what the budget might be for NRIS and if so, guess at what percentage of that it takes to do the water information system?

Allen Cox: The Water Information System and the GIS make up, over the biennium, just over 1 million dollars with \$500,000 being contracts and grants that we secure. I would say out of that the Water System is about a third of that figure, \$350,000 for the biennium.

CHAIRMAN GROSFIELD: The NRIS is under the State Library. The State Library is that an executive branch agency?

Allen Cox: I would say yes. There is a commission that oversees the operation of the Library, and they hire the State Librarian who is the agency director. There are seven commission members, which five are appointed by the Governor, one is from the University System and one is from OPI. Essentially yes, it is an Executive Branch Agency.

CHAIRMAN GROSFIELD: So what this bill does is take the DNRC out of the picture and basically gives the Legislature some oversight and responsibilities? Which branch are we dealing with here? We're not exactly taking you out of the executive and putting you in the legislative.

Allen Cox: It is considered an Executive Branch Agency. Maybe the biggest difference is the Governor does not appoint the State Librarian, but does appoint five of the seven commission members for whom the State Librarian serves. It's not quite as directly political as an Agency director the Governor would appoint, but it's not an elected office either and is not a Legislative Branch Agency. The DNRC does still sit on our Advisory Committee and still have some involvement. On a daily basis, they're involved through a variety of committees like ground water, water planning, and water rights.

CHAIRMAN GROSFIELD: When it comes to funding, your budget is approved by your Advisory Committee before you come to the Legislature?

Allen Cox: We go through the same budget process as any other Executive Agency. We work quite closely with the Governor's Budget Planning Office and it's the identical budget process the DNRC goes through.

CHAIRMAN GROSFIELD: With regards to DNRC and NRIS, what this bill does is take you out from under the Executive?

Allen Cox: I've not read it that way and I don't anticipate that's how it would be interpreted. I don't see any way that we really could. The Library is officially attached to the Board of Education also. We don't have very much to do with them, but that is what pulls us into the Executive design. I can't see any way that we would not be going through the Governor's Planning Process that we've always gone through. Essentially we've been using the Water System to build our budget for the last 10 years. We've been factored in already. The Governor, in the past and this biennium as well, either supports

or doesn't support any initiative that we want to bring forward and we're tightly integrated into the budget process.

CHAIRMAN GROSFIELD: Then you don't see this bill as changing that?

Allen Cox: No, I can't anticipate at all any change.

{Tape: 1; Side: B; Approx. Time Count: 1:55; Comments: .}

Closing by Sponsor:

SENATOR KEN MESAROS: As a former member of the Water Policy Committee, the Water Information Systems provides valuable information not only to the Water Policy Committee but to the Environmental Quality Council. I think Senate Bill 72 modifies statutes to accurately reflect the implementation of the Water Information System so with that I will ask you to vote favorably on this. Thank You.

Committee Business

CHAIRMAN GROSFIELD: Discussed the progress on setting the committee rules, and passed out a draft form. He said **Todd Everts** looked at it and made a couple of suggested changes. I would like to post a copy of these at the door as a guidance for witnesses and so on, members as well, if acceptable.

SENATOR MCCARTHY: In the case of individual who is unable to attend a Friday hearing, would that allow them to get it in by Monday?

CHAIRMAN GROSFIELD: We talked a little bit about 24 hours and about until the next committee meeting. If you would prefer we could do it that way although that will be tough towards transmittal. Would you prefer having it until the next committee meeting? The major problem with that is we try to get bills recorded out so that we can take floor action and waiting from Friday until Monday and then it's Tuesday before the report comes out, it delays it a few days.

SENATOR COLE: I would go along with the next meeting maybe with the understanding that the Chairman would have some discretion when we get close to transmittal or if it's some bill that for some reason the bill has urgency.

CHAIRMAN GROSFIELD: I think the discretion is there, it says may, it may be left open, so instead of 24 hrs. we could put until the next committee meeting. Would everybody prefer that? Any other thoughts?

SENATOR KEATING: Under witnesses, #4, certain copies of the testimony should be submitted for the committee record. I hope that everyone who wishes to testify doesn't have to put it in writing.

CHAIRMAN GROSFIELD: Most of this came from a format that was in a Committee Chairman book for Legislative committees. We could strike that and put may in #4.

SENATOR MILLER: On the executive action is there a reason particularly that we have to wait till after all the scheduled bills are heard? In other words, I can see some exceptions. I just wrote on the end of mine "or at the discretion of the Chair," if you wanted to make an exception for something.

CHAIRMAN GROSFIELD: That's fine with me. Just put a period after the word later.

SENATOR VAN VALKENBURG: As a general rule, executive action will not be taken the same day as the hearing, but at the discretion of the Chair, may be heard that same day.

CHAIRMAN GROSFIELD: There is one thing under general item six that just came up this morning at the Senate Rules Committee. Apparently, there have been some people who have requested to submit absentee video testimony to committee hearings. The Senate Rules Committee decided against allowing that for three reasons. One is we don't have an abundance of that kind of equipment for every committee room to be ready for that. Secondly, there is no opportunity for questioning or rebuttal. The third thing is that you may have a video that you don't have any idea what's on it. You would have to preview it. Senate Rules Committee decided they just didn't want to deal with it. Next meeting the committee rules will be in some kind of final form so we can adopt it.

{Tape: 1; Side: B; Approx. Time Count: 2:05; Comments: .}

EXECUTIVE ACTION ON SB1

Motion: SENATOR KEN MILLER MOVES A DO PASS RECOMMENDATION.

Discussion: SENATOR VIVIAN BROOKE: It seems strange that the legislature can go back and change language even though the scientists and technologists probably had it in mind "nitrogen as nitrogen." It is in fact the industry norm and in order to measure nitrates to lower the standards, which was the clear intent of SB331, you had to measure it as nitrogen. I've no question at all that was the intent of scientists and technologists, but for lay people across the board, who don't have that scientific background, there was not a clear understanding that language was needed. To go back and change the language simply because we're in a lawsuit seems pretty arrogant or presumptuous, so I'm going to have to vote against this motion.

CHAIRMAN GROSFIELD: **SENATOR BROOKE**, all the technical people that we had before us just used to word nitrate just like we all did. We all understood what we were talking about. Even in the hearing the other day direct questions were asked of people's understanding of the term in the last session. There was nobody that raised the issue and this is what the code commissioner said. "Nobody raised the issue until the session was over and everyone had gone home." Again, I don't think anybody had the understanding that it was anything other than what it is. Now, the code commissioner has to put in the words to clarify. I don't think it took a lawsuit to prompt him to have this bill. I think we all had a fairly clear hearing and everybody understood we aren't really making any changes here.

SENATOR FRED VAN VALKENBURG: I don't really have any problem with what you're proposing to do on the bill because I think that you're essentially trying to write the law as it was generally intended to be written in 1995. Although I may disagree with what the substantive provisions are, I think that there's a certain responsibility to try and get the law written correctly. What I do have some problem with, and I probably should have asked **Larry Mitchell** to prepare an amendment, is this retroactive applicability provision. I think that it's generally not a good idea to try and make laws retroactive. I think that there are very rare circumstances where that is appropriate. I think we don't really need a retroactive provision in here, at least I didn't hear any reason that we had to have one. If the Chair would permit, I like to offer a verbal amendment to strike section 3 of the bill.

CHAIRMAN GROSFIELD: I'll permit that. That's a straightforward amendment and I don't think we need a drafted edited amendment to take care of that.

Motion: **SENATOR VAN VALKENBURG:** MOVE THAT SECTION 3 BE STRICKEN FROM BILL.

Discussion:

CHAIRMAN GROSFIELD: I guess as sponsor of the bill I would resist the amendment. Perhaps I should ask **Mr. North** to comment on this, but it would seem me that if we don't have that and this bill gets signed by the Governor, say on April 3, 1997, that we have a two year opportunity window there for litigation. I would presume this retroactive applicability provision is trying to close off that potentiality. It seems to me that we're just asking for a lot of lawsuits with this proposed amendment.

SENATOR KEATING: I believe in the testimony it was stated that there were some subdivisions that were permitted within the last two years that might be jeopardized if the retroactive date is not passed. They would have to resubmit those subdivisions for permits and that would cost a lot of money to a lot of people.

CHAIRMAN GROSFIELD: I would like to ask **Mr. North**, Chief Legal Counsel for Department of Environmental Quality, to comment on this retroactive applicability provision.

Mr. North: The general estimate I have from the subdivision people in our department is that the department has about 1500 applications with an average of 4 lots per application. We would be talking of about April 1995 to October 1996, 2 years 4 months. You can figure that's about 3500 applications and 6,000 to 12,000 lots that would be affected during this interim period.

CHAIRMAN GROSFIELD: Are you saying, **Mr. North**, that in just those two years there were 12,000 lots subdivided across the state of Montana? **Mr. North:** Yes, that's my understanding.

CHAIRMAN GROSFIELD: That's a different issue but that's a lot of lots. When you say "would be jeopardized" what do you mean?

Mr. North: In the lawsuit not only have the plaintiffs asked for declaratory judgment that nitrate means NO3 but they have been asked that all approvals under the interpretation that nitrate as nitrogen be invalidated. The applications would have to be re-reviewed by the department.

CHAIRMAN GROSFIELD: Thank you. Further discussion on the amendment?

SENATOR VAN VALKENBURG, would you like to close on your amendment?

SENATOR VAN VALKENBURG: I would. I understand the statistics that Mr. North has cited, but he hasn't said that just because there has to be a re-review of these matters that these subdivisions will not be approved. I think that the important issue here is that the Legislature has a responsibility to write the laws correctly. One should have to live with those mistakes, learn from them, and move on. You can't go back and with 20/20 hindsight and fix up what you didn't do correctly in the first place.

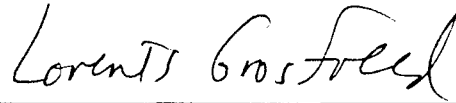
Vote: MOTION TO ADOPT SEN. VAN VALKENBURG'S AMENDMENT TO SB1 FAILED 7 TO 3.

SENATORS BROOKE, VAN VALKENBURG and MCCARTHY having voted aye and the remainder of the committee having voted no.

Vote: MOTION CARRIED. SB1 PASSED 9 TO 1. SEN. BROOKE voting no.

ADJOURNMENT

Adjournment: 2:23 P.M.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG\GH