

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on January 15, 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 110, 1/10/97;
SB 119 1/10/97
Executive Action: None

HEARING ON SB 110

Sponsor: SEN. TOM BECK, SD 28, DEER LODGE

Proponents: Hank Hudson, Administrator, Child and Family
Services Division, Department of Public Health and
Human Services
Mary Ellerd, Executive Secretary, Montana Juvenile
Probation Officers Association
Terry Young, Department of Corrections

Opponents: None

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, DEER LODGE, reported that SB 110 was
requested by the Department of Public Health and Human Services,
and will authorize the Department to establish parental

contributions towards a youth's care, including assignment of child support. He stated that this bill will clarify, if a child is taken from the home, that the parents retain responsibility to the child, noting that this will put some teeth into the law to allow the Department to receive contributions from the parents for the care of that child. He indicated that representatives from the Department will explain the provisions of the bill.

Proponents' Testimony:

Hank Hudson, Administrator, Child and Family Services Division, Department of Public Health and Human Services, reported that, four years ago, the number of children who were in either corrections, youth corrections placement or foster care placement was growing at a rate which exceeded the Department's resources, so the Department began the process of considering every available resource which could legitimately be used towards providing care for those children. He indicated that one resource they identified was to ask the parents to help offset the cost to the State for providing that care. He stated that they looked at a number of vehicles for accomplishing this, and one was to ask the courts to require the Child Support Enforcement Division, which is responsible for collecting child support payments in other situations, to assist them in collecting payments from families while their child is in the care of the State. He noted that they do have a policy of not going to the parents immediately to collect that money, so as not to weaken the family and reduce the likelihood of returning the child to the home but, if the child will be out of the home for an extended period of time, which they define as six months, they then pursue funds from the parents to offset their costs.

Mr. Hudson explained that, in the last biennium, they discovered that they lack the authority to do this for a certain portion of the population they serve, the Child Welfare Service children, and that the process, as it exists, is too cumbersome for their staff, as well as for the courts, requiring too many trips back and forth to court to accomplish their goals. He indicated that they need to clarify the authority of the Department and the Child Support Enforcement Division to pursue collections from the parents.

Mary Ellerd, Executive Secretary, Montana Juvenile Probation Officers Association, stated that they definitely support this bill.

Terry Young, Department of Corrections, stated that they support this bill, which clarifies the collection of funds to supplement program costs, and keeps parents financially responsible and active, even though their child has been removed from the home.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. FRED THOMAS referred to page 4, lines 3 and 4, and asked **Mr. Hudson** to explain what the language regarding assignment of rights will do.

Mr. Hudson asked to defer that question to another representative of the Department.

Mary Ann Wellbank, Administrator, Child Support Enforcement Division, Department of Health and Human Services, explained that the language provides that, when a parent has an existing support obligation, that support obligation will be assigned to the Department and directed toward support of the child.

SEN. THOMAS asked what, specifically, is being assigned in the language "all rights that the parent or guardian may have to child support that are not otherwise assigned."

Ms. Wellbank responded that the right to child support is being assigned. She explained that, if she were a divorced mother and the father was paying child support, her rights to that support would be transferred to the Department, if the child was in their custody. She added that this is routine language in that, any time the Department handles a case, the parents are required to assign support to the Department, which then assumes collection activities on behalf of the parent.

SEN. KEN MESAROS asked if this language pertains just to a child that is removed from the home.

Ms. Wellbank replied that, in this bill, it does. She added that there are other situations when the Department is assigned those rights in order to collect child support on the parent's behalf.

SEN. MESAROS asked what the language on page 6, lines 22-23, "otherwise assigned under 53-2-613" refers to.

Ms. Wellbank explained that Title 53 is the section regarding Aid to Families with Dependent Children (AFDC), that parents on AFDC are required by law to assign their rights to child support to the State so they do not receive child support payments along with welfare benefits and, if those support payments are not previously assigned under that provision, then they would be under this provision.

CHAIRMAN DON HARGROVE pointed out the references in the bill to "a parent or guardian", and asked if a distinction is made between separated or divorced parents, and how that is handled.

Ms. Wellbank responded that "a parent" could be either parent, that, in a case where a child has two parents, each of them would have to contribute toward the child's support.

CHAIRMAN HARGROVE asked if there is a judgement as to how much they contribute.

Ms. Wellbank pointed out that this is what SB 110 would do. She indicated that, currently, the Child Support Enforcement Division has the authority to establish support orders, to enforce them and to determine how a parent should pay, and that they are required to establish orders in accordance with the child support guidelines, which have a specific formula allowing for variances. She continued that, if they establish an order under those guidelines, they establish it for each of the parents.

CHAIRMAN HARGROVE asked if economic factors are taken into consideration.

Ms. Wellbank replied that the parents' financial statements, resources, assets and income are considered.

CHAIRMAN HARGROVE asked what the fiscal impact of this bill would be.

Ms. Wellbank stated that they do not believe there will be a fiscal impact, with the exception that the Department will collect more money towards the support of those children. She explained that it will be a routine matter for the Department, that there are not a lot of these cases, and they normally do this type of thing.

Closing by Sponsor:

SEN. BECK indicated that it has been brought to his attention that a minor clean-up amendment is needed, and that **Ms. Wellbank** will work with **David Niss** on that.

He pointed out that it is the responsibility of the parents to contribute to the support of their children, whether or not a child is a ward of the State, and that this bill will put some teeth into the Department's authority to collect those payments.

HEARING ON SB 119

Sponsor: **SEN. MACK COLE, SD 4, HYSHAM**

Proponents: **Bill Kloker, Tax Program Manager, Income and Miscellaneous Tax Division, Department of Revenue**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, HYSHAM, stated that the Department of Revenue requested this bill to clean up some incorrect and/or

unnecessary language in current statute, as well as address some State income tax issues. He indicated that this bill will address reporting of income tax withholding under \$1200 per year, and align domestic service with the Federal Government. He added that this bill would also allow a parent to exclude the income of a child from their Montana adjusted gross income. He explained that, currently, Federal law requires inclusion of certain income of a child on the parents' adjusted gross income, but that Montana does not. He continued that Montana adjusted gross income, however, is tied to Federal adjusted gross income, but there is no provision in current State law to allow that income to be excluded for State income tax reporting purposes. He indicated that representatives from the Department of Revenue will explain the bill in more detail.

Proponents' Testimony:

Bill Kloker, Tax Program Manager, Department of Revenue, stated that he distributed copies of amendments requested by the Department, explaining that there were some errors in the bill which were not corrected in time. (EXHIBIT 1)

He indicated that Section 1 addresses some grammatical errors, and also corrects the reference in Subsection (3)(ii) to 39-51-2403, which should be 39-51-2402. He explained that this was an error in HB 550 in the 1995 Legislative Session, and that it is a reference to Independent Contractors. He noted that Section 2 strikes reference to 15-10-101 which, as he will explain later, is repealed in Section 7.

Mr. Kloker then stated that Section 3 addresses the "kiddie tax". He explained that, under Federal law, if a person has a child under 14 years old with unearned income, that income has to be included in the parents' Federal adjusted gross income, but that this is not required in Montana. He pointed out that Montana adjusted gross income is tied to Federal adjusted gross income, but there is no provision in current Montana statute to allow that child's income to be excluded from the parents' Montana adjusted gross income, and this bill would provide the ability for that exclusion. He added that, currently, the State is double taxing that income because, by Montana law, if the child meets the filing requirements, he or she is required to pay that tax on their own.

He indicated that amendments to Section 4 will Strike 15-30-204(4)(b), which is covered in 15-30-204(4)(c), and these amendments will also allow small employers who estimate that their total withholding or Old Fund Liability Tax (OFLT) will not exceed \$12,000, and who do not have a full lookback period, to apply to the Department to remit taxes annually. He pointed out that, in the last session, the Department of Revenue adopted an accelerated system of collecting taxes, explaining that an employer with over \$12,000 in total withholding in the previous fiscal year, referred to as the "lookback period", must report

within three banking days after making a payment of wages. He added that employers reporting between \$1199 and \$12,000 in withholding taxes in the lookback period must remit monthly, and employers with \$1199 or less must remit annually.

He explained that the provision regarding small and/or new employers coming into the system during the year is to address concerns of small businesses with estimated annual withholding of less than \$1200. He added that, if, during the year, the total withholding exceeds \$1200, the employer must report immediately, and then report on a monthly basis for the remainder of the year.

Mr. Kloker described Section 5, which parallels Federal law regarding domestic services provided in the home. He pointed out that payments for domestic services are not subject to Federal or State withholding, but are taxable for OFLT and FICA and, if those payments to an individual are less than \$1000 annually, the employer report and remittance, including W2s, are not required, since those payments are not considered wages. He added that, if an employer pays an employee \$1000 or more during the year, those payments are considered wages and the employer must pay the OFLT when filing a Montana individual income tax return. He indicated that this provision would allow the small domestic employer to pay OFLT taxes on wages in excess of \$1000 a year in their own individual tax return, reiterating that no OFLT tax will be paid on wages under \$1000 a year. He pointed out that employers who withhold state income tax from wages paid to employees are required to file like other employers in the State.

He indicated that Section 6 will correct language referring to quarterly payments, that HB 293, in the last session, provided for an accelerated filing schedule but that some references to the quarterly schedule were missed at that time, and this new language will insert the three remittance schedules provided for in this bill. He added that one of the amendments he distributed will strike the language in the bill on page 14, (C)(ii), "in the preceding calendar quarter", and insert "each payroll period", to conform to the new schedule.

Mr. Kloker then pointed out that Section 7 will repeal Sections 15-10-101, 102 and 104, explaining that these statutes regarding state-wide levying of property taxes were enacted in the 1800's, and are no longer necessary or utilized since enactment of the State income tax.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. COLE stated that he thinks a good report was given on the details of the bill, that he does not see anything very radical and believes it will help clean up some errors, as well as

address some small employer issues. He added that he would appreciate the amendments being considered with the bill at the time the Committee takes executive action.

{Tape: 1; Side: A; Approx. Time: 10:27 a.m.; Comments: None.}

EXECUTIVE ACTION ON SB 42

Amendments: SB004201.adn (EXHIBIT 2)
SB004202.adn (EXHIBIT 3)
SB004203.adn (EXHIBIT 4)
SB004204.adn (EXHIBIT 5)
SB004205.adn (EXHIBIT 6)

Discussion:

CHAIRMAN HARGROVE reported that Pat Graham, Director, Department of Fish, Wildlife and Parks wanted to be present when the Committee takes executive action on SB 42, and that he has been sent for. He indicated the Committee would discuss some of the amendments in the meantime.

David Niss reported that two amendments were requested by SEN. GAGE and three by SEN. MESAROS. He explained that Amendment SB004205.adn will strike language in the title of the bill and in the catch phrase in Section 1 referring to exchanges of land, and that it will strike, on page 3, lines 8 through 14, subsection (7) in its entirety, which is the authority for land exchanges requested by the Department.

SEN. MESAROS asked CHAIRMAN HARGROVE what his intent is.

CHAIRMAN HARGROVE replied that he would prefer that Mr. Graham be in attendance while the Committee discusses these amendments and the bill.

(At this point in the hearing, CHAIRMAN HARGROVE suspended discussion regarding SB 42 while waiting for Mr. Graham to arrive. He opened executive action on SB 110.)

EXECUTIVE ACTION ON SB 110

Amendments: None

Discussion:

SEN. MESAROS indicated that it was his understanding that an there would be an amendment to SB 110 proposed.

Mr. Niss stated that Mr. Hudson mentioned that Ms. Wellbank would be contacting him to draft an amendment.

CHAIRMAN HARGROVE thanked SEN. MESAROS, and suggested that the Committee wait until the amendment was presented before

considering executive action on the bill. He closed executive action on SB 110.

EXECUTIVE ACTION SB 119

Amendments: SB011901.adn (EXHIBIT 7)

Discussion:

CHAIRMAN HARGROVE indicated that SB 119 appears to be a clean-up bill, and seems reasonable to him. Mr. Niss indicated that amendments were distributed to the Committee, but that he had not had an opportunity to review them to see that they fit the bill.

SEN. BROOKE pointed out that the proposed amendments were not explained in testimony.

CHAIRMAN HARGROVE acknowledged they had not been explained, noting that he looked them over briefly, and asked if anyone wished to move the amendments to SB 119.

SEN. MESAROS suggested that Mr. Niss review the amendments before a motion was made.

CHAIRMAN HARGROVE asked Mr. Niss if he felt they should be reviewed. Mr. Niss responded that he does not understand them, and is not sure that they fit the bill, adding that, in most cases, agency amenders do not understand the system well enough to draft amendments which properly fit the bill.

CHAIRMAN HARGROVE thanked Mr. Niss and SEN. MESAROS for the cautions, and indicated that executive action on SB 199 would be delayed until such time as the amendments had been reviewed.

Mr. Niss pointed out that SB 119 is a good example of references in Montana Code Annotated to adopt future changes in Federal law, which was the basis for the Supreme Court case of Montana vs. Lee, and which was discussed by the Committee in the hearing on SB 24.

SEN. THOMAS asked Mr. Niss to review the change in the reference, on page 3, lines 10-11, from 39-51-2403 to 39-51-2402, to make sure it is accurate.

{Tape: 1; Side: A; Approx. Time: 10:42 a.m.; Comments: End of Tape 1, Side A.}

EXECUTIVE ACTION SB 42

Discussion:

SEN. BROOKE asked if the Committee will resume executive action on SB 42.

CHAIRMAN HARGROVE indicated that the Committee could discuss some of the amendments until **Mr. Graham** arrives, and asked **Mr. Niss** to explain the amendments proposed by **SEN. MESAROS**.

Mr. Niss referred to page 3, subsection (7) on lines 8-14 of SB 42 and pointed out that this sets out new language to be added to 87-1-209 MCA to allow the Department of Fish, Wildlife and Parks to exchange an interest it owns in real property for an interest in other property that would be more suitable to the Department's uses, and would allow the Department to establish the manner, terms and conditions of the exchange, adding that there is a maximum of acreage or value allowed in these exchanges before it would have to be reviewed by the State Board of Land Commissioners. He explained that Amendment SB0042.05.adn would delete that section from the bill.

Motion: **SEN. MESAROS** moved to ADOPT AMENDMENT SB004205.adn

Discussion:

SEN. MESAROS indicated that he believes the intent of the bill, as presented, is to address problems encountered in conveying small parcels of land to school districts, noting that he supports that, but he pointed out that the language in the bill goes beyond that, and enables the Department to make considerable land transactions. He stated that his legislative experience and the interest of the general public expressed by his constituents regarding these transactions is that there is a great deal of concern regarding expanded authority of the Department of Fish, Wildlife and Parks to execute major land transactions.

CHAIRMAN HARGROVE pointed out that there is a trigger of 100 acres or \$100,000 in value, and that this may be merely to make it consistent. He asked **Mr. Graham** to comment.

Pat Graham, Director, Department of Fish, Wildlife and Parks, distributed copies of a letter to the members of the Committee. (EXHIBIT 8)

CHAIRMAN HARGROVE asked **Mr. Graham** what it takes, under current law, for a transaction to be approved by the State Board of Land Commissioners.

Mr. Graham responded that he does not know if other agencies have the same requirements but, for the Department of Fish, Wildlife and Parks, transactions of 100 acres, or \$100,000 in value, in addition to being approved by the Commission, are also approved by the State Board of Land Commissioners, noting that this is not changed in the bill.

CHAIRMAN HARGROVE asked if it would be true that the exchange must be approved by the State Board of Land Commissioners and the State Land Board.

Mr. Graham pointed out they are the same thing. He indicated that the letter he distributed to the Committee will clarify the authority the Department already has to accomplish these land transactions, stating that SB 42 will actually put some limits on that authority. He explained that the Department currently does land exchanges under a provision of the Montana Constitution, but that SB 42 would clarify that authority in statute, noting that they mirrored the language of the Department of Transportation's authority for land exchanges, making it specific to the needs of the Department of Fish, Wildlife and Parks.

CHAIRMAN HARGROVE asked if, whether or not subsection (7) was included in the bill, it would change the way the Department currently operates.

Mr. Graham replied that no one has actually pursued litigation to test their Constitutional authority, and it has never been refined in statute, noting that he can not say it would not change anything, but they would continue to do land exchanges. He added that they thought it made sense to clarify legislative intent in the law.

SEN. MESAROS asked **Mr. Niss** to comment on the Constitutional authority. **Mr. Niss** indicated that the section they looked at was the authority for the purchase and sale of land, not exchanges.

CHAIRMAN HARGROVE asked **SEN. MESAROS** if he would be more comfortable if **Mr. Niss** were to research the other statutes **Mr. Graham** referred to before a vote was taken.

SEN. MESAROS stated that it makes no difference to him, unless the Committee wanted them reviewed for further explanation.

SEN. THOMAS asked **Mr. Graham** if this bill would be putting in statute what is held in the Constitution.

Mr. Graham responded that it is a further refinement, it defines the purposes for land exchanges, that it says what the Department can do more specifically. He reiterated that, currently, the Department can make land exchanges, under the Constitutional provision, but that the Legislature has the authority to further refine that, noting that, otherwise, their authority is broader.

SEN. BROOKE stated that, given the information from **Mr. Graham** regarding their current authority, it would appear that the amendment goes opposite its intent in that, in accepting the amendment, they would go back to the broader authority, but that leaving the language in would limit their authority. She noted that she has some of the same concerns that **SEN. MESAROS** does, but reiterated that what they need to do is limit that authority, and that the language in Subsection (7) should be left in the bill.

SEN. GAGE asked **Mr. Graham** if the Department currently notifies the State Board of Land Commissioners on land exchanges.

Mr. Graham responded that, under any of these provisions, they do.

SEN. GAGE asked, if this amendment to remove subsection (7) from the bill passes, would it be **Mr. Graham's** intention to try to get someone to put that section back into the bill on second reading.

Mr. Graham replied that he had not given that much thought. He stated that the bill was presented to accomplish three things, one of which is the kind of exchanges requested by the Ophir School District, that another issue was to clarify in statute the authority the Department has relative to land exchanges, and the third was to allow the Department to expedite disposal of land for conservation. He stated that he thinks this is useful language but, if it is not in the bill, it will not stop them from doing what they are already doing, noting that it puts a cloud on the transactions with the Commission when people look at the statutes and ask where that authority is, and they point to the Constitution. He added that he does not know if it is crucial to the bill, that the prioritization would be more important to him, but they felt this was a housekeeping issue, and were not trying to broaden their authority.

CHAIRMAN HARGROVE asked if the 100 acres or \$100,000 in value is set out in the Constitution.

SEN. THOMAS responded that it is not. He asked **Mr. Graham** if, by putting this in statute, the Commission can grant these land exchanges without approval of the State Board of Land Commissioners.

Mr. Graham replied no, that this was not their intent.

SEN. THOMAS indicated he was referring to the legal question, when the authority is questioned. **Mr. Graham** responded that the authority is not usually questioned in smaller land exchanges, that it is usually with the larger ones.

SEN. THOMAS asked if that is when their authority is questioned.

Mr. Graham indicated that this is when someone is looking for any reason to stop an exchange, noting that one has never been stopped, but that someone will look at the statute and ask what authority they have to make land exchanges.

SEN. THOMAS asked if they are then referred to the Constitution.

Mr. Graham indicated that they do refer them to the Constitution, adding that this bill is an attempt to put current practice into statute. He reiterated that it will not change the way they do things now, that they will still go through the process of

approval by the Commission, and the environmental assessment, which involves public notice, and that, for transactions of 100 acres or \$100,000 in value, it will also be reviewed by the State Board of Land Commissioners.

SEN. THOMAS asked **Mr. Graham** what amount of concern he has that exchanges of less than 100 acres or \$100,000 in value are not legal exchanges, unless approved by the State Board of Land Commissioners.

Mr. Graham stated that he has never heard that concern expressed, indicating that he does not think the Department of Transportation takes their exchanges to the State Board of Land Commissioners at all.

SEN. THOMAS pointed out that, as outlined in **Mr. Graham's** letter, the Constitution does not address the Commission, it only addresses the State Board of Land Commissioners.

Mr. Graham indicated he had not thought of that.

SEN. GAGE asked whether case law dealing with the authority of the State Board of Land Commissioners, under the old Constitution, was applicable under the 1972 Constitution, and whether that case law would require that the Department's land transactions go through the State Board of Land Commissioners.

Mr. Graham responded that he did not know, but could have the Department's legal staff look into it.

SEN. THOMAS asked **SEN. GAGE** if the controversy regarding the University System land transactions stems from the same issue of another entity, besides the State Board of Land Commissioners, approving those transactions.

SEN. GAGE responded that it may well be.

CHAIRMAN HARGROVE asked **Mr. Graham** if, currently, the State Board of Land Commissioners approves land exchanges involving 50 acres. **Mr. Graham** responded no, they do not. **CHAIRMAN HARGROVE** further asked if that approval is required for transactions involving 100 acres. **Mr. Graham** responded that it is, and also that approval is required for transactions exceeding \$100,000 in value.

CHAIRMAN HARGROVE then asked why they use those guidelines.

Mr. Graham responded that it is laid out in statute, noting that he can not recall the exact aspects of the statute or the wording, but that it has to do with acquiring interest in land, and that all exchanges, sales, purchases or other land transactions which exceed those triggers are taken to the State Board of Land Commissioners.

CHAIRMAN HARGROVE asked what statute contains these triggers, and then asked if he understood correctly that the Department of Transportation has put it in their statute.

Mr. Graham responded the triggers are in the statute regarding land transactions by the Department of Fish, Wildlife and Parks, but he does not believe the statute pertaining to the Department of Transportation contains those same triggers.

SEN. GAGE commented that he believes the Supreme Court interprets legislative intent based on statute.

SEN. MESAROS pointed out that everything in the legislative arena is open for interpretation, that he respects an attempt to clarify in statute what is interpreted by the Department and others, but that he is concerned about putting this particular language in statute, which is the basis for his amendment.

Mr. Niss stated that the legal question is whether Article 10, Section 11, subsection (4) was intended by the framers of the Constitution to be self-implementing. He noted that maybe the Constitutional Convention minutes or court cases would clarify this, but neither are available, indicating that the exercise this Committee would go through to determine that intent is very similar to the exercise the Court would go through to determine legislative intent. He continued that the question is whether the Constitutional framers intended agencies like Fish, Wildlife and Parks to administer land exchanges based on a provision of the Constitution, or whether the Legislature must, as a result of that intent, adopt some form of statute before those exchanges can be made. **Mr. Niss** indicated that he does not recall having read a Montana Supreme Court case on that issue with regard to Article 10, Section 11, subsection (4), noting that there is an indication in the same section of the same article that an exchange provision exists for at least some types of dispositions, and pointed out that the issue is whether the kinds of dispositions referred to in the Constitution are the same as an exchange, but there is also some indication in the language of the Constitution that some types of dispositions were only meant to be undertaken pursuant to the general laws of the State.

CHAIRMAN HARGROVE asked if the Department of Fish, Wildlife and Parks has other statutes which enable those transactions.

Mr. Niss responded that they may.

Mr. Graham stated they do have that authority in 87-1-209. **Mr. Niss** pointed out that those statutes are subject to amendment.

CHAIRMAN HARGROVE asked if **SEN. GAGE** felt the need to delay the vote for more research.

SEN. GAGE stated that he would feel more comfortable voting if **Mr. Niss** were able to research the Constitutional Convention minutes as well as Supreme Court rulings on the issue.

SEN. MESAROS indicated he would have no objection, and would withdraw his motion.

SEN. THOMAS asked **Mr. Niss** to also research the University System cases to see if they revolve around the same issue.

{Tape: 1; Side: B; Approx. Time: 11:19 a.m.; Comments: End of Tape 1, Side B.}

CHAIRMAN HARGROVE then opened the discussion on Amendment SB004204.adn.

Mr. Graham reported that he would also like to present an amendment to clarify an issue of concern to the Committee.
(EXHIBIT 9)

SEN. MESAROS asked if these amendments were proposed in hearings.

Mr. Graham responded that they were proposed as a result of discussions regarding some confusion over their ability to use the proceeds for maintenance on page 4, section 5.

CHAIRMAN HARGROVE asked if **Mr. Niss** had any comments on whether the amendments fit or not, and asked the Committee to review the amendments with the thought of being willing to propose them.

SEN. MESAROS indicated there are other amendments, commenting that any amendments the Committee may review will require additional information. **CHAIRMAN HARGROVE** asked if he was referring to the information requested by **SEN. GAGE**. **SEN. MESAROS** responded yes.

Mr. Niss referred to Amendment SB004202.adn, noting that paragraphs 1, 2 and 3 simply affect the title. He asked the Committee to turn to page 3, paragraph 4, and explained that, beginning on line 16, the amendment will strike Section 2 in its entirety from the bill, pointing out that the intent of the amendment proposed by the Department is to amend language in that section which is stricken by this amendment, making the two amendments incompatible.

SEN. MESAROS pointed out that it was his intent in Amendment SB004204.adn only to strike the new language on page 4.

Mr. Niss responded that the entire section will be stricken from the bill because, in striking the new language on lines 13-15 of page 4, and lacking other amendments in that section, there is no purpose for that section in the bill. He added that the language on page 5, line 4 is being stricken because it is superfluous in that the date has already passed.

SEN. MESAROS pointed out that it was not his intention to strike the language on page 3, beginning on line 16, that he intended only to strike the proposed modifications to that section, and it would revert back to the original language.

Mr. Niss stated that striking a section from a bill does not repeal it from existing law, that this only means it will not be changed by the bill.

SEN. MESAROS indicated he just wanted to clarify that.

CHAIRMAN HARGROVE asked that the Committee turn its attention to the amendments proposed by **SEN. GAGE**.

Mr. Niss indicated that the issue before the Committee is whether to deal with the amendments proposed by **SEN. MESAROS**, and the competing amendments proposed by **Mr. Graham** with a motion and vote.

CHAIRMAN HARGROVE asked **SEN. MESAROS** if he wanted to have the information requested by **SEN. GAGE** before acting on the amendment. **SEN. MESAROS** responded that, if the Committee does not feel the information is necessary, they could act on the amendments now.

Motion: **SEN. MESAROS** moved to **ADOPT AMENDMENT SB004204.adn**

Mr. Niss pointed out that the language which has been added in the bill, and which would be removed by Amendment SB004204.adn, is concerning the use of proceeds from the sale of lands administered by the Department. He added that it has nothing to do with land exchanges and it appears there is no legal connection between the two issues.

SEN. MESAROS reiterated that, with these changes in the bill, and subject to appropriation by the Legislature, this money may be used by the Department to acquire other real property. He indicated that he interprets this as expanding the opportunity for land acquisitions by the Department and pointed out that, in previous sessions, there has been considerable concern over expansion of property held by the Department.

SEN. GAGE stated that it appears to him this is changing the use of money received by the Department from sale of surplus real property and sales from exploration or development of oil or gas or mineral deposits from lands. He asked what the Nonexpendable Trust Fund of the State Treasury is.

Mr. Niss explained that budget statutes separate all accounts and funds of the State into categories, but indicated that he is not sure if the Nonexpendable Trust Fund refers to the collection of coal tax receipts or not, that it may.

CHAIRMAN HARGROVE indicated that he felt **SEN. GAGE's** comment that it does appear to offer a significant change in the original intent of existing law is entirely appropriate.

SEN. GAGE asked **Mr. Graham** to comment, adding that it appears, under current law, that proceeds from the sales of those properties for exploration or development of oil and gas or mineral deposits must go into the Nonexpendable Trust Fund, but that this bill provides the opportunity for the Department to use those funds to acquire real property, if appropriated by the Legislature.

Mr. Graham stated that is not the way he reads it, indicating that the sentence was bifurcated, and money received from exploration or development of oil, gas or mineral deposits goes into the Nonexpendable Trust Fund, that the intention was that proceeds from the sale of surplus real property, only, will be rolled back into the account from which it came. He explained that there was no intent to increase the amount of money which would be available, that it is simply to expedite the disposal of lands acquired in fee title on which they only wanted a conservation easement and, without this provision, there is no incentive to do that, so they go through the process of land exchanges. He reiterated that the money from the exploration and development of oil, gas and mineral interests continues to go into the Nonexpendable Trust Fund, which is a maintenance trust, and that the amendment offered by the Department would clarify that the proceeds from the sale of surplus real property could go into either the Maintenance Trust Account, or be made available for acquisition, subject to appropriation by the Legislature.

SEN. THOMAS pointed out that the old language states "Money received by the department from the sale of surplus real property; from exploration or development of oil, gas, or mineral deposits from lands acquired by the department ... must be deposited in an account within the nonexpendable trust fund of the state treasury." He stated that it seems **SEN. GAGE's** question and point was the fact that there is a change proposed.

Mr. Graham asked what kind of change he was referring to.

SEN. THOMAS replied that the changes requested by the Department to that section would allow money received by the Department from the sale of surplus real property to be put into their own fund, versus being put into the Nonexpendable Trust Fund.

Mr. Graham stated that the Nonexpendable Trust Fund is the Department's trust fund, that it was set up specifically for the Department of Fish, Wildlife and Parks for maintenance. He reiterated that it is not a general fund, and is not available to anyone except the Department of Fish, Wildlife and Parks for the purposes of maintenance of Department lands, and is appropriated each legislative session by the Legislature through the long-

range building program, noting that it contains approximately \$4 million at the moment.

SEN. THOMAS asked if, by appropriation by the Legislature, the Department could acquire other real property from the funds in the Nonexpendable Trust Fund.

Mr. Graham responded no.

SEN. THOMAS pointed out that this is, in fact, a change.

Mr. Graham explained that there is a change in that part, but not a change in where the money from exploration and development of oil, gas and minerals goes, noting that he thought that was the question.

SEN. THOMAS stated that they run together.

Mr. Graham explained that the intent was that money received from the disposal of surplus land may be used for the acquisition of land, and that they have suggested an amendment to clarify that money received from exploration and development of oil, gas and minerals will go into the Nonexpendable Trust Fund.

SEN. THOMAS noted that the Committee follows that, but again pointed out that the bill would change where the money from the sale of surplus real property goes, that it will be subject to appropriation by the Legislature for purchase of other property, and asked **Mr. Graham** if that is a change.

Mr. Graham responded that it is.

SEN. GAGE indicated that his understanding is, if they sold a mineral interest in property, under current language, that money would have to go into the Nonexpendable Trust Fund, but under the new language, that money could be used for acquisition of real property.

Mr. Graham stated that this is the difference, that monies from the exploration or development of oil, gas or mineral deposits would still go into the Nonexpendable Trust Fund.

SEN. THOMAS stated that he does not think so. **SEN. GAGE** added that the mineral interest sale, itself, would not.

Mr. Graham indicated that if they sold the land, the rights would go with the land.

SEN. GAGE pointed out that the Department may not own the land, that they may own only the mineral rights, noting that, in Montana, mineral interests are real property.

Mr. Niss stated that subsection (5) was not drafted very well, originally, but that existing language does separate several

categories of money received from different types of transactions to be put into the Nonexpendable Trust Fund. He pointed out that, rather than using commas or the word "or", these categories are separated by semicolons and the original statute reads "Money received by the department from the sale of surplus real property; from the exploration or development of oil, gas or mineral deposits from land acquired by the department, except royalties, ...", down to the first word in line 17, "and from leases of interests in department real property not contemplated at the time of acquisition", noting that, beginning at this point, the language applies to all three categories of money received by the Department, and reads "must be deposited in an account within the nonexpendable trust fund of the state treasury." **Mr. Niss** confirmed that the only change being made is regarding money derived from the sale of real property, that there is no change to the disposition of funds resulting from exploration or development of oil, gas or mineral deposits, and no change to the disposition of funds resulting from leases of interests in Department real property not contemplated at the time of acquisition.

CHAIRMAN HARGROVE indicated that he thinks it is clear now.

SEN. BROOKE stated that she was inclined to vote against the amendment, that she thinks there are enough checks and balances within the system. She asked **Mr. Graham** how much surplus real property they anticipate being able to sell in a given year.

Mr. Graham responded that the Department has compiled an inventory of surplus lands, and there is not very much. He indicated that there were objections when they attempted to sell some of the land, and they also ran into opposition when they attempted to sell a small parcel along Flathead Lake. He pointed out that the intent of this bill is to respond to Legislative direction to put an emphasis on conservation easements as opposed to fee title acquisitions, and to streamline the process of surplus property. He related some examples of surplus land that was sold, and some which is currently held by the Department that they would like to sell as surplus.

SEN. BROOKE added that another balance is that the Department would have to sell property in order to acquire more, and that it does not seem that there are many dangers or cautions that they need to be concerned about, noting that if the Department sells surplus property, they will have the money to make an acquisition which will be more appropriate, by the standards set by the public.

SEN. MESAROS reiterated that concerns have been brought to his attention regarding having more public involvement in these land transaction activities by the Department, and again pointed out that the language in the bill reads "without regard to the requirements of subsection (3)(b) and (c)", which involves notice

to the public, resulting in less public notification of these land transactions.

CHAIRMAN HARGROVE remarked that it does appear there is increased authority to go ahead with these transactions without the public process, adding that public concern for land in Montana is not going to go away.

SEN. GAGE asked, if the Legislature does not appropriate money for acquisition of real property, and that money goes into the Nonexpendable Trust Fund, would the Legislature then have to appropriate the Nonexpendable Trust Fund money in order for the Department to have access to it.

Mr. Graham responded yes, they would.

SEN. GAGE asked if the Department of Fish, Wildlife and Parks pays in lieu of taxes, and if those payments are anywhere close to what a private owner would pay, and he further asked if the Department owns mineral interests which are not currently taxed, which may be sold and the proceeds used to purchase real property that is currently taxed, and would then be taken off the tax rolls.

Mr. Graham reported that the Department does pay in lieu of taxes in an amount equal to what the taxes were on the property at the time it was acquired, adding that, if the tax increases, the Department pays the increase. He noted that some property is exempt from these payments, including administrative property and, possibly, some park lands. Regarding mineral rights, he indicated that the Department does own some rights, but that the majority of their properties do not have mineral rights associated, and he is not aware of that being a major issue in the acquisition or sale of properties by the Department.

SEN. THOMAS asked what the funds in the Nonexpendable Trust Fund are used for.

Mr. Graham responded that they are used for the operation, maintenance and development of Department properties.

VOTE: The motion that SB004204.adn DO PASS CARRIED with **SEN. BROOKE** voting NO.

CHAIRMAN HARGROVE referred to the amendment proposed by the Department, and **Mr. Niss** pointed out that the section which would have been amended has been removed from the bill by Amendment SB004204.adn, which was just adopted by the Committee.

CHAIRMAN HARGROVE directed the Committee's attention to the amendments proposed by **SEN. GAGE**.

Mr. Niss pointed out that Amendment SB004203.adn would delete proposed language on page 2, lines 10, 11 and 12, beginning with

"and may" on line 10. He explained that this would strike language which would allow the Department to convey land to a private person without regard to the requirement in subsections (3)(b) and (c) for notice and advertised notice for the purposes of bid. He indicated that the language which would be removed from the bill would not affect the sale to the Ophir School District, that it only applies to sales of land to private parties without regard to notice.

SEN. GAGE indicated that his concern is that adjacent landowners should be given notice that the land is going to be disposed of, and they should have the opportunity to know what is occurring, and have some input.

SEN. MESAROS noted that his name was on the amendment, but that it was actually an amendment requested by **SEN. GAGE**, adding that he does have further amendments to the same section.

Mr. Niss indicated that there was another amendment to this section which would require notice under subsection (3)(b), but not (3)(c), even for the purpose of sales of land to government entities.

SEN. GAGE acknowledged that this is the amendment he requested.

CHAIRMAN HARGROVE asked if the trigger of 10 acres or \$20,000 is removed with this amendment.

Mr. Niss explained that the trigger is not removed, that only the ability to make the sale without notice or notice and bid is removed from that section.

CHAIRMAN HARGROVE asked if the Department could convey land for full market value to other government entities, regardless of the size.

Mr. Niss responded that is correct.

SEN. BROOKE asked if **SEN. GAGE's** intention was to delete the 10 acres, \$20,000 trigger.

SEN. GAGE stated that he did not recall requesting this amendment, that his concern was notifying adjoining landowners, in addition to a newspaper notice, even on transactions with other governmental entities.

CHAIRMAN HARGROVE suggested reviewing the other amendments. **Mr. Niss** noted that there were two remaining amendments. **CHAIRMAN HARGROVE** suggested that the Committee take advantage of the fact that **Mr. Graham** was available for questions.

Mr. Niss explained that Amendment SB004202.adn would strike the reference on line 10 to subsection (3)(b), which would mean that a sale to a government entity would still have to comply with the

notice provision in subsection (3)(b), but not the notice and bid provision of (3)(c), pointing out that this would address the Ophir School District situation.

CHAIRMAN HARGROVE asked if the phrase "convey for full market value" is the same thing as a sale.

Mr. Niss responded they are approximately the same, that the term "convey" is more precisely the signing of the documents, without the exchange of money. He then explained that the final amendment would impose an immediate effective date.

SEN. THOMAS asked **Mr. Graham** if, with the immediate effective date, the Department could address the Ophir School District situation very promptly.

{Tape: 2; Side: A; Approx. Time: 12:00 noon; Comments: End of Tape 2, Side A.}

Mr. Graham responded, yes, if this bill is passed.


SEN. THOMAS repeated his question, and **Mr. Graham** again answered yes. **SEN. THOMAS** then asked if this is a very stern commitment on the part of the Department to do that.

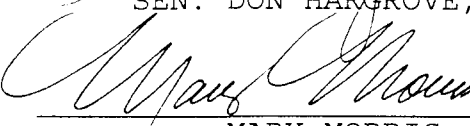
Mr. Graham responded that the process was begun three or four years ago and, if there have been commitments made to other people, the Department can not just do a complete about face. He indicated that he would commit, to the degree that they can, to expedite the process, that it was always their intention to do that and was one of the reasons for bringing this legislation forward.

CHAIRMAN HARGROVE thanked **Mr. Graham** and announced that executive action would be delayed until **Mr. Niss** could complete the research requested by the Committee.

ADJOURNMENT

Adjournment: 12:02 p.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary

DH/MM