

MINUTES

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

Call to Order: By CHAIRMAN DON HARGROVE, on January 21, 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 88, 1/16/97;
SB 153, 1/16/97;
SB 154, 1/16/97

Executive Action: None

HEARING ON SB 154

Sponsor: SENATOR MIKE FOSTER, SD 20, TOWNSEND

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE FOSTER, SD 20, TOWNSEND, stated that SB 154 addresses the issue of the number of acres that the State Land Board can sell or lease for use as a school site. He pointed out that a bill sponsored by SEN. KEN MESAROS also addresses this issue, indicating it is his understanding that the Committee amended the provisions of SB 154 into SEN. MESAROS' bill and, therefore, he would suggest that SB 154 be tabled.

Questions From Committee Members and Responses: None

Closing by Sponsor: SEN. FOSTER had no closing statement.

HEARING ON SB 88

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

Proponents: Dr. Peter Blouke, Director
Montana Department of Commerce
Linda Reed, Senior Economic Development Advisor
Governor's Office
Alec Hansen, Montana League of Cities and Towns
Barbara Richards, Business Services, Inc.
Melissa Scianna, Double Tree, Inc.
Tim Burton, Chief Administrative Officer
Lewis and Clark County
Nick Clos, Montana Rural Water System
Bill Leonard, Midwest Assistance Program
Gordon Morris, Director
Montana Association of Counties
Kim Milburn, Director, Public Works
City of Helena
Dick King, Director, Bear Paw Development
Jeff Rupp, Director
Human Resource Development Council
Dan McCauley, Vice President, Damschen Associates
Bob Thomas, Chairman, Board of Housing
Maureen Rude, Director, Board of Housing
Gordon Booth, Mayor, Cascade, Montana

Opponents: None

Opening Statement by Sponsor:

SEN. THOMAS BECK, SD 28, DEER LODGE, distributed copies of information (EXHIBIT 1), and indicated that SB 88 addresses the Treasure State Endowment Program (TSEP), a program designed to help local governments make infrastructure projects affordable. He added that those projects include water systems, waste water treatment plants, sanitary sewer and storm drains, and bridges, and that local governments must match 50% of the grant funds.

He explained that applications for this grant are submitted to the Department of Commerce, where they are reviewed, the projects ranked, and a list of recommendations is prepared based upon statutory priorities. The Department of Commerce submits these recommendations to the Governor for review, who then submits the proposals to the Legislature, which makes a final determination regarding TSEP awards. He reported that, in 1995, thirty-two applications were submitted for a total of \$11.62 million, and that the Legislature approved 24 projects for a total of \$4.13 million. He added that, in the 1997 Biennium, 21 applications were submitted for a total of \$7.19 million, of which 15 were

approved for a total award of \$4.99 million and, in the 1999 Biennium, 40 applications have been submitted requesting a total of \$15.52 million, noting that there will only be approximately \$9.13 million in available funds, and that, at the present time, there are about 22 projects at the top of the priority list.

SEN. BECK explained that SB 88 will transfer the final approval of these grant awards from the Legislature to the Governor's office, so that these grants can be awarded on an annual basis. He pointed out that local governments have repeatedly expressed their desire to see this occur on an annual basis. He indicated that he was sure the Committee would have some questions regarding relinquishing the ability of the Legislature to make this final decision, stating that the criteria set up for the application of TSEP grants is almost just a rubber stamp process, adding that he spoke with **REP. ERNEST BERGSAGEL**, who indicated there are hardly ever any changes made in the recommendations by the Department.

SEN. BECK stated that their proposal is to handle the TSEP grant applications the same as Community Development Block Grants (CDBG), that the Legislature will be involved in making recommendations to the Governor, but the Governor will make the final decisions. He added that the criteria will be changed slightly, stating that they believe public health and safety is the number one criteria in applying for the grants. He pointed out that the information he distributed contains a list of the current priorities, and the changes implemented in SB 88.

He indicated that other people wished to testify, and he would reserve the right to close.

Proponents' Testimony:

Dr. Peter Blouke, Director, Montana Department of Commerce, said that he would like to emphasize that, throughout the history of the TSEP, the main concern of the local communities has been the fact that the program is structured on a two-year cycle, and creates difficulties in terms of coordinating other funding sources and their ability to work with the short building season. He added that there has been a tremendous amount of effort to change this to an annual cycle, and they recognize there will be controversy over this proposal that the Legislature relinquish ultimate approval of these grants, but felt that, given the recommendations from local governments, and the fact that the Legislature has, with very few exceptions, not changed any of the recommendations of the Department with regard to approval of these grants, plus the fact that the Department reviews the Community Development Block Grant Program, widely recognized as a fair and equitable allocation of those resources, all show that the Department does have a history of careful, fair review, and would certainly continue that same process with TSEP. He said that the Department is in strong support of this legislation, and

staff is available to answer any questions the Committee may have.

Linda Reed, Senior Economic Development Advisor, Governor's Office, reported that she is responsible for developing policies which encourage private sector investment in Montana and, ultimately, job creation. She pointed out that, as she travels through the state talking to expanding and relocating businesses, she is asked about reliable, predictably priced public services so that businesses can operate effectively and employee health and safety is assured. The Treasure State Endowment Program is designed to help communities ensure these vital services are affordable, and financial resources are available to address serious public health and safety issues. She said that community infrastructure is vitally important, and the Governor's office wants to make sure they are doing everything possible to help local governments successfully confront the challenges they face. Toward that end, a conference of community leaders was held last May to discuss what the State could do to make their jobs easier. She added that SB 88 is a result of those and other discussions.

Ms. Reed indicated that she doubts there would be disagreement regarding the need for necessary infrastructure in conjunction with affordable housing projects, and to reward communities which have implemented sound planning and management systems, or to reprioritize the financial need criteria, but that they realize there might be some controversy about the proposal to convert the program from a biennial, legislature-approved program to an annual, executive branch approval process. She stated that this recommendation is not about control; that it is about getting monies to communities more quickly, and that the result of such action will be better opportunities for matching with other federal programs, lower construction costs, and a public better served. She pointed out that both the Legislature and Executive Branches are charged with being good stewards of the public's money, which requires that they make sure funds like those in the Treasure State Endowment Program are spent as intended. She remarked that the Legislature very wisely has statutorily defined qualifying criteria so that objective ranking is possible, and have done such a good job that neither the Governor, nor the Legislature, has ever over-turned a recommendation from the Department of Commerce. She added that the stewardship role they play also requires them to maximize the value of these precious dollars, and the annual funding cycle will do that.

Alec Hansen, Representative, Montana League of Cities and Towns, stated that their organization, comprised of 128 municipal governments across the state, supports this bill. He remarked that someone once told him good timing is the secret of a happy life, and that is what this bill is about, timing. He indicated it has nothing to do with the Legislative process, that he has never received a complaint about Legislative review of Treasure State Endowment projects, that the discussions have been that it would work better and be more effective if these projects could

be approved on an annual cycle, that the money could be put into the projects and into people's pay envelopes on a better schedule. He added that they would be able to comply with regulatory guidelines, and it would be a much more effective and efficient program, noting that this is the issue. It is not about removing Legislative authority to approve these projects. He pointed out that the Legislature meets every two years, and the business of funding infrastructure projects and building private works across the state would be much more efficient on an annual cycle. He reiterated that the process is fair and does not leave a lot of room for error, that the Legislature seldom, if ever, reverses one of these decisions, adding that it is important to keep the Legislature involved, and it is a good idea that the Long Range Building Subcommittee have the opportunity to review and comment on grant proposals, and report to the Legislature, if any problems do develop. He said that he also thinks the changes recommended in the rating criteria are important, and he hopes the Committee will agree with the intent of the bill.

Barbara Richards, Business Services, Inc., read written testimony attached as (EXHIBIT 2).

Melissa Scianna, Double Tree Inc., stated that they are a community development consulting firm, and work with many small communities throughout the state. She pointed out that, by establishing an annual application cycle, TSEP funds will be easier to coordinate with other funding sources. She indicated that projects using TSEP funds are frequently delayed one construction season waiting for Legislative approval, and these delays can result in increased project costs due to increased construction costs, and an annual approval cycle would avoid those delays. She added that establishment of the statutory priority to encourage infrastructure for affordable housing will be a step towards meeting housing and development needs in many small communities, that lack of affordable housing is an obstacle to creating a healthy community because, without housing for workers, new businesses will not invest in a community and, with infrastructure in place, housing developers and business owners will find it more cost effective to come into a community.

She reported they are currently working on a joint local government project to create sixty units of elderly assisted-living housing in Red Lodge, but that the only site large enough is about a mile away from existing infrastructure. She indicated that TSEP funds, with the changes proposed by SB 88, would fit perfectly into the funding package for this project, that it would provide infrastructure to the area, and also open it up to light manufacturing businesses who have shown an interest in this area. She concluded by stating that Double Tree supports SB 88, that they feel the changes will make this program more effective for Montana communities.

Tim Burton, Chief Administrative Officer, Lewis & Clark County, stated that they support SB 88, but added that they feel the language in the bill, as presented, might be further clarified by stating that it encourages infrastructure construction. He distributed written material (**EXHIBITS 3 & 4**), indicating that Lewis & Clark County feels that bridge financing is vitally important. He explained that the information he provided details eligible projects under TSEP, and they would propose a set aside within the TSEP program specifically for bridge financing, which would be in line with CDBG, and other infrastructure programs. He noted that this could probably be handled by administrative rule within the Department.

Nick Clos, Montana Rural Water Systems, read written testimony attached as (**EXHIBIT 5**).

Bill Leonard, Midwest Assistance Program, reported that they work with small rural communities throughout a nine-state area, including Montana, and explained that small communities do not look for major infrastructure projects, that usually serious violations bring to light the need for infrastructure projects. He indicated that, once the decision is made to go forward with a project, they build momentum in going through the process but, once they get to the financial planning stage, that momentum is sometimes stifled because of delays in getting approval by the TSEP program, noting that, as has been stated earlier, it can take two to three years for that process to be completed. He remarked that momentum does not have a good shelf life, that some projects have, in fact, fizzled, only to be resurrected years later when the necessity resurfaces, but at a greater cost to the community. He then reported that Federal dollars have been returned because they were not used and that, in many cases, they weren't used because of delays in getting projects approved through the TSEP program. He pointed out that Federal funds must be allocated or they have to be returned, stating that it is a shame, in this state with its vast needs, that those dollars have to ever be sent back. He added that passing SB 88 will help alleviate that problem.

Gordon Morris, Director, Montana Association of Counties (MACo), stated that he is very pleased to stand before the Committee on behalf of his Board of Directors and their fifty-six member counties in support of SB 88. He reported that the history of this bill goes back to 1991, and it was supported by MACo then, as well. He remarked that he applauds the Legislature, the Governor and the Department of Commerce, adding that he thinks the management should be comparable to what is done in Community Development Block Grant Programs. He asked for the Committee's speedy consideration of this bill.

Kim Milburn, Director of Public Works, City of Helena, indicated that he thinks he speaks for most public works directors. He reported that most projects take two to three years in the planning stage, but that an application for Treasure State

Endowment Program financing can not be made simultaneously because of the requirement that a completed design be submitted with the application, and it is very difficult to coordinate that design window, which is usually a four to six-month process, with the TSEP application process on a two-year cycle. He pointed out that, effectively, this eliminates full consideration for about half of their projects, and an annual process would solve a lot of these problems. He added that, because he is involved with infrastructure for water, sewer, streets, and so forth, he hates to see it watered down with housing programs.

Dick King, Director, Bear Paw Development, distributed copies of written testimony (EXHIBIT 6). He remarked that they would like to express their appreciation to SEN. BECK, and to the Department of Administration, for putting this idea forward, adding that Bear Paw Development is, in essence, a tool for local governments who support their organization, and that changing the Treasure State Endowment Program to an annual funding cycle will be a very welcome improvement to a very important and valuable resource. He explained that it is extremely difficult for small communities to meet the challenge of managing a water or sewer system, complying with regulatory requirements, and to come up with financing to get the improvement done, while keeping it affordable. He indicated that Treasure State Endowment Program assistance is extremely helpful, especially to communities that are paying a lot of money for water and sewer systems and improvements, adding that rural communities are experiencing an opportunity for growth, that, for many of them, is their first opportunity, and a welcome change from years of disappointment and disillusionment. He cited the example of Highwood, which now has the opportunity to expand, but the infrastructure needs to be improved. He reported that, in 1995, when Choteau County joined Bear Paw Development, the Commissioners designated Highwood a priority, and they began with the water system, in anticipation of the highway being paved. He reported that the Highwood Improvement Association was formed, and a \$1.4 million package of improvements for Highwood has been established, including water distribution, water storage and waste water treatment, adding that, although everything can not be accomplished in two or three years, they do have a plan in place, that they have a unified water and sewer district, and they are taking action to meet their needs. He stated that the Treasure State Endowment Program is a critical resource, but that having a two-year funding cycle makes it extremely difficult to coordinate a reasonable and intelligent plan because they have to apply in June of one year for a final decision in April of the following year. He noted that it is very tough, especially on the rural communities.

Mr. King said that they support the changes in ranking criteria, pointing out that current ranking criteria can tend to award communities which have not taken care of their maintenance and operation needs, that there is a double priority in the first and second criteria that can give a higher ranking to a community that has basically ignored their problems, noting that he thinks

the Department of Commerce has done a wonderful job in trying to sort through that. He indicated that it makes perfect sense for the affordability issue to be ranked second because the Treasure State Endowment Program should help those communities that are truly needy, and only in an appropriate amount, that the balance should come from other sources, especially from the community itself. He then stated that they also support encouraging construction of affordable housing, that the financing of affordable housing remains extremely difficult but, if some Treasure State funding can be used to develop infrastructure for affordable housing, some jobs will be created but, more importantly, it will expand the tax base for rural communities.

{Tape: 1; Side: A; Approx. Time: 10:38 a.m.; Comments: End of Tape 1, Side A.}

Jeff Rupp, Director, Human Resource Development Council, reported they have been involved in affordable housing development for six years, and formed Montana's first community land trust in Bozeman. He explained that these are single-parent families with three to four children, with an average income of \$23,600 a year, and they have been priced out of the home ownership market in Bozeman, as well as most places in Western Montana. He stated that they support SB 88, and urged that the Committee do so, too.

Dan McCauley, Vice President, Damschen Associates, testified that he is in support of SB 88, and thinks opening up the cycle to an annual application process will benefit many of the communities, especially the smaller ones. He said that, if reapplication is required, some projects could be as much as five years out, and he thinks this could be set up very similar to the Community Development Block Grant Program, noting that he has worked with that program for over a decade, and it has worked great. He stated that the Department of Commerce is fair in their ranking, and very thorough, and he believes an annual cycle would improve the process of getting projects on line faster. He pointed out that the problems with infrastructure are real, and they are two-fold. He explained that, in many communities, the systems are old and beginning to fall apart, that they are undersized, and maintenance is continuous. In addition, he pointed out that councils, commissions and boards change, that they are often volunteers, particularly in smaller communities, and, as time goes on, if the project is not implemented, they lose some of those people, and the project is back-burnered. He indicated that, eventually, the project will be completed, but that it may come to a mandate, which is a no-win situation for everyone. He pointed out that it is better for the communities if the project can be up and going sooner, so that their problems are solved, their operation and maintenance costs are less and their rates are where they should be, and the community can plan for the future.

He indicated that a final benefit will be that the Department will see better applications submitted, explaining that, often,

in the hurry to meet the application deadlines, something will be thrown into the application because they know it will be another two or three years before anything will happen. He pointed out that the preliminary engineering is not ready, the financial information is not completed, that they may not have gone to the community to sell the program, and the applications probably are not as strong as they should be, adding that, with competition the way it is, the Department has to spend an immense amount of time sorting out the good applications. He concluded by saying that he is in support of SB 88.

Bob Thomas, Chairman, Board of Housing, announced that **REP. PAUL BANKHEAD**, who is also on the Board of Housing, is available, and that **Maureen Rude, Director, Board of Housing,** will be the Board's spokesperson.

Maureen Rude, Director, Board of Housing, reported that one of the things they have heard, as they travel around the state, is that there is a lack of infrastructure for housing in a lot of the communities. She explained this means that, anytime someone tries to develop housing, the cost goes up substantially; the streets, the sewers, the water is not there, and it all has to be put in as part of the development, which adds substantially to the cost of each individual unit. She said that the Board has been very frustrated at the rising cost of housing, that their lower interest rates simply cannot make up that difference anymore, and that they formed a working group to look at some of the issues they believe are related to the increased cost of housing, such as regulatory and infrastructure issues. She noted that they keep hearing that economic development can not happen without housing for people, pointing out that they, as the Board of Housing, hear that, as well. She pointed out that there is no state source of matching funds for grants from Federal housing programs and, in order for communities to apply for a housing grant, they have to have some kind of matching funds from local government. She explained that 25 percent of those matching funds can come from the Board of Housing through tax exempt bond sales, but there is still a need for other matching funds, and that is very important in order for them to use their Federal funds for affordable housing.

Gordon Booth, Mayor, Cascade, Montana, noted that he is sure the Committee is aware of the problems in Cascade, adding that he wholeheartedly supports SB 88, and appreciates the Committee's help and input. He said that he thinks it is a great step forward and, maybe by the year 2000, their little community will be brought up to date in compliance with EPA, adding that, with the Committee's knowledge and help, it will be done.

Questions From Committee Members and Responses:

SEN. DEL GAGE asked if these funds can be either a grant or loan.

Robb McCracken, Program Manager, Treasure State Endowment Program, responded yes, grant funds, or other eligible type of funding, also construction loans and preliminary engineering loans.

SEN. GAGE pointed out that several programs are funded by interest earnings from the Resource Indemnity Trust (RIT), that they are, by and large, grant requests and requests that go through the Long Range Building Program, and asked **Mr. McCracken** if he anticipates that people will apply for funding from both of those, and if it will bring more grant requests into those programs, or perhaps fewer grant requests.

Mr. McCracken explained that the Treasure State Endowment Program deals with water, sewer, solid waste, bridges and storm sewers, and the Resource Indemnity Trust deals with a different set of facilities and other types of eligible activities, and he is not sure there would be any real change in the types of projects they would have in either program, although he thinks there would be more projects getting into the program because of the annual cycle.

SEN. GAGE asked if funds from these programs are statutorily appropriated.

Mr. McCracken replied that the funding mechanism is set up in statute, that the Legislature reviews their budget requests, both for their administrative budget, and for grants and loans anticipated.

SEN. GAGE asked if they would still have to appropriate those funds on a two-year cycle.

Mr. McCracken stated that his understanding is that they would not change the current budget process in terms of how the request is made through Department of Commerce and the Governor's office, that they would have to project, as they currently do, what the funds might be two years ahead of time for the grants allowance and the administrative portion of the expenditures.

SEN. VIVIAN BROOKE pointed out that, in the proposed priority rankings, number one and two in current statute have been combined into number one in this bill. She explained that, now, compliance with State or Federal standards shares the same criteria priority ranking, and asked if, in the history of TSEP, there has ever been an application denied that had urgent or serious health or safety problems.

Mr. McCracken responded that they are required by statute to rank and review each application on the ten priorities, so that all projects are ranked on priority one and two under current statute. He stated that they have not recommended denial for very many projects, that, typically, those are projects where there is a technical problem which would make it imprudent to

spend money until the project could be better designed. He said that he could not think of a situation when they have recommended denial where there was a high health or safety threat, although it is a possibility if there are other flaws in the project, and they would have to look at two aspects of the evaluation, based on the statute's ten priorities, and determine if the applicant can use the grant or loan to make the project affordable.

CHAIRMAN DON HARGROVE asked **Mr. McCracken** what the source of funds for the Treasure State Endowment Program is.

Mr. McCracken reported that coal severance tax revenues are placed in a special account within the permanent trust called the Treasure State Endowment, and only the interest off of those earnings in the Treasure State Endowment are used, that they do not touch the principal.

CHAIRMAN HARGROVE asked if there is an appropriation for this, or if it is part of the Coal Tax Trust Fund.

Mr. McCracken pointed out that there is a separate statutory reference, which lays out all the mechanics of how that actually works.

CHAIRMAN HARGROVE asked **SEN. BECK** to comment on the philosophy and the possibility of a precedent concerning removing the Legislature from the immediate workings of this sort of a decision.

SEN. BECK said that he has given that some pretty serious thought, that he hates to see the Legislature lose some of its authority but, after investigating this particular grant program and the fact that the criteria is what really sets up these grants, changing to an annual cycle with the Governor making the final decision will expedite the grant process, and make it a much more workable program. He added that the program seems to be cumbersome at the present time, and he thinks this change would expedite the process, which will benefit local governments.

SEN. GAGE said that he assumes funding for this biennium from this program will already be allocated by the Long Range Building Program, and asked if, with an effective date of July 1, 1998, they would be looking at funds awarded after June 30, 1999.

Mr. McCracken responded that is what they anticipate at this point, that they need the lead time so applicants can put their projects together.

Closing by Sponsor:

SEN. BECK emphasized that this program does not fund the construction of housing, itself, that it is strictly for the infrastructure, pointing out that the criteria is very limited, that the funds can only be used for sewer, water, waste treatment

plants, bridges and those types of projects. He indicated that he hopes the Committee will look favorably on this bill, that he thinks it is part of what they are trying to do with State Government; to design state government so that the public can benefit in the quickest possible way. He said that he thinks it is cumbersome for local governments to have to wait ten months to learn the disposition of a grant application, when there is a health and safety problem that needs to be taken care of, and this bill will expedite that process.

SEN. GAGE asked SEN. BECK if he would have any objection to an amendment which would address grants for infrastructure for affordable housing.

SEN. BECK responded that he would like to discuss that with the Department and think about it, that he wants to leave that discretion open, and would prefer it be on the basis of the criteria with regard to safety and soundness, but assured SEN. GAGE he would consider the idea and get back to him.

{Tape: 1; Side: B; Approx. Time: 11:00 a.m.; Comments: At this point, there was a 10 minute recess.}

HEARING ON SB 153

Sponsor: SEN. LARRY BAER, SD 38, BIGFORK

Proponents: Rob Natelson, Montanans for Better Government
Arlette Randash, Eagle Forum
Laurie Koutnick, Christian Coalition
Kenneth Guy, Montanans for Better Government

Opponents: Cory Swanson, Helena
Christine Kaufman, Montana Human Rights Network
Don Judge, Montana AFL-CIO
Ted Lange, Northern Plains Resource Council
Anne Hedges, Montana Environmental Information Center

Opening Statement by Sponsor:

SEN. LARRY BAER, SD 38, BIGFORK, read from the bill "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved for the states respectively or to the people", announcing that this is the 10th Amendment to the United States Constitution created by the founding fathers to admonish a distinction that the states are not the colonies, and Washington, D.C. is not the king.

He stated that it seems modern federalism increasingly refuses to acknowledge this distinction, and indicated that the principal or enumerated powers granted to the Federal government by the Constitution are the interstate commerce power, the power to tax and spend, the national defense and war power, and the power to

enforce civil rights, and that other, lesser powers, include the coining of money, patents and copy rights, uniform bankruptcy code, the postal service, rules on federal elections, and powers of admiralty over maritime affairs, and that all others are reserved to the sovereign states. He indicated that the necessary and proper clause of the U.S. Constitution allows reasonable laws in other areas necessary to carry out the forgoing powers, that this area is where most of the abuse arises and many of the nation's leaders, as in Arizona, have declared that states' rights are virtually under siege, adding that Virginia's Governor George Allen feels "the Federal government is over-centralized, overburdensome, out of touch, too big, and out of reach of the people." He further stated that New Jersey's Governor, Michigan's Governor, as well as other governors and state legislators believe that the Federal government has overreached the authority originally intended by the founding fathers, and that **U.S. Supreme Court Justice Sandra Day O'Connor** has argued that "Congress may not conscript state governments as its agents", and that, in many instances, state governments have been commandeered as administrative arms of the Federal government.

SEN. BAER gave examples of intrusive, unfunded Federal mandates violating the 10th Amendment, citing the 55 mph speed limit, the Clean Air Act mandates, landfill regulations, range land reforms, wolf reintroduction, the Brady law, Goals 2000, outcome-based education, and immigration decisions that have become a nightmare for the border states. He indicated that, most recently, an exemplary of the terrific harm possible is a law prohibiting any person convicted of an act of domestic violence from possessing a firearm. He pointed out that any physical force or even the threat of using physical force, using a deadly weapon such as a knife, a club, an automobile, or a rolling pin, is a misdemeanor prohibiting possession of a firearm, that application is given to acts committed anytime prior to the enactments of this federal September 1996 law. He explained that, as a result, this could cost the jobs of thousands of law enforcement officers who would now be prohibited from possessing a firearm. He added that the Federal government inter-meddled to override a citizen-passed initiative in California, ending discrimination for prejudices affecting jobs, education and other areas of social inequality where civil rights are violated. He pointed out that, here, the Federal government violated one of the enumerated areas they are constitutionally entrusted to protect, civil rights, and that, without protection enforcement of the 10th Amendment, state governments are relatively helpless to resist these wrongful Federal intrusions and limitations of authority. He said that the common objective among governors and legislators across the country is to restore state sovereignty and standing in the Federal system, that the march is on across the country, adding that, in Colorado, Missouri, Arizona, and Hawaii, there have been legislative declarations of state sovereignty coupled with instructions to the Federal government to cease and desist mandates which are beyond the scope of constitutionally

designated powers. He indicated that other states have actually sued the Federal government to restore this essential constitutional balance, that these states include California, Florida, Texas, Missouri, Utah, South Carolina, Oklahoma, Michigan, as well as a courageous Montana sheriff who was protecting us against the wrongful unfunded Brady law, with no help from state government, even though Governor Racicot has joined with us in his public support for 10th Amendment states rights efforts. He reported that California Governor, Pete Wilson, exercised civil disobedience against the Motor Voter Law, stating "what you do is challenge something which you believe, in good faith, to be unconstitutional."

SEN. BAER stated that SB 153 is far less drastic than the action taken by other states, that it simply gives constitutional affirmation that our Executive and Legislative leaders may, not must, but may elect to refuse Federal mandates violating the 10th Amendment, to the detriment of Montanans, by Executive or Legislative action. He explained that it defines a procedural constitutional mechanism which can be utilized by way of the Governor or Legislature to defend our state's rights, that we will decide if a Federal mandate is in the best interests of Montanans and accept it, if beneficial, or reject it, if it is harmful or not in compliance with the 10th Amendment. He pointed out that a recent example of this bill's flexibility is **SEN. LINDA NELSON'S** excellent health care bill, SB 34, complying with an unfunded Federal mandate violating the 10th Amendment, perceivably, but one that Legislators chose to adopt for the best interests of the women of Montana. He declared that he is presenting SB 153 for the Committee's consideration as the messenger of bipartisan support across this nation to end the threat of current circumstances which are spiralling out of control, and quoted **James Madison**, who said, several hundred years ago, "it may safely be received as an axiom in our political system that the state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. The legislatures have better means of information that can discover the danger at a distance, and possessing all the organs of civil power and the confidence of the people, they can at once adopt a regular plan of opposition in which they can combine all the resources of the community". He concluded by saying that this is what this bill endeavors to do.

{Tape: 1; Side: B; Approx. Time: 11:10 a.m.; Comments: End of Tape 1, Side B.}

Proponents' Testimony:

Rob Natelson, Montanans for Better Government, read written testimony attached as (EXHIBIT 7).

Arlette Randash, Eagle Forum, read written testimony attached as (EXHIBIT 8).

Laurie Koutnick, Executive Director, Christian Coalition of Montana, reported that their organization spends a great deal of time encouraging the participation of people, who sometimes have been disenfranchised or discouraged in the political process, noting that she believes part of that discouragement is a result of burdensome Federal mandates. She related the example of a friend in northeastern Montana, explaining that a portion of that individual's land was designated as a reserve for the Black-footed Ferret, and can no longer be used for cattle. She added that people in environmental circles debate wolf introduction, that there are those who think this money is not spent wisely, or that this particular program should not be subsidized, and quoted **U.S. SEN. CONRAD BURNS**, who said "The wolves don't read signs, they don't know that they've left Yellowstone Park." She reported that her father, a shepherd and rancher, has suffered losses as a result of wolves attacking his sheep, that she realizes there are programs in place to recover those losses, but stated that it does not matter if it is 55 mph, or the Black-footed Ferret, we have all seen the intrusiveness, and the truth of the matter is, the Federal government can only be as strong as the states and local governments are. She indicated that she thinks we are at a juncture in time when people want to re-engage in government, but to make it their own, that they are tired of being ruled from afar and feel they know what is best for their situations and their communities. She encouraged the Committee to support **SEN. BAER'S** motion.

Kenneth Guy, Montanans for Better Government, reported that he rises in support of SB 153 for all of the reasons already expressed, noting that he does not have anything to add to the excellent presentations already made.

Opponents' Testimony:

Cory Swanson, Helena, stated that he agrees with most of the testimony, but drew the Committee's attention to lines 26-27 on page 1 of the bill, which is Section 2 of Article II, of the Constitution of the State of Montana, and states "The people have the exclusive rights of governing themselves as a free, sovereign, and independent state." He indicated that he understands we are all for a free state, but pointed out that we are not sovereign from the Union, itself, or from the laws of the United States Government, that we are sovereign from the rules and laws of other states, however, we are not an independent state. He said that he assumes that "the people" refers to the people of Montana but, if it does not, then he would propose that clarity would be something that should be adopted. He maintained that Montana does not conduct itself as an independent state from the United States of America because of the Constitution and the legal contract that Montana entered into in being adopted as a state under the Constitution, and with the other states of the Union. He read the second sentence, on page 1, lines 27-28, "They may alter or abolish the constitution and form of government whenever they deem it necessary," indicating that we

all assume that means the State Constitution, the state form of government, but that he thinks it would behoove us to insist on clarity in this section, considering the strong language of the rest of the bill, and we need to understand we are a free and sovereign state from the rule of other states, but we are subservient to the rule and the law of the Constitution.

Christine Kaufman, Montana Human Rights Network, clarified that the Human Rights Network is not the Human Rights Commission, which is an agency of the State government, that they are a grass-roots group composed of twelve local chapters with over 1500 members in Montana, and that they try to help communities respond to bigotry, intolerance, discrimination and other threats to democratic principles. She stated that they stand opposed to SB 153, and asked the Committee to consider the following issues. She pointed out that Article 6 of the Constitution states "This Constitution, the laws of the United States shall be made in pursuant thereof and all treaties made shall be the supreme law of the land, and the judges of every state shall be bound thereby," and indicated that a Constitutional Amendment declaring that Montana does not need to follow a Federal law would be challenged in court. She then referred to the history of the states' rights movement, noting that **SEN. BAER** testified that civil rights is a duty relegated to the Federal government, and pointed out that it has been in the area of civil rights that the states' rights argument has often reared its head, that the cry for states' rights is often no more than a thinly veiled stand against the abolition of slavery, during Civil War times and, in the 1950's, against racial integration, that it was the argument put forth by those who wanted to keep Black Americans out of schools, hotels, restaurants, voting booths, housing and jobs. She reported that white citizens' councils were set up across the South to preserve segregation, and quoted a 1956 report of the Mississippi Citizens Council, "Segregation represents the freedom to choose one's associates. It represents Americanism, state sovereignty, the survival of the white race", noting that this is the legacy of the states' rights movement, that she thinks it is a legitimate topic for political debate and has been debated many times throughout our country. She stated that the Articles of Confederation were much more about state sovereignty, but were later rejected in favor of the Constitution as not being an adequate document to govern the United States of America. She indicated that the history of civil rights advancement has been one of Federal action, often over and against state inaction or state failure to act, relating that, in 1954, the Governor of Alabama used the Doctrine of States Rights to prevent integration of the University of Alabama, despite a Federal mandate prohibiting segregation of schools.

Ms. Kaufman pointed out that Federal mandates freed slaves, integrated schools, protects workers and protects the environment, and asked what exactly is going to be thrown out if a Constitutional Amendment like this is adopted. She noted that the modern states rights movement is being championed by people

such as Charles Duke, a State Senator from Colorado, and groups such as the Freeman and the militia, reporting that Mr. Duke is a leader in the Common Law Court Movement, which would establish a parallel court system that disregards the rulings of legitimate courts, and has stated that the 13th Amendment, the amendment that freed the slaves, is invalid. She added that the Freeman and the militia believe the 14th Amendment, which guarantees equal protection and equal citizenship under the law, grants a second class of citizenship for people of color, and that they do not have the same rights as white people. She reiterated that she thinks it is a legitimate debate, but that, throughout history, people asserting the states' rights argument have lost, time and time again, adding that she hopes they lose again in this debate. She referred to **SEN. BAER's** testimony about what other states are doing, the various law suits and speeches by prominent people about states' rights, indicating that is true, that there is debate out there, but stated that she does not think anyone has amended their constitution to put this kind of language in. She urged the Committee to consider these thoughts and to reject SB 153.

Don Judge, Montana AFL-CIO, acknowledged several people in the room, noting that they have been on opposite sides of some issues and on the same side on others, and then stated that he is not quite the liberal people would make him out to be, but he is here to defend something he thinks is very important to all of us.

He then indicated that he is reminded of the words "One nation, under God, indivisible, with liberty and justice for all", when he thinks about this legislation, because this legislation sets up a mechanism for a separation of that nation, pitting state against state, worker against worker, and pitting our environment and quality of life against the environment and quality of life that other states have.

He referred to the Hannaford Nuclear Facility in Washington, which the Federal Government has determined is not safe, and pointed out that, when Mount St. Helens erupted, we had to live with the dust from that eruption. He asked, if the State of Washington determines the Federal government has no right to tell them a nuclear facility is not safe, and goes ahead and operates it, with the prevailing winds heading into Montana, whose rights are being threatened, whose lives are being threatened, whose quality of life is being threatened, explaining that it is ours, because we agreed that states have the right to determine those issues and have, in effect, ceded our ability and right to live a clean and healthy life to the State of Washington. He referred to the Missouri River issue, and asked how many debates have there been over Montana's right to regulate the water on that river, pointing out that, when we pollute the Missouri River, which flows into the Mississippi River, it goes into Mississippi, Louisiana, and other states where the citizens depend on a Federal law for a clean and healthful environment, for their health and safety, and for their future.

Mr. Judge referred to **SEN. BAER's** testimony regarding Federal laws that apply to Montana, which may not be constitutional and which Montana could reject, and cited some of the programs provided by the Federal government; student loan reforms, the Food Stamp program, the National Voter Registration Act, the National Child Protection Act, the United States Grain Standards Act, Cable Television Consumer Protection Act, the College Work Study Program, Drug Free Schools and Community Act, education for all handicapped children, the Clean Air Act, the Super Fund, the Federal Water Pollution Control Act, the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Older Americans Act, the Black Lung Benefit Act, the Davis-Bacon Act of 1981, the Disabled Veterans Outreach, the Fair Labor Standards Act of 1938, the Veterans Education Assistance Act, the National School Lunch Act, the Supplemental Security Income for the Aged, Blind, and Disabled, the Carl D. Perkins Vocational and Applied Technology Education Act, Federal Unemployment Tax, Job Training Partnership Act, Contract Work Hours and Safety Standards, Occupational Safety and Health Act, and the Federal Mine Safety and Health Act of 1977, and noted those are just a few. He indicated that there may be disagreement over whether or not Montana should be subject to those Acts, but he thinks there are a couple of things about this resolution that there would not be disagreement with. He indicated that he does not think Montana should stand out among other states by saying we are going to pick and choose what we want to accept as our responsibility, and ignore those things we do not want to accept. He noted that he thinks we all know the Federal government can be just as vindictive as state and local governments, if they disagree with your position, and that, if we do not comply with a certain act, we may be denied certain Federal loans for the assurance and guarantees on those very things covered in SB 88, the improvement of water quality, sewer systems, and others, where Federal dollars are used as matching funds. He then pointed out that this resolution would take the Legislature out of it, that the Legislature would have the right, in the form of a bill or joint resolution, to complain about Federal mandates, but the authority has been given to the Governor to pick and choose, noting that this language is on page 2, line 6 of the bill, "or executive order", that the Governor will determine, not the Legislature, which acts, rules and regulations of the Federal government to either follow or not follow.

Mr. Judge indicated that he understands the problem with Federal mandates, that we have great problems with devolution, with giving authority back to the states, but asked the Committee to look at what is going on in Europe right now. He pointed out that, while the United States is devolving into a group of separate and independent states which comprise America, in Western Europe, and even in parts of Eastern Europe, countries have declared they can no longer afford to battle, compete, and challenge each other, that they have to work together and talk about common goals, common regulations, common currency, and common good. He added that they have discovered, in that portion

of the world, being separate does not work, that joining together is going to work, pointing out that we are going in just the opposite direction. He encouraged the Committee not to send a signal to the Federal government that Montana is ready, by its own decision of executive order, to secede from the United States of America, and instead to let the rest of the world know we will continue to use the processes that are currently available in the law to challenge unfair regulations through the courts, if necessary, or by raising the issues through resolutions, as has been done in the past, or through our elected representatives to the U. S. Congress, but not to change the Montana Constitution, or send a signal that our Governor, by executive order, can pick and choose those regulations he deems necessary to follow. He urged the Committee to oppose SB 153.

Ted Lange, Northern Plains Resource Council, reported that they are in opposition to SB 153. He pointed out that, last week, this Committee considered SB 170, another bill to place a constitutional amendment on the ballot in the next election, and that one of the issues raised in that debate was the cost of having these things on the ballot, the cost to local governments of printing ballots, and the technicalities of these issues. He indicated that he would question whether Montana taxpayers' money should be spent to put something on the ballot which is clearly unconstitutional, noting that Article 6 of the Montana Constitution states "we believe that is clearly a power delegated to the Federal government", and that the 10th Amendment says "powers not delegated to the United States by the Constitution may reside with the states and the people." He added that Article 6 clearly delegates the laws of the land, and it seems clear that is a power delegated to the Federal government. He stated that, clearly, this is unconstitutional, and asked why spend taxpayers' money putting this on the ballot.

Mr. Lange noted that, right now, it is not a clear-cut question of right and wrong, that, when looking at Federal mandates, there is no question the Federal government oversteps its bounds, that there are problems with Federal mandates, however, it seems clear from the Constitution that this is meant to be dealt with through our elected representatives to the U. S. Congress, and through the courts. He indicated that we often want laws regarding public health, property protection, or environmental laws that are stricter than Federal laws but, at the same time, we have this devolution trend, and state legislatures, including Montana's, which pass laws saying "no stricter than Federal." He stated that the Northern Plains Resource Council has generally opposed these laws, that they believe states can move more quickly to protect property, public health and the environment, and that, sometimes, states need to pass laws that are stricter than Federal laws. He reported that one issue they worked on was property rights and water protection from coal mining, that Montana acted before the Federal government, and passed laws that protected the property and water rights of ranchers. He added that they were in coalition with other groups across the country,

in coal mining areas dealing with these same questions, and a lot of those other groups ran into a brick wall when they went to their state government, that big business had too much power, and they could not get the laws they needed to protect their property rights and water. He indicated that those groups joined with Northern Plains Resource Council, and passed Federal coal laws, which is still the only protection in many of those states. He noted that they would not want to see those states throwing out those Federal laws, which are the only protection a lot of their citizens have from the depredations of big business.

He concluded by saying that, often, the Federal government has resources to conduct very expensive and detailed studies which are necessary to determine what will protect public health, and what is not necessary, in order to decide where those regulations should be, that states do not often have the resources to do that, and they think a lot of Federal environmental protection and public health protection laws are essential, and should not be thrown out. He urged the Committee to vote no on this bill.

Anne Hedges, Montana Environmental Information Center, stated that this country is very different than it was two hundred years ago, that two hundred years ago there were no large petroleum refineries, no large mines, and there was not a lot of large industry which causes a lot of the pollution we have today. She reported that, in response, the Federal government has had to become more complex in dealing with more complex issues, that it has to have broader authority to protect citizens of this country, one nation, adding that we are one nation, that it protects the citizens of Montana as well as the citizens of Vermont. She explained that, for example, air pollution does not know state boundaries, that it travels and, because the EPA has set air-quality standards, all citizens are protected. She pointed out that Ohio factories are poisoning people in the upper northeast corner of the United States, and those people would have had no recourse for that pollution coming from another state, that we need the ability to protect ourselves, and the Constitution has been interpreted to give the government the authority to protect the citizens.

She referred the Committee to page 1, line 17, which talks about court cases, and indicated that the Court has already said that Congress may not simply commandeer the legislative and regulatory processes of states; the Court has addressed this issue, and this is not an issue that is going unaddressed. She then referred to the next line which says "Whereas, a number of previous, pending, or proposed directives ... have violated and may further violate the United States Constitution", and asked who makes that determination. She stated that, as seen in this state in the past couple of years, and in other states, people interpret laws very differently, that they interpret the authority of the Federal government very differently, and she sees no reason to include this unnecessary and inflammatory language in the Montana Constitution. She noted that she is not saying we should not

have states rights, but that she is saying this is not the mechanism to tell the Federal government that we think it has exceeded its authority.

{Tape: 2; Side: A; Approx. Time: 11:41 a.m.; Comments: End of Tape 2, Side A. At this point, the tape malfunctioned, and the following is a brief summary of notes from the proceedings.}

Questions From Committee Members and Responses:

SEN. FRED THOMAS asked SEN. BAER to clarify his comment regarding the 10th Amendment.

SEN. BAER responded that the 10th Amendment already exists, that this is not a new law, nor does this bill change that Amendment. He pointed out that this is simply a mechanism to enforce it, and this bill is not an affront to the Federal government.

CHAIRMAN HARGROVE commented that it has been suggested this is a waste of motion because it is unconstitutional.

SEN. BAER replied that this is identical to a bill presented in the last session, that it has gone through the process and was reviewed by **Greg Petesch, Legislative Services Division**. He reiterated that this is simply a mechanism.

CHAIRMAN HARGROVE asked **Mr. Judge**, if this bill were passed and resulted in a Constitutional Amendment, would that affect things in his opinion. He further asked if we would be able to not do something the Federal government wanted us to do.

Mr. Judge responded that he would presume we would not have to comply with clean air and water laws.

SEN. BROOKE referred to page 2, lines 5 and 6, and asked SEN. BAER, if this results in a Constitutional Amendment, and a bill passes during a legislative session, would Montana be able to reject a Federal mandate.

SEN. BAER responded that our right to reject a Federal mandate already exists, explaining that this is only creating a mechanism and will allow the Legislature to decide. He added that, yes, a bill could be introduced to reject a Federal mandate.

SEN. BROOKE asked if, within the budget process, if someone decided it was not in Montana's best interests to receive a Federal block grant, could they introduce a bill to reject that, under this bill.

SEN. BAER replied that we are empowered to do that, now.

SEN. BROOKE asked what is the point of this bill.

SEN. BAER reiterated that this is a mechanism, that it will define, in the Constitution, a procedural mechanism. He noted that the Governor and the Legislature know they are empowered, that the 10th Amendment already exists, and this will provide the mechanism.

SEN. BROOKE asked if the Attorney General would be included in this.

SEN. BAER said that he believes that is true.

SEN. BROOKE pointed out that the Constitution usually goes to broad powers and statements in its language, and that this is fairly specific.

SEN. BAER explained that this is defined so as to make it simpler and will designate what to do.

SEN. GAGE asked if this rejection of Federal mandates can be accomplished by the initiative process as well.

SEN. BAER indicated that, if it is the opinion of the citizens and the Legislature does not take action, the people will, adding that he would prefer the Legislature do it.

SEN. GAGE asked if he would be opposed to inserting "initiative" into the language.

SEN. BAER stated that he would not be opposed.

SEN. GAGE asked if it should have an immediate effective date.

SEN. BAER indicated he would like to see it implemented as soon as possible.

Closing by Sponsor:

SEN. BAER indicated that he is trying to support and enforce the Constitution by way of the 10th Amendment, that both levels of government deserve the trust and respect of the citizens as well as each other.

ADJOURNMENT

Adjournment: 11:59 a.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary

DH/MM