

MINUTES

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

Call to Order: By CHAIRMAN DON HARGROVE, on February 6, 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 220, 2/3/97; SB 238, 2/3/97  
Executive Action: None

HEARING ON SB 238

Sponsor: SEN. GERRY DEVLIN, SD 2, TERRY

Proponents: James Kembel, Montana Technical Council  
Beth Yount, Montana Association of Realtors

Opponents: None

Informational

Testimony: Anna Miller, Department of Natural Resources and  
Conservation

Opening Statement by Sponsor:

SEN. GERRY DEVLIN, SD 2, TERRY, announced that he brings before  
the Committee SB 238, which has to do with agencies, noting that  
it only affects State agencies. He explained that agencies are  
charging too much in fees, building up a surplus, more than what

they need to operate on. He reported that the Department of Natural Resources and Conservation was charging a county in his district, and other counties as well, on particulates from the county's gravel crusher, adding that their entire bill was \$42. He indicated that they used to pay a minimum of \$250, which was not too bad, but that, a year ago, the Department raised that to a \$300 minimum. He pointed out that it is not much money, but it was the principle of it that "riled" him, and he decided to introduce this bill to have some leverage, and in the hope that agencies and departments will change their attitude regarding increasing the minimum all the time, noting that he is sure it does not cost them that much to administer those programs.

**SEN. DEVLIN** then reported that there is a similar bill in the House which will affect local governments as well as State government. He added that there will be amendments proposed to SB 238 which will address two-year fees, and asked that the Committee take their time in considering SB 238.

**Proponents' Testimony:**

**James Kembel, Montana Technical Council**, reported that the Council is made up of engineers, architects, land surveyors and landscape architects, adding that he also represents the City of Billings, who is not interested in this particular legislation, but they are working on a subcommittee on HB 240, which is similar. He stated that their concern with this legislation is that, since the engineers and surveyors board collects fees only every two years, they are not sure how this would impact them, and indicated that they would like to work on it, if they could.

**Beth Yount, Montana Association of Realtors**, urged the Committee's support of SB 238.

**Informational Testimony:**

**Anna Miller, Department of Natural Resources**, stated that she is not sure whether she is an opponent or proponent, but that she would like to provide some information. She reported that the Department of Natural Resources does not have any jurisdiction on gravel piles, that she believes **SEN. DEVLIN** was referring to the Department of Environmental Quality. She added that the Department of Natural Resources does, however, have a program in which they give loans to water and sewer districts, and communities, cities, towns, and counties in Montana for wastewater and water systems. She stated that this bill would affect that program, and distributed copies of a list of State Wastewater Revolving Fund Loans, (**EXHIBIT 1**) attached. She explained that these loans are 20-year agreements, that they go through a hearings process, or they have to vote the debt in order to take on the loan, and the Department guarantees their interest rate at 4% or less, so there is no effect on their water and sewer rates. She stated that the Department would like to introduce amendments which would leave that interest rate in

place, so it would not go up and down, they would not have to hold hearings, and contracts would not have to be adjusted, adding that they feel it is more fair if they borrow the money at a certain interest, and give them that fee. She noted that this bill would affect what they are currently doing, and offered to answer questions from the Committee. She reiterated that this is the amendment they would like to put in this bill, so that these programs would not have to adhere to those fee adjustments.

Questions From Committee Members and Responses:

SEN. FRED THOMAS asked SEN. DEVLIN how long he wants the Committee to delay action on the bill.

SEN. DEVLIN responded that he would hope to let the other bill progress, and see what happens, that, evidently, it is in the subcommittee now. He added that, in time, he will try to contact the members of the Committee and the Committee Chair.

SEN. THOMAS asked if the other bill is more comprehensive.

SEN. DEVLIN replied yes, that it covers local government, and this just covers State, that the other one covers local, counties and cities.

SEN. THOMAS asked SEN. DEVLIN if this would include any Department of Commerce boards.

SEN. DEVLIN responded that he thinks it would.

SEN. THOMAS asked if the fiscal note could be more significant than this is.

SEN. DEVLIN replied that he thinks it should cover boards and, if it does not, the Committee could put them in with an amendment. He added that he thought they would be in there, but that they are not listed in the fiscal note.

SEN. VIVIAN BROOKE indicated that they are listed on the back of the fiscal note.

SEN. THOMAS pointed out that there are probably another 50 boards who are probably running surpluses.

SEN. DEVLIN noted that there are a lot of boards in the Department of Commerce.

SEN. BROOKE referred to page 3, regarding reports required, and asked SEN. DEVLIN if that is something they would normally do, or if it will be an additional expense for the departments to report in writing to the Legislative Finance Committee.

**SEN. DEVLIN** answered that he would think they would have to make a report to that interim committee, although it does not say how extensive that report would have to be.

**SEN. BROOKE** asked if it will be an extra expense for the Department.

**SEN. DEVLIN** responded that he is not sure.

**SEN. BROOKE** then referred to Section 5, retroactive applicability, and asked **SEN. DEVLIN** how far back that will go.

**SEN. DEVLIN** replied that it is within the meaning of 1-2-109, and that **David Niss** might be able to answer that, that he drafted the bill, noting that there must be a reason for that.

**Mr. Niss** stated that it depends on what is in the fund. He explained that, if the agency collected the money five years ago, but have spent it, it no longer applies, but, if the agency collected the money twenty years ago, and it's still in the fund, it applies.

**SEN. BROOKE** asked **SEN. DEVLIN** if that would be included in the report that is envisioned.

**SEN. DEVLIN** responded that he would hope they would come forward with the report to the Revenue Oversight Committee outlining what they have in reserves, what they are charging, and what their fund balance was two years previous to that date, and make a determination as to whether they should reduce their fees, or not.

**CHAIRMAN DON HARGROVE** asked **Ms. Miller**, where, in the bill, it says that interest would be affected.

**Ms. Miller** pointed out that, when they make a loan with a community, they charge what they call an "all-inclusive rate" of 4%, which is broken down into several items; 2.25% goes to pay the State's G.O. bonds, .75% is an administrative fee, which goes to pay the salaries of the financial officers and the people at the DEQ who do the engineering review on the project, and there is a 1% charge in the loan loss reserve, which has to do with a guarantee against defaults. She reiterated that the 4% includes those things, which is why it would be affected by this bill and, if they do not adopt the amendments to leave that in place, as they go through the loan, if money goes up, they will have to go back to the cities and towns to get that adjusted, and the Department does not feel that is fair for them, that they have entered into an agreement and set their user rates.

**SEN. THOMAS** asked **Ms. Miller** if she could have those amendments prepared. **Ms. Miller** responded that she believes **Mr. Niss** has the information to get those prepared.

SEN. THOMAS requested that Mr. Niss prepare the amendments to include boards. Mr. Niss noted that the boards are in the bill, to the extent that any funds they use satisfy the definitions in the bill that are not included in the exemptions. He reiterated that the Title 37 licensing boards are in the bill.

Closing by Sponsor:

SEN. DEVLIN indicated that he does not want to damage any loan program that DNRC has, and apologized for using a misnomer in referring to the Department of Environmental Quality. He stated that he does feel the need for somebody to keep an eye on the various entities of government that may get a little over-zealous about the fees they charge, and that is all this bill does. He added that he would like to keep an eye on the other bill that is coming through the House, which addresses local governments also.

CHAIRMAN HARGROVE asked SEN. DEVLIN, if his purpose is taken care of by HB 240, would he have an objection to, and SEN. DEVLIN interrupted, saying he would have no objection to them doing what they have to do, but asked that it not be sent out Do Not Pass.

HEARING ON SB 220

Sponsor: SEN. CHARLES SWYSGOOD, SD 17, DILLON

Proponents: REP. DICK KNOX, HD 93, WINIFRED  
REP. ED GRADY, HD 55, CANYON CREEK  
Don Snow, Montana Consensus Council Board  
Jack Stultz, City Commissioner, Helena  
Liz Jones, Rancher, Big Hole Watershed Committee  
Matt Quinn, Helena  
Charles Harris, Big Hole Watershed Commission  
Alan Rollo, Great Falls  
Ed Hall, Chairman, Jefferson County Planning Board  
John Grande, Rancher and Land Manager, Martinsdale  
Garth Haugland, Beaverhead County Consensus Council  
John Bloomquist, Attorney, Montana Stockgrowers Association  
Cassie Cady, Rancher, Musselshell  
SEN. KEN MESAROS, SD 25, CASCADE

Opponents: Barb Beck, President, Beck Consulting  
Chuck Sperry, Independent Consultant

Informational

Testimony: Dennis Havig, District Ranger, U.S. Forest Service

Opening Statement by Sponsor:

SEN. CHARLES SWYSGOOD, SD 17, DILLON, reported that SB 220 is an act providing that the Montana Consensus Council become a part of statute. He stated that the Montana Consensus Council was

originally established by executive order, in 1994, and is governed by a board of directors representing a wide variety of viewpoints across Montana. He reported that, during the past three years, the Consensus Council has helped Montanans build understanding and agreement on land access to State school trust lands, in-stream flow legislation, the State Superfund Program, and land-use planning in Helena, Jefferson County and Beaverhead County. He stated that these projects demonstrate that consensus processes are an efficient, cost-effective way to build creative ideas, and popular and enduring solutions to community problems. He added that the Consensus Council has also improved the ability of Montanans to solve problems through consensus by hosting a series of educational workshops that were funded, in the past, one-third from the State General Fund, one-third from fee for services, and one-third by private contributions. He reported that the funding for the Consensus Council is already in the Governor's Executive Budget, noting that he understands that the subcommittee has approved funding for the continuation of this.

**SEN. SWYSGOOD** reported that, when the Consensus Council was first put in place, he was skeptical, but that he became involved, in his area, with the Big Hole Watershed group, an outcropping of the efforts of the Montana Consensus Council. He indicated that, for the past year and a half, while he has not been able to attend all of the meetings, that group was put together to look at the Department's ruling that the Big Hole River was a chronically de-watered stream, which created a little bit of concern, to say the least, among a lot of the people in that area. He reported that the Consensus Council got all types of groups together, sportsmen, ranchers, and others who are involved with the use of the Big Hole River and, in that ensuing period of time, they sat down at the table with people who he has had problems with, in the past, and he now has come to learn that, sometimes, when you sit down and talk, and try to work things out together, it comes out for the betterment of all. He added that, while they are still working on this and addressing the issues that arise around the Big Hole River, the talks are ongoing, and they are coming to some positive solutions. He indicated that others wish to speak on the bill, and he will close later, and answer any questions.

*{Tape: 1; Side: A; Approx. Time: 10:24 a.m.; Comments: None.}*

**Proponents' Testimony:**

**REP. DICK KNOX, HD 93, WINIFRED**, reported that his name is on the bill, that he has seen the Consensus Council work, and has been part of the process in two different areas. He indicated that he was involved with the in-stream flow issue, which was one of the most contentious issues and that, in the 1991 and 1993 sessions, it was a huge issue, noting that it was the largest hearing he has ever attended. He added that he chaired the hearing in 1993 on the sale of water, and reported that it created an enormous division because, if you sell water, you permanently sever the

water from the land and there are a lot of long-term consequences. He reiterated that it was a very, very divisive issue between the agricultural and some of the environmental segments, that the Consensus Council convened a group of people representing all aspects of this issue, and worked up a bill to lease water, noting that the bill is now in place, and is working for in-stream flow. He added that he worked with the Consensus Council on that, that it was his privilege to carry that bill before the House, and it passed through the system and is now law. He stated that he saw it work there, on a very divisive issue, which was solved, perhaps not to everybody's total satisfaction, but it was resolved, and that issue has been put to rest.

He reported that the other area he had direct experience was, perhaps, one of the more contentious issues that any of them will ever deal with, which was the Endangered Species Act. He indicated that he and **REP. EMILY SWANSON** co-chaired a group of people from all over the State of Montana, including an equal number of bi-partisan Legislators from both sides, an equal number of industry representatives, and an equal number of environmental people. He noted that they worked for a considerable period of time, about a year, with the assistance of the Consensus Council. He stated that, when you try to get a diverse group of people together, you will never get any agreements, and that seems to be conventional wisdom. He then reported that they came up with a series of concrete revisions to the Act that this extremely diverse group of people agreed upon and, subsequently, he and **REP. SWANSON** were invited to appear before a subcommittee in the U.S. Senate, noting that, unfortunately, he can not report that there has been any change in the Endangered Species Act, however, they did present their material to a number of influential Senators, who have a definite interest in it. He added that the Endangered Species Act has not been acted upon, but that he knows the work they did will be considered whenever that process truly gets under way.

**REP. KNOX** stated that he is concerned in the natural resource area, and has worked in that area for many years. He reported that he sees constant conflict in the natural resource area between the various sides, and that the Consensus Council has the ability to work in some of those areas, although not all of them. He cautioned the Committee not to get the idea that they will be able to have success in every area, pointing out that some areas are not, perhaps, suited, but indicated that there are definitely some situations where the Consensus Council can serve an extremely useful purpose.

**REP. ED GRADY, HD 55, CANYON CREEK**, reported that he, like the sponsor, had hesitations about this program, but he will tell the Committee what he has seen them do, that they have really performed, and he thinks it is time they were made more a part of our government, which is what he thinks this bill does. He reported that the subcommittee he chairs passed their budget, and

they did not ask for any more General Fund dollars. He explained that, when the program was first started, it was the intent that they could probably sever themselves from General Fund dollars, but they have not been able to do that, and he does not think they should. He indicated that some of the issues the Council gets involved in affects everyone in the State, and he thinks taxpayer dollars should go to support this.

**REP. GRADY** reported that the Council was involved in the pre-release center issue in Helena, which was a touchy situation, and they are now involved in the issue of the foundation, which has been literally torn apart, between the Department of Corrections and the people of the State. He pointed out that this is a state-wide issue, in that more pre-release centers will have to be established throughout the State to avoid sending inmates to expensive facilities out-of-state, and he thinks the Council has their work cut out for them. He added that they have also been involved in land planning issues, which is another touchy issue in Helena.

He indicated that there have been comments that the Council is competing with the private sector, and the Committee will hear testimony later, but that he does not feel they are, since most of their work is contracted out to the private sector. He added that he thinks a government agency should be in the leadership role, which is mainly what they do. He said that he hopes the Committee sees fit to pass this legislation.

**Don Snow, Montana Consensus Council Board**, reported that he was appointed to the Consensus Council by **Governor Racicot**, as one of the original members, and it has been a very good project. He indicated he would like to emphasize two points; first, the nature of the public-private partnership they are trying to create and, second, the question of how the Consensus Council is helping to create a good and, in some cases, better policy in natural resources in Montana, and other issues. He stated that he was appointed to the Council by the Governor because he, like several people in Montana, practices consensus, to some degree, as a professional, that he runs a private, non-profit organization called Northern Lights Institute, which has been involved in these kinds of questions and methods for about twelve years. He stated that he thinks the Consensus Council has arrived at a perspicacious time in trying to reformulate natural resource policy, and improve it as they go along, and he thinks the tide is rising for consensus processes, nationwide. He reported that the Governor has just returned from the National Governor's Conference, and that his remarks about natural resource policy emphasize consensus processes, adding that the Governor has been good to his word in terms of creating the organization, and then standing back and letting the organization do its work. He then stated that, as a practitioner, he does not fear the Consensus Council in some way destroying the potential for private practitioners, whether they are non-profit organizations, such as he is, or in their own businesses, because



there is plenty of work for everyone. He remarked that the tide rises, and it lifts all the ships simultaneously.

**Mr. Snow** then noted that the public-private partnership is interesting, that what they are creating in Montana is unique, not only in Montana, but in the country. He reported that they have scoured to try to find someone who's been on the path ahead of them, and they really haven't found anyone. He indicated that they are trying to create an organization that, on the one hand, is recognized by State government, by the Governor, by the Legislature and, on the other hand, operates as well in the private arena, that it receives funds from both public and private sources, and the arena in which it operates touches on the interests of both public and private, which is exactly what they have done, and that is now built into the structure of the organization. He stated that they think it is appropriate to ask for this legislation at this time because the public-private partnership is a clear reflection of the very nature of the work the Consensus Council does, and they would like the Council to reflect, in structure, in focus, a direct correspondence to the work it does, which is really about uniting the interests and efforts of public service actors, State and Federal agencies, and local agencies of government, with the private sector, non-profit organizations, businesses, agriculture, and so forth, that it seems to be the right idea at the right time. He added that the statutory creation would help them guarantee that the Consensus Council goes beyond the existing Governor. He pointed out that they are created, now, by executive order, that **Marc Racicot** is a strong proponent of the Council and, as he stated earlier, has been good to his word, but their question, as the Board, is what happens when **Governor Racicot** is no longer Governor. He remarked that, that which was created by executive order could be un-created just as readily.

He then referred to the question of operating in the policy area. He indicated that he wants to stress that the Council is not about the business of simply trying to resolve disputes between, for example, two parties who would otherwise go to court. He pointed out that this is a familiar tried-and-true way of performing alternative dispute resolution, but really is not what the Council is about, or designed to do, nor is it an organization that simply facilitates public meetings or provides public forums. He explained that it has really been in the arena of trying to help Montanans come together and forge better natural resource policy, that often this involves resolving existing disputes, and then moving on to agreements that the people can come up with on their own. He stated that he thinks the kind of consensus building they are trying to foster at the Council, not only in natural resource issues, but in the other arenas in which they have begun to work, is really, at its root, about governing ourselves, and governing better. He indicated that consensus is one more tool to help people, including elected officials, to make better policy decisions, and asked why are they sometimes better decisions, or why does he think they are

better? He answered that because, often, with consensus processes that work well, there is a "buy-in" of most or all of the affected parties, before they go on to the next level of, perhaps, trying to get some kind of statutory or rule-making change. He said that, in his view, consensus, in the way it has been created and practiced by the Council, is an excellent way to bring citizens together so they can participate more fully in the kind of democracy that **Thomas Jefferson** described. He concluded by saying that he is really pleased to be here, and thanked the Committee for the opportunity to testify. **Mr. Snow** submitted a written statement, (**EXHIBIT 2**) attached.

**Jack Stultz, City Commissioner, Helena**, stated that he speaks in favor of SB 220, noting that they have had experience with the Consensus Council, in a couple of areas. He indicated that they have an on-going subdivision review process, a Consensus Committee, and have had a lot of development in Helena, recently, involving subdivisions. He reported that the review process for bringing a subdivision to a decision-making point before the City Commission has always been very contentious in all communities, that it has been contentious here in Helena, and has had its problems.

He indicated that the idea of addressing that kind of contention within a community through a formal consensus-based process, with a group of widely diverse but involved members on that committee, came to their attention by a participant in the Consensus Council's educational forum. He said that they were specifically dealing with how to revise their subdivision review process, which was very contentious, and the fact that an official entity, with official status endorsed by the Governor, was urging this kind of approach to these kinds of questions was important to the people involved in the controversy in realizing that this is an alternative that can work, should work, and is something they should try. He reported that the process has been very successful, that they have made specific progress on subdivision review, and changing the way they go about it, in a way that is acceptable to surveyors, contractors, City staff, and even to neighborhood groups participating in the process. He indicated that the latest area they were involved in with the Consensus Council was on the issue of the pre-release center, noting that the Department of Corrections has been instructed, by the Legislature, to identify locations for pre-release centers. He pointed out that there are some in the State, which came through interest, within the community, to invite a pre-release center into their community. He pointed out that there is now an instruction from the Legislature for the corrections process to look at pre-release centers around the State, noting that he thinks it is appropriate for communities to take the responsibility for reintroducing people into their community, but that it is a highly controversial issue. He reported that Helena was the first to be approached by the Department of Corrections with the pre-release center idea, and it has been very contentious, that it is the type of issue that does not work well

under the traditional simple public hearing and decision-making process. He pointed out that it is the kind of thing where people do need to get involved, at the very outset, that they have to work their way through the issue in a way that they feel their points of view have been thoroughly listened to, and actually worked through. He added that this is an issue that will be seen across the State, from community to community, and having an organization like the Consensus Council, formally in place, to work through those kinds of issues, he thinks is very important. He noted that he thinks it is appropriate that it be maintained as a statutory entity, and urged the Committee's support of the bill.

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

**Liz Jones, Rancher, Big Hole Watershed Committee**, reported that she is also a member of the Beaverhead County Planning Board, that she has had the opportunity to work with the Consensus Council, and has a lot of praise for them. She indicated that, a couple of years ago, the Big Hole Watershed Committee was started with a group of ranchers, to see what they could do for the river. She added that they knew they had to get other groups involved to make it work, but there is sometimes controversy between ranchers and other groups, so they decided they needed a facilitator. She reported that, at her suggestion, they asked the Consensus Council, who then came down and met with the Committee, and they have been working with them since. She reiterated that she has nothing but praise for them, and supports SB 220, because they have put a very diverse group of people together, caused them to open up and gain trust, knowledge and education for one another, and she thinks it is working very well. She added that they have also done a lot for Beaverhead County.

**Matt Quinn, Helena**, noted that he is from Carroll College, but is speaking on his own behalf in favor of SB 220. He indicated that one aspect of the bill is the education and training aspect, noting that he has been a participant and observant of several seminars hosted at Carroll College, and has seen that the Consensus Council is able to bring people together to learn the basic skills of government, participation in open discussion, open dialogue, and to give people the sense that they are not victims of government but, rather, the vehicles of government; that they are the ones who make policy work, if they can come together and talk openly and with information. He urged the Committee to pass SB 220, adding that he supports its existence.

**Charles Harris, Big Hole Watershed Committee**, reported that, on a part-time basis, he is also Director of the Big Hole Foundation, a small, private foundation located in Butte, which acts in support of projects on the river, and that his full-time activity is owner and president of a management consulting firm. He indicated that he would like to make two philosophical points,

and two practical points, speaking in favor of this proposed legislation, and the first of the philosophical points is that the Consensus Council is doing something very special in the Big Hole, which is creating community among people who, before, had a very antagonistic relationship toward one another and, now, as a result of the work of the Consensus Council, understands one another's interests to the point that they have shared approaches to solving problems. He added that the second philosophical point is that this creates self-governance, that they do not stand opposed to government, and do not look to government to try and promote their narrow interests, but they govern themselves, and would welcome the opportunity to continue that development, noting that he believes the Consensus Council can aid that.

He stated that the two practical points are that, in creating the Watershed Council, there is no one group within that Watershed Council, as it is currently formed, who could or should fund the activity, noting that, if one of them did, they would somehow own that. He added that the second point is that he thinks, practically speaking, as groups form, like the Watershed Council, they may become more formalized but, in the early stages, they are not formal and, as a result, do not operate with budgets and do not have the monies that a firm like his might look to, to see compensation for their work, noting that may come in time, and the Watershed Council may look to the Consensus Council to bring other firms in but, at this point in their development, he sees the Consensus Council as a reflection of Montana's government saying to the State that we do intend to create community, where there was once a great deal of conflict.

**Alan Rollo, Great Falls,** stated that he supports SB 220, and reported that, over the last three years, he has been involved with the Consensus Council in this process for the Montana Wildlife Federation, primarily on the in-stream flow issue, which the Committee has already heard about. He indicated that this process, at first, is very difficult to understand, because it's an unknown process and people are unsure what it is all about but, as it moves forward, they can see that it is the best process to utilize at this time. He reported that, for years, people have fought and argued over the many issues that are out there today, and now they see teamwork, actually people working together, as earlier discussed. He indicated that, as mentioned earlier, it will not solve everything, but it does get people together to think and resolve the issues that are out there. He added that he looks at this as a way of solving the issues, and saving money and time for everyone involved, and he would appreciate the Committee's support of this bill.

**Ed Hall, Chairman, Jefferson County Planning Board,** indicated that he will give another example, slightly different than those the Committee has already heard, about how the Consensus process worked in Jefferson County. He reported that Jefferson County, just south of Helena, has been experiencing a lot of growth lately, and a lot of change. He indicated that they have had

contentious issues with hazardous waste burning and cement kilns, noting that the Committee may remember that from a few sessions ago, and the community was fairly well fractured. He added, on top of that, the Commissioners asked him to deal with the "Z" word, zoning, which, as the Committee knows, some people consider taking, others will bring guns to meetings, that they knew it would be contentious. He reported that the Planning Board asked the Consensus Council to assist them in this particular project and, at their first meetings, there were representatives from Ash Grove, from Montanans for a Healthy Future, from commerce, from landholders, from the farmers and ranchers, and mining interests in the area, and, at their first meetings, almost no one thought that the process would work. He reported that, at the end of the process, when they were testifying before the Commissioners on the zoning proposal, to a person, they all testified "When I started this, I said it wouldn't work. It worked." He indicated that he thinks that, in itself, speaks well for the process, adding that Jefferson County is very close to zoning on the north end, they got through it in a fashion that was emotional, but not out of control, that people were well-behaved and the issues were discussed in a fashion which made sense, and was logical. He added that, in the end, he thinks the community on the north end drew closer from all of that, and what he thinks the Committee should find valuable is not that this particular Consensus Council and its staff can do a good job, that the real issue is that they can institutionalize it, so that Montana can continue to do a good job in an era when any old farmstead can become a compound, or any old abode can become a bomber's house. He stated that we need to do things which can foster consensus and working together, and the value, in addition, is that this was not a solution forced down to them by Uncle Sam, it was not a solution forced down to them by Uncle Marc, that it came from the people and they came together, that not everybody won, it is not a win-win, it's not a "I win, you lose", it's more like "Here's what I can live with and here's what you can live with, and we can get on with business." He added that Ash Grove came away from that very happy, Montanans for a Healthy Future came away from the zoning issue very happy, and the process worked. He said that he would appreciate the Committee's support of this bill.

**John Grande, Rancher and Land Manager, Martinsdale,** reported that he is also President of Castle Mountain Livestock Association, and Director of the Montana Stockgrowers Association. He stated that he thinks passage of this bill will send a message that the Legislature recognizes the value of using consensus processes to supplement other processes for building policy and, hopefully, as a substitute for some of the more divisive avenues that we pursue in achieving public policy. He indicated that their experience with the Consensus Council is in the Castle Mountains working group, that landowners and Forest Service permittees have spent over six years working with the Forest Service in developing an environmental impact statement. He stated that they wanted someone who could help them work with groups like **Mr. Rollo's,**

and others, to achieve some consensus to have their voices heard more clearly by the Forest Service. He reported that they looked at several different avenues, including some private people, and the Consensus Council fit their needs the best for several reasons. He stated that, if the Consensus Council is competing with private industry, he does not see it that way, and reported that, in their situation, some of the people they were working with would have been unable or unwilling to fund private people, and that, if the ranchers had taken on that task, it would have been unfair and, secondly, if they hired and paid for a private firm, any position of being non-partisan and neutral would have gone out the window. He indicated that they really liked the approach the Consensus Council took, not just in coming in and trying to facilitate meetings, but trying to talk to all concerned parties, and do a situation assessment, that this brought not only Consensus Council personnel up to speed, but it clarified some of the issues, and those who have been involved in it for five years saw some things in a different light.

He referred again to the issue of competition with the private sector, and asked the Committee to keep in mind that, as it has been pointed out, less than a third of the Consensus Council budget comes from General Fund revenues and that, in many cases, the participants can not work with private people. He indicated that the third reason he supports the Consensus Council comes out of personal frustration that, in a situation like theirs, working with government entities, particularly the Federal government, they can get pretty frustrated because they feel they are spending their time and their money working in a process, noting that he does not like to infer they are in a battle, but that, in a sense, they are fighting against a government entity that is fighting back against them, using their tax dollars, and they get frustrated being involved in a fight where they are funding both sides of the battle. He stated that, if it is appropriate for a government to be in that position, he thinks it certainly is appropriate for a government branch to be in the position of trying to resolve these types of issues. He thanked the Committee for the opportunity to be here, adding that he hopes they will pass SB 220.

**Garth Haugland, Beaverhead County Commissioner**, stated that he is in support of SB 220, and indicated that Beaverhead County has used the Consensus Council more than anyone else in the State, noting that they probably have used more of their money, really. He indicated that he also sits on the Big Hole Watershed Committee as a local government representative, that, in effect, he represents four different counties that border the Big Hole, and it has been a very contentious issue to deal with. He reported that this group has given some cohesiveness to this, that they do not spend every night arguing over fish, who should catch fish, who should have water and who should not have water, and this process has opened his eyes that they can do things in a better manner. He added that the Consensus Council is assisting Beaverhead County in finally getting some input into Federal land

management plans that affect the citizens of Beaverhead County, noting that Federal and State government own roughly 70% of Beaverhead County. He indicated that, whether it is a grazing management plan, or a timber management plan, it affects the citizens of the County and, in the past, this has not been a consideration in these Federal plans. He reported that they are working through a process, with the Consensus Council, through a community forum, to give input into these plans. He stated that the Governor has done an excellent in funding this, but that he has the same fears that others do that, when this Governor leaves office, it is possible this entity could dissolve, adding that he would strongly support, and that all three of the Commissioners strongly support legislatively empowering this.

**John Bloomquist, Attorney, Montana Stockgrowers Association,** stated that, as an attorney, he should probably stand up in opposition to this bill because he can think of at least three situations, maybe four, that are going to court. He reported that he has been involved in four of the processes, one on the in-stream flow leasing legislation, which **REP. KNOX** carried, and which he thinks was a very successful endeavor for both sides. He indicated that he was involved in the endangered species discussion, that it was a very divisive issue and he does not think they came to complete agreement, but there was a forum provided to make the attempt, and he thinks it was a valuable experience. He further indicated that he was involved in the State Land Recreational Access situation, which has been successfully resolved as a result of two sides, who were at war over a particular issue, coming together, sitting down and discussing some very difficult concerns. He added that, right now, they are working on an issue which is very divisive in Montana, that he is participating in the discussion on the wilderness issue, and if there is a way that issue could be resolved through the Consensus process. He pointed out that he has been involved as a participant in the nuts and bolts of the consensus process, and he thinks the most important thing about this bill is that there does need to be a forum, and the Consensus Council is that forum. He stated that he agrees with previous testimony about the public-private relationship, that he thinks, if it was privately funded, and completely privately funded, the Consensus Council would not be able to serve the role that it does. He reported that, in one instance with Forest Service litigation they are involved in, a consensus process was recommended, and a firm in Colorado was suggested, which is privately funded, but they did not think that was the appropriate way to go, that there was no trust in the entity or the forum that would conduct the process. He urged the Committee's support.

**Cassie Cady, Rancher, Musselshell,** stated that she is most concerned, as a rancher, pointing out that, as the Committee knows, the ranching community has to become more and more efficient in their business. She indicated that, as a rancher, she hates the thought of adding more government to the system,

but that she hates even more the waste of time and resources incurred by appeals of litigation that may be avoided by a consensus building process. She added that consensus building is a valuable means of solving conflicts, that it uses communication, not the courts, to work towards solutions, and does so at the local level. She stated that one of the most valuable services inherent in such a process is holding the participants accountable for what they say and what they agree to, and, in doing so, this allows the State of Montana and its citizens the chance to effect positive changes in Federal government activities. She pointed out that there are other ways of attempting such positive changes, including Section 8, CRM, and the private resources, and so forth, but that she feels that is as it should be, that a variety of consensus building methods should be available so that citizens have the flexibility to choose what will work best in their particular situation. She stated that, for these reasons, she urges the Committee to support SB 220.

**SEN. KEN MESAROS, SD 25, CASCADE**, pointed out that he signed on this bill, and reported that he has witnessed the results of the consensus process. He indicated that it has been highly effective, noting that it is not going to work 100% of the time, but they do have the ability to bring in divergent groups, and sit them down at one table to discuss the issues. He reiterated that they have an excellent track record, whether in a natural resource area, urban or rural, that they have the ability to address these very contentious issues, and have done so very effectively. He stated that he thinks it is responsible to pass this legislation to create it, statutorily, and insure that this process continues into the future. He remarked that, when we have a good program going, let's keep it going.

Additional written testimony from **Steve Luebeck, Trout Unlimited (EXHIBIT 3)** and from **D. D. Dowden, Dowden/Bergkamp, (EXHIBIT 4)** are attached.

**Opponents' Testimony:**

**Barb Beck, President, Beck Consulting**, read written testimony, (EXHIBIT 5) attached. She offered written testimony from two other practitioners, **Dennis Phillippi, Natural Resource Options, Inc. (EXHIBITS 6)**, and **Norman Lavery, Ph.D., Common Quest Mediation, Inc. (EXHIBIT 7)**, attached.

**Chuck Sperry, Independent Consultant**, read written testimony, (EXHIBIT 8) attached.

{Tape: 1; Side: B; Approx. Time: 11:14 a.m.; Comments: End of Tape 1, Side B.}

**Mr. Sperry** offered written testimony from **Roy H. Andes, Missoula, (EXHIBIT 9)** attached. He indicated the testimony is regarding a community in Harrisonburg, Virginia, which apparently started a



public dispute resolution center about 15 years ago and, according to **Mr. Andes**, the private mediation sector in Harrisonburg has virtually disappeared, it no longer exists.

**Mr. Sperry** continued reading written testimony.

Additional written testimony from **Eileen Shore, Helena** (EXHIBIT 10) is attached.

Informational Testimony:

**Dennis Havig, District Ranger, Wisdom Ranger District, Beaverhead-Deer Lodge National Forest**, stated that he is appearing at the request of the Montana Consensus Council, and has been asked to provide the Committee a public land manager's perspective on the work of the Council in Beaverhead County. He reported that, almost two years ago, they asked **Matt McKinney, Director, Montana Consensus Council**, to assist them, as land management agencies at the local, state and federal levels, and the communities in Beaverhead County, to improve their communication and work on problem solving. He indicated that **Mr. McKinney** provided a number of suggestions and, eventually, came to Beaverhead County to help them out with some work in the community. He reported that, out of those early discussions, the group now known as the Beaverhead Community Forum was developed, and the Forum has worked on a variety of topics, including Federal Land Management decisions and affordable housing, and that, recently, they facilitated a discussion between the livestock industry and some national environmental groups. He indicated that these early discussions stem from their desire to involve all the agencies and the County Commissioners in problem-solving, and they realize they couldn't deal with the problems in Beaverhead County without all the parties being involved in the discussions. He pointed out that Federal and State decisions often affect local decisions, and local decisions affect National Forests, and other Federal lands. He stated that, as Federal Public Land Managers, it is difficult, at times, to provide the leadership in getting these groups together, noting that, frankly, some people do not see it as his role, as a District Ranger, or their role as the Forest Service, and other people, unfortunately, find they can't trust them, and do not feel the Forest Service should be doing it and, perhaps, think that they are biased. He reported that the Montana Consensus Council was able to come into Beaverhead County, as previously testified, and effectively take on a leadership role, noting that he thinks they were viewed in Beaverhead County as a neutral party, and they assisted in proving this communication, fostering problem-solving. He added that he thinks the trust in Beaverhead County is growing, that communication has improved, and he thinks that, at all levels of government in Beaverhead County, they are probably making better decisions, noting that, at this point, their successes are modest, but he believes that the people involved feel good about what they are doing, and he thinks they have hope for the future. He asked if they could have done this

without the help of the Montana Consensus Council, stating that he does not know if they will ever know the answer to that, but that he does know that people still have diverse opinions, they are still impassioned about their opinions, but he thinks there is a willingness to listen and understand the interests of others.

Questions From Committee Members and Responses:

**SEN. BROOKE** indicated that it has been stated, quite thoroughly, that there is a resource of private money within the Council, and the argument was that it is better to have a public-private mix. She asked **Mr. McKinney** to give the Committee a report of what the sources of private money were, and the amounts.

**Mr. McKinney** responded that the subcommittee that oversees their budget approved a budget for the upcoming biennium of \$225,000 per year, of which \$66,000 will be General Fund money. He indicated that represents no increase in the General Fund to the Consensus Council over the past biennium. He stated that approximately 50% of the funding for this past fiscal year, and what they are anticipating in the upcoming biennium, will come through private foundations, including the Hewlett Foundation, which is based out of San Francisco, the Northwest Area Foundation, based out of St. Paul, Minnesota, and two or three smaller foundations within the State, that they are more family oriented. He reported that approximately 20% of the funding in the past fiscal year, as well as what they are anticipating for the upcoming biennium, would come through fees for services.

**SEN. BROOKE** asked **Mr. McKinney** what the families' names are.

**Mr. McKinney** replied there is a local one called the Family Foundation, Art Ortenberg and Liz Claiborne, that the MPC EnTech Foundation, which is connected to the Montana Power Company, has provided some funding, and the U.S. Forest Service provided a grant, a couple of years ago, to do some work. He indicated that he does not have a list of all those with him, but he would be happy to provide that information. He noted that he thinks that is in their Biennial Report.

**SEN. BROOKE** pointed out that, in testimony, there is an impressive array of work they have done, but that she has been concerned about the emphasis on natural resources, noting that it is in the bill, too, and asked, within the structure of the Board and the Consensus Council itself, how these decisions are made, or if the Board is composed of people who have more interest in natural resources, say, than human resources, or any other kind of resources in the State where there are conflicts. She further asked if that is the pivot point they focus on.

**Mr. McKinney** reported that, coming out of the gate in creating the Consensus Council, there was a real need to focus on natural resource issues, and that seemed to be the defining moment to

create the Consensus Council, but that, over the past three years, they have had the opportunity to begin to experience some demand for services in more of the human service area, for instance, the issue in Helena of siting a pre-release center whereby they helped citizens and leaders better understand what their options are and how to create a consensus building forum. He added that, three years ago, they also worked with a group of attorneys to create a dispute resolution program for the State Supreme Court and, recently, they were approached by Legislators seeking some input and advice on whether or not they would have an interest in doing something on Medicare and Medicaid during this next biennium. He noted that they have not committed to anything, but stated that he thinks there is clearly a need, and some opportunities to move beyond natural resources, and they are certainly open to that, but that, to some degree, it is an issue of resources and demand by citizens and leaders to use these services in those other public policy arenas.

**SEN. BROOKE** pointed out that it took some effort on **Mr. McKinney's** part to bring this bill before the Committee, and asked if he found a conflict in his time and energy, and expenditures, to develop this bill to make this a permanent fixture within State government.

**Mr. McKinney** responded that the bill is at the request of their Board of Directors, and the Board is composed of a diversity of citizens from across the State. He stated that they did all the work, that it required very little of his time, or that of his staff person. He added that they had to work with **Mr. Niss** in making sure the bill was drafted per the request of the Board of Directors but that, by and large, this is a project and a recommendation from the Board of Directors.

**SEN. BROOKE** referred to page 3, line 2, regarding the Montana Consensus Council Board of Directors' powers and, pointing out that they are given the power to appoint an Executive Director, she asked **SEN. SWYSGOOD** if the Board would go through any Equal Opportunity Employment practices, and put out an RFP for that Director.

**SEN. SWYSGOOD** said that he thinks that question would be better asked of one of the Board members, adding that he would hope that they would abide by that.

**SEN. BROOKE** asked if there is a Board member in attendance. **SEN. SWYSGOOD** indicated **Mr. Snow**.

**Mr. Snow** asked **SEN. BROOKE** to repeat the question, which she did. He replied that he does not recall that this question has come up in their Board meetings, but that, with statutory creation and the things that implies, they would probably go through the best procedure they could follow. He stated that, speaking from the Board's point of view, statutory creation helps to hold in place the Council as it is but, at the same time, to further extend the

public-private partnership idea. He added that they are also creating the 501(c)(3) non-profit entity, which will require a separate hiring of staff, at some point. He indicated that his guess is that they would probably discuss those two questions, more or less, at the same time, being careful of that which would come out of the State hiring procedure, and that which would come out of the 501(c)(3), which would be, as he understands it, separate from State, and that he would presume they would go through a proper hiring procedure.

**SEN. THOMAS** referred to Section 5 of the bill, regarding the exemptions, and asked **Mr. McKinney** what these exemptions are for, and if this is so the Consensus Council can not be involved in those domains.

**Mr. McKinney** answered that he believes, and perhaps **Mr. Niss** could confirm, that Section 5 is a list of current positions within Montana State government that are exempt from the State Classification Personnel System. He stated that his recollection, in terms of why the Director of the Consensus Council might fit on this list, is simply an issue of both funding, in that a significant portion of the funding for the Consensus Council comes through private sources, and also as a way of maintaining additional impartiality and objectivity for the organization.

**SEN. THOMAS** noted that he would take that up with **Mr. Niss** at some point. He then asked why there should be a little branch of government that would compete with the private sector.

**Mr. McKinney** stated that it seems to him, listening to testimony and reflecting on the past three years of their activities, and conversations with their Board of Directors, that it basically boils down to a question of whether, as a matter of public policy, the State of Montana would like to promote the use of consensus processes as a way to supplement existing forums for making public decisions. He added that it is not meant to replace any of those systems, judicial, executive, legislative, or any of those systems, but merely provides a supplemental forum in which, in certain circumstances, public policy and public disputes might be resolved and moved forward. He indicated that, in terms of the issue of competing with the private sector, they currently work with several members in the private sector, that there is no way they could accomplish the amount of work that they do, if they did not. He reported that the Consensus Council staff currently consists of two full-time State employees, one of which is completely funded through private sources, and three additional individuals in the private sector, noting that they went through open, competitive processes to hire them. He explained that one of these people works, more or less, full-time providing consensus building services, a second one provides communication and education services, and the third one is actually an accounting firm that manages their books. He reported that they have also worked with two or three other

individuals on a one-time basis, consistent with State law which allows any agency to enter into a contract up to \$5,000 to provide certain services, and that these individuals helped them provide different educational forums, and design and manage consensus building projects, adding that these individuals sought them out in terms of a relationship. He indicated that they have adopted an executive policy, and distributed packages of material to the Committee (**EXHIBITS 11-15**) attached, and indicated that he thinks this speaks to their attempt, over the past three years, to define their relationship with their private sector colleagues. He referred to the first item, and described it as an executive policy that was reviewed by members on the Consensus Round Table, referred to in testimony, which basically indicates if anyone has an idea, a project, or a proposal that they think the Consensus Council could help them move forward in terms of promoting consensus processes, by all means bring it to them, noting that is how the two or three individuals they worked with on a one-time basis came to pass.

**SEN. THOMAS** asked if, for instance in the Beaverhead, which is obviously an outstanding example of success, this is something that the private sector could not have done.

**Mr. McKinney** responded that he does not know how the Montana Consensus Council competed with the private sector and, listening to the testimony of the representative from the U.S. Forest Service, he does not know if it is something that the private sector could have provided. He reported that, initially, they provided advice and consultation, and created a forum within which people from that particular community could come together.

**SEN. THOMAS** indicated that, if **Mr. McKinney** does not know, he would like to ask someone from the private sector. He asked **Ms. Beck** to respond to that question.

**Ms. Beck** indicated that, if the question is could the private sector have provide those facilitation services, the answer is yes.

**SEN. DELWYN GAGE** asked **Mr. McKinney** if their budget comes through the Governor's budget.

**Mr. McKinney** replied yes, it does, that it comes through the Office of the Governor.

**SEN. GAGE** then asked if the subcommittee has heard the Governor's budget.

**Mr. McKinney** responded yes, that they just took action and approved it two days ago.

**SEN. GAGE** asked if all of the facilitating they have done, as far as consensus building, has been as a result of requests, or have

they seen things they thought they could lend the Consensus Council's services to, and asked if they could help.

**Mr. McKinney** answered that, in some cases, they have reached out in situations such as in-stream flows, and also in the case of the wilderness issue, noting that both started with very small, private conversations with individuals affected by those issues, where they talked about the possibility of creating a forum within which they might have a conversation, but that, by and large, they respond to requests from individuals. He added that, if the Committee would allow him, he would like to make a distinction between whether or not the type of services they are providing are facilitation-meditation services. He pointed out that they do not see themselves as merely providing facilitation and meditation services, that this is really not the principal purpose of the Montana Consensus Council. He stated that the primary function of the Council is to provide this forum and these opportunities for people to come together to create a common understanding of the issue, and then to move forward in terms of whether or not they would like to engage in a consensus process and, if so, how, and, if so, would they like to have somebody manage that process, whether it is a facilitator, a mediator, or whatever it might be. He indicated that they never enter into a process assuming that the Consensus Council is going to continue as a manager of that process, either as a facilitator or a mediator, that this decision is ultimately up to the participants.

**SEN. GAGE** noted that **Mr. McKinney** has indicated some of their revenue comes from fees, and asked how those fees are set.

**Mr. McKinney** reported that they have a fee-for-service policy, which he passed out to the Committee earlier (**EXHIBIT 10**).

**SEN. GAGE** stated that he assumes, regardless of whether this bill passes or not, the \$225,000 appropriation will be used.

**Mr. McKinney** indicated that he is not sure what the question is.

**SEN. GAGE** indicated that he assumes the Consensus Council will continue, and will use the \$225,000 a year budget, whether this bill passes or not.

**Mr. McKinney** replied that, whether this bill passes or not, it is up to the Governor whether he would like to continue to operate the Consensus Council under an executive order.

**SEN. GAGE** asked if **Mr. McKinney** knows whether he plans to.

**Mr. McKinney** answered that, as **Mr. Snow** indicated, the Governor has been 100% supportive and, in fact, was hoping to be here today to testify in favor of the bill, but he had to go to another meeting.

**SEN. GAGE** indicated that it appears to him they would be well advised to put a July 1st effective date on the bill, if it passes.

**SEN. MESAROS** asked **Mr. McKinney** to briefly comment on the amount of requests they receive for action by the Consensus Council relative to the time and resources they have available.

**Mr. McKinney** indicated that the easiest and quickest way to do that is to refer the Committee to the Biennial Report (**EXHIBIT 13**) that lists approximately 50-70 public and private organizations which have requested information and assistance over the past two years from Consensus Council.

**SEN. MESAROS** asked if they have to highly screen the processes that they choose every year.

**Mr. McKinney** answered that is correct. He added that another handout he distributed to the Committee (**EXHIBIT 10**) was an Executive Policy on Selecting and Prioritizing Projects. He explained that they use that, and try to be very consistent, and try to select projects that have compelling public interest. He added that some of the other material distributed to the Committee is information on how the Consensus Council does refer cases to the private sector. He stated that they have resisted recommendations by several individuals to serve as a clearing house for so-called "qualified" facilitators or mediators, and have co-published, with the State Bar of Montana, a Directory of Facilitators and Mediators (**EXHIBIT 11**), and they have also put together a consumer guide (**EXHIBIT 12**) to help consumers of these processes and of these services make informed decisions about the people and the organizations they hire.

**SEN. MESAROS** asked if, in their selection process, it is a safe assumption that the processes they enter into are closely associated with public policy, and have a direct link to legislative follow-up.

**Mr. McKinney** responded that he would say that a significant portion of the projects entered into have a direct bearing on state-wide public policy and the legislative process.

**CHAIRMAN HARGROVE** asked if, by putting this into statute, there is any chance they are creating a monster that will grow and grow. Noting the very fact of its value and use, he remarked that, in Montana, the things they always used to shoot each other over are natural resource issues, that some people think a cheap funeral is better than hiring a consultant. He indicated that he wonders if the current method might be better at containing this, and asked **Mr. McKinney** to comment, subjectively.

**Mr. McKinney** answered that his sense is that there will continue to be a growing demand for these type of processes as a way to supplement other forums for making public decisions and resolving

public disputes. He added that, in terms of the Consensus Council, he thinks that the way in which it is structured, and the way in which the proposal before the Committee is structured, noting that this was a discussion they had with the Board of Directors over a period of eighteen months, is a built-in limitation to how large the Consensus Council will grow, because of their reliance on partnership with people in the private sector. He added that they want to maintain as much flexibility and sustainability of the organization as possible, and the Board believes that the way to do that is to maintain a small core-staff, and utilize the services of the private sector, as needed.

**CHAIRMAN HARGROVE** indicated that he is not sure if they have a standard way of doing things, if there are times when they hire consultant firms, and other times when they hire individual consultants, and if there are people on long-term contracts or short-term contracts, noting that he suspects it's a combination. He asked **Mr. McKinney** to explain how they do that and, further, if the people who are not too wild about the competition are people who they use, or can use.

**Mr. McKinney** responded that anyone who can provide these services within the context of the Consensus Council is somebody that, down the road, they might find cause to have a partnership with. He explained that, three years ago, they put out an open, competitive RFP, that 10-12 individuals submitted proposals and, out of that, they entered into a contract with one individual. He added that it is a one-year, renewable contract, and the contract has been renewed twice. Regarding utilizing the services of other private sector providers, he reported they utilized the services of two or three other people who came to the Council, presented their ideas and asked if it would fit within the mission of the Consensus Council, and if they have the resources and the time to do it, pointing out that those individuals took the initiative to define the idea and define the project, and the Consensus Council, in those situations, became a vehicle to further promote the use of these processes. He noted that he suspects they will continue to operate that way, more by choice than by accident.

**CHAIRMAN HARGROVE** asked if all of the "point people" are contracted.

**Mr. McKinney** noted that this question came up in the budget hearing, and indicated that they been involved in twelve projects over the past few years, six of which they utilized the services of a private sector individual, so it is roughly half.

**CHAIRMAN HARGROVE** asked **Mr. Sperry** to comment about his opportunities to participate in the process, either through a direct liaison or a bid process, or whatever.

**Mr. Sperry** responded that the only opportunity that he had, very clearly and directly, was the opportunity to compete for the



contract, which he believes is still in force a number of years later. He added that he was one of the finalist, but was not selected, although he was comfortable with that because he bid so low that he might have done himself a disservice. He indicated that, beyond that, he does remember a telephone conversation with **Mr. McKinney** who suggested that he put together a proposal on an idea they were kicking around, but that he did not follow through, noting that he takes responsibility for that. He added that, a number of times, he has heard **Mr. McKinney** talk about a significant backlog of work, and indicated that one of the things he would like from the Council is, when that happens, noting that he understands the Board of Directors has some concerns about doing referrals because of the possibility it could create the impression they are serving a regulatory function, making them legally vulnerable in case they do something negligent, and he understands the risk, but, if they can not refer directly, would it be possible for them to be informed of the backlog and, perhaps, get some names in an impartial way so that they could reach out. He added that the Council has the advantage of extraordinarily high visibility, of the stature of the Governor's Office, and they don't have that, and can not afford that kind of marketing. He stated that he fully understands **Mr. McKinney's** point that this is a much more expansive concept than simply being a facilitator or a mediator, that it is much more complex than that, but he has lead and designed those kinds of processes and, he is not perfect, but he does think the private sector can provide that service.

*{Tape: 2; Side: A; Approx. Time: 11:55 a.m.; Comments: End of Tape 2, Side A.}*

**SEN. GAGE** asked if they anticipate rulemaking regarding anything other than for the operation of the Council itself, noting that he is referring specifically to authority to regulate industry.

**Mr. McKinney** responded that, in the process of taking the bill that the Board of Directors drafted, and working with **Mr. Niss** in putting it into the proper legislative context, it was **Mr. Niss's** insistence that they had to have rulemaking authority to adopt bylaws to govern the organization, and that is the extent of the conversation, and they have never contemplated any sort of rulemaking authority beyond that, so it is simply to govern the organization.

**SEN. GAGE** referred to testimony regarding the Consensus Council taking advantage of 501(c)(3) status, and asked either **Mr. Sperry** or **Ms. Beck** if that gives them heartburn regarding a competitive advantage.

**Mr. Sperry** responded that it concerns him, but he would like to know more about it and understand it better, that he does not want to go on record as unequivocally opposing it, that maybe it is a move in the right direction, but he needs to understand it better. He noted that he would like to know that they will

create at least a reasonable opportunity for private sector providers to have access to the same opportunities that the Council has.

**SEN. GAGE** asked **Ms. Beck** if she would like to respond to that.

**Ms. Beck** declined, saying she thinks that covered it.

**Closing by Sponsor:**

**SEN. SWYSGOOD** indicated that he has listened for an hour to testimony that, as it relates to the Consensus Council, is fairly overwhelming as to accomplishments made in areas that had not previously been made. He stated that he is sympathetic with some of the concerns of the private sector, noting that he is not one to carry legislation which competes with the private sector, but he is still having difficulty understanding all of the ramifications put out by the private sector as it relates to establishing a statutory entity in government which competes with them. He indicated that he will make this brief, but he thinks it is important, because they have a policy decision to make. He noted that he heard testimony from opponents that they offer pro bono services, and he is sure that is probably true, but that, when they got together in his area, he does not recall the Council coming to them and asking to do something, that they made the initial entree into figuring out what they could do. He reported that they discussed using a private firm, but he had never seen an advertisement from private entities offering free services to groups that want to get together and resolve their differences. He remarked that his part of the country has had quite a few conflicts, and that, sometimes, that short funeral is better. He indicated that they had absolutely no idea what they were going to do to resolve this issue, but knew they had to do something, or the State would shove something down their throats that they did not want, and it was suggested that they contact the Consensus Council, who came in and gave them some direction. He added that the participation has been themselves, not the Consensus Council, to the degree that they have interfered with what they are trying to resolve, only that the direction was there. He asked how are local governments and private individuals and organizations going to bring funding together to continue this process, so they can see a fruitful end to their endeavors. Regarding the private sector, he asked how long do they provide the free service, how long do they work with these groups, and how do they take the monies from all the entities and establish a rate of service. He indicated that, with the number of staff on the Consensus Council, and the number of requests they get, if he was in the private sector, he would try to figure out a way to advertise his services, and he is not sure they are doing that effectively or, if it is free, why more people in the State are not taking advantage of it, noting that it can't be free, or they would not be in business. He stated that, while he is sympathetic, and is not one to stand up and bring a competing entity of government against private, he is not sure this is as

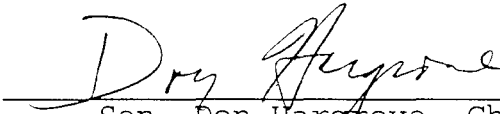
broad as it is let on to be, noting that he is sure they have some concerns, as he does, that they need to keep monitoring it and, if there are some parts they need to address in this process, before it passes, they can do that, adding that he will work with the Committee on that. He stated that he thinks the bottom line is that this entity has provided a service for people that was not there before, that, of those people who have taken advantage of it, some have had results, and some have not, that it does not always work, and probably will not always work. He stated that he is standing before the Committee as one who probably would not have sat down at the table sometimes, but he did sit down and, although he does not always agree with what goes on, he listens and they talk, and it goes on from there. He indicated that he thinks, in a policy decision, with as many controversial issues this State faces, whether it be land development uses, zoning, subdivisions or social problems, the Council is not going to be able to handle all of them, and the private sector has got to be an integral part of it. He asked the Committee's favorable view on this bill.

The following additional written testimony was received and is attached as follows:

Nancy Moore-Hope, Moore-Hope Associates (EXHIBIT 16)  
Donald Snow, Montana Consensus Council (EXHIBIT 17)  
Gerald Mueller, Consensus Associates (EXHIBIT 18)  
James Burchfield, Missoula (EXHIBIT 19)  
Louise Forrest, Bozeman (EXHIBIT 20)  
Alan Taylor, Win-Win Meetings (EXHIBIT 21)  
Grant Agreement, Conservation and Resource Development  
Division, Department of Natural Resources and  
Conservation (EXHIBIT 22)

ADJOURNMENT

Adjournment: 12:03 p.m.



Sen. Don Hargrove, Chairman



Mary Morris, Secretary

DH/MM