

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on February 7, 1997, at 10:03 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: SR 9, 2/4/97; HB 41, 2/4/97
Executive Action: SJR 3 TABLE

HEARING ON SR 9

Sponsor: CHAIRMAN DON HARGROVE

Proponents: Bob Gilbert, Montana Wool Growers Association

Opponents:

Opening Statement by Sponsor:

CHAIRMAN DON HARGROVE noted that Pat Graham, Director, Department of Fish, Wildlife and Parks is in attendance, and commented that this is an important function of the Legislature. He explained that, when a Governor is elected, or re-elected, the confirmation process has to happen, that all of the appointees are serving in a dejour status until confirmation by the Senate, that, assuming, passage through this Committee, there will be a motion and hearing on the floor. He indicated that he was informed this

morning that, because the agenda is getting too full, these confirmations may be delayed until after Transmittal. He reiterated that this is an important part of the democratic process, that it is not just a formality, noting that he believes it allows the people of Montana more full participation through their elected representatives in the appointment of people who have general affect over the lives of just about everyone in the state. He indicated that **Mr. Graham** will be provided with an opportunity to make a statement as to his appointment, and his qualifications for that appointment, adding that, insofar as possible, the regular hearing format will be followed in that proponents and opponents will be given an opportunity to testify, followed by questions from the Committee, and that **Mr. Graham** will be given an opportunity to make a closing statement.

Pat Graham, Director, Department of Fish, Wildlife and Parks, reported that he was born in Bozeman, and raised most of his life in Montana, and received an undergraduate degree in Fish and Wildlife Management at Montana State University, and a Graduate Degree from the University of Idaho in Moscow. He indicated that he got a job with the Department of Fish, Wildlife and Parks in 1977, that he worked his way around the state, and up the ladder, with no great intentions of ever becoming the Director of the Department, noting that, had he been asked in the beginning, he would have absolutely confirmed that in no way would he ever hold this position, or desire to hold it. He added that it was not necessarily a lifelong goal to get into this position, but is one that he has enjoyed very much.

He indicated that he was a Fisheries Biologist in eastern Montana and in northwest Montana, in the Kootenai and Flathead Basins. He added that he was transferred to Helena, where he held various positions, including Chief of Fisheries in Helena, and then he was promoted, under the previous administration, to Deputy Director for the Department, which he held until he was appointed Director by **Governor Marc Racicot** in 1993.

Mr. Graham noted that he was not sure how much the Committee would like him to go into about the Department, his activities in the Department and his goals and objectives, or if they would prefer to wait until the question and answer period.

CHAIRMAN HARGROVE responded that **Mr. Graham** could address whatever he feels would be appropriate, that the questions will address whatever the Committee feels is necessary, and that he should relate whatever he feels the Committee should know in order to consider his confirmation.

Mr. Graham indicated he would like to touch on a few of the priorities that the Department faces right now, and some of the challenges, noting they are many. He stated that one of the top priorities for him, over the last four years, has been the area of landowner, sportsmen and outfitter relations. He reported that, when he took this position, during the 1993 Legislature, he

was taken aback by the amount of animosity and discord between the landowner, sportsmen and outfitter groups, noting that the legislation introduced at that time was all aimed at either advancing one position, or affecting one of the other groups in an adverse way. He pointed out that the legislature, in their wisdom, chose not to pass any of those bills and, instead, created HJR 24, which asked the Governor to appoint a task force to take a look at that, the outcome of which was brought to expression with the passage of HB 195 during the 1995 Legislature. He indicated that another area, which ties together, is access to opportunity. He explained that they have dual mission in the Department of Fish, Wildlife and Parks, and that mission, on the one hand, is to conserve resources for future generations, and the second part of that mission is to make those resources available for the enjoyment of the public. He pointed out that, sometimes, those dual missions conflict with each other, that there are times when the public recreational interest and demands have come to conflict with the preservation needs, and the conservation needs, and they are always trying to balance that. He reported that, increasingly, they find public attention shifted towards access to those opportunities. He indicated that the other aspect is the habitats, noting that, when he says "habitats", often, people think about fish and wildlife, but that it can be extended to parks, too. He pointed out that, with many cultural and historical parks, the resource, itself, is the basis for either the recreational enjoyment or preservation, and stems from a case of Fish and Wildlife, if there is habitat and, in the case of Parks Research, it is things like pictograph caves, Bannock and the historical resources there, and those need their attention in that way, as well. He indicated there is a balancing act of working on maintaining access to opportunities, as well as conserving the resource itself, whether it is habitat or other resources values.

He reported that an issue that came on to the forefront, and has become a Department priority in the last two years, is Whirling Disease, and that they do not know quite what the implications of Whirling Disease are going to be, that, if the Madison holds true, it could have devastating affects on both the long-term ability to sustain some fisheries in the State of Montana, as well as certain recreational opportunities that they provide. He indicated that a fourth area is in the stabilization of parks funding, that they have continued to work, with the support of the legislature, to maintain a stable funding base for our valuable state park system and, at the same time, they have done a number of things to help themselves, through the use of volunteers and down-sizing that park system. He said that the other priority that he sees coming for the Department is not one that they sought out, any more than they sought out Whirling Disease, and that is the growing conflicts between people and wildlife. He indicated that it has surfaced a little bit, this session, with **REP. BOB REAM's** bill on urban hunting of deer, and all the emotions and perceptions that this evoked, noting that they see it in the management of mountain lions, bears, and a

variety of species, that they spend an increasing amount of their time dealing with conflicts between people and wildlife. He reiterated that this is not something they sought out as a priority, but is a priority that came onto their plate.

Mr. Graham indicated that there is a need for good communications, and that his philosophy has been and continues to be one of trying to bring diverse groups together to help address problems. He stated that he thinks people have a different expectation of government than they had ten years ago, the expectation that government is the one who makes the decisions and has all the answers has shifted, out of necessity, to one of bringing the people who are affected together to help try to draft a solution. He indicated that it is too complex for them to craft those solutions, and they can not be implemented if the people affected by them do not buy in. He stated that the best way to do that is to get them involved in the process. He added that, as they stumbled into some of those early experiences, they found themselves trying to outreach, but that they would go from one group to the next group, then to the next group and, when they tried to explain to a group what the previous group had told them, they would immediately assume the Department was on that side, and against them, so the Department transitioned from doing that, in isolation, to finding forums and ways to bring those people to the table at the same time so that they can express their concerns to each other, across the table. He noted that, if there is some ability to build consensus, or at least consent, to him that is how it has to happen.

He continued by explaining that the other aspect to that is just getting the word out. He indicated that he has told his staff, on numerous occasions, that they have shifted their emphasis. He pointed out that many people who work in these activities for the Department do not do so because of their people skills, that they like being out in the woods and working with the natural resources, and not necessarily interacting with people, as much, but that working with people is a large part of their job. He said they have tried to shift their emphasis to one more of customer service and recognizing that they do serve all of the people in Montana and, in so doing, they have to communicate, that they can not take it for granted that people know what they are doing because, often, they do not, that everyone is very busy. He indicated they have put an increased emphasis on trying to find ways to communicate to people what it is they are doing in a way that means something to them. He added that he will continue, if confirmed in this position, to do both of those outreach efforts.

{Tape: 1; Side: A; Approx. Time: 10:15 a.m.; Comments: None.}

Proponents' Testimony:

Bob Gilbert, Montana Wool Growers Association, stated that he wanted to be on record, representing his association, in

supporting **Mr. Graham**. He stated that his association has long felt that the Governor should choose the leadership of the various departments, and then he has to live by that leadership. He pointed out that they have had conflicts with the Department of Fish, Wildlife and Parks throughout the years over many issues because of landowners not seeing things the way sportsmen see them, but stated that he has found **Mr. Graham** good to work with. He indicated that the Wool Growers are very interested in predator control and, for 23 years, they have been saying that predators have adverse effects on wildlife populations, that some biologists within the Department do not believe so, however, the Department is now going to take a look at that issue and will be using some money to do some studies, and also to do some coyote reductions in some areas, to see if, indeed, taking some coyotes can increase antelope and deer populations, noting they are confident, and have been for 23 years, that this can be done. He reiterated that, while they have disagreements with the Department, many times, **Pat** has a tough job, that he would not envy anyone that position. He remarked that he has mentioned to him, personally, that he does not know why he wants that job, adding that he thinks it is just as bad as **Rick Day's** job, that he has a tough job, he does it well, and has responded when he calls.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. DELWYN GAGE reported that, some time ago, it was brought to his attention that the Department of Fish, Wildlife and Parks had a picnic every year for their employees, and that, at one of those, a person was paid \$1,500 to run a volleyball game for it. He asked **Mr. Graham** if he is aware of that.

Mr. Graham responded that has not happened since he has been with the Department, that he can assure the Committee of that.

SEN. GAGE indicated it is his recollection that it was before **Mr. Graham** was there, and reported that he asked the Director at that time if he would have any objection if, someday, noting there were some other things that person brought up that were ridiculous, he took the time to look through their invoices, and that Director said "No, come right on over." He asked **Mr. Graham** if the same invitation would apply from his perspective.

Mr. Graham replied "Any time."

SEN. GAGE reported that, two sessions ago, he had a crossbow hunting bill that would allow handicapped people, who could not use a regular bow and arrow, to use a crossbow during bow and arrow season, and that the previous Director opposed that bill. He indicated that he and the previous Director talked about this, and he expressed concern about the whole bow hunting area, which is why he was opposing that bill. He added that, that same

session, there was a bill to authorize 3,000 more bow hunting licenses to non-residents, which was a considerable increase in bow hunting, and that it looks as if the Director, to be kind, lied to him regarding a concern about the whole bow hunting area. He asked **Mr. Graham** to comment about his position regarding items that might come into the legislature as far as bill proposals.

Mr. Graham asked if **SEN. GAGE** was referring to bills specifically regarding bow hunting.

SEN. GAGE indicated he was, a little bit, but asked, in general, what is his position with regard to the Department opposing or not opposing legislation.

Mr. Graham responded that their concern with crossbows has been a transition from a traditional bow and arrow, and the safety concerns involved with that, noting that they often allow bow and arrows and shotguns with slugs as a method to allow hunting in areas, that provide for safety. He indicated the reason he thinks the issue of the crossbow came up, if he is not mistaken, had to do with disabled people. He stated that he thinks their interest was not opening that whole area of crossbow hunting, into the archery arena, but seeing if they could work through some groups and individuals, noting that he is meeting a group in a couple of weeks for this very purpose, working with the NRA to try to help disabled people developing mechanisms, or whatever, they can shoot if they have difficulty in hunting. He noted that they prefer to work that way, rather than with the whole issue. He stated that his approach on legislation is to try to get to the sponsor ahead of the bill, noting that he was not always able to this session, that he had to testify on 16 bills the first week of the session, and was not able to get to every sponsor ahead of the bill. He explained that he tried to get together with them ahead of the bill, to learn what their intent is, and try to understand what they are trying to do, just as he has gone out, ahead of the Legislative Session, to 13 meetings with Legislators across Montana. He indicated that they invited Legislators from across the state to sit down and hear what the Department has proposed, at least a month before the sessions, to see if they wanted to express any concerns about what the Department was doing. He added that, if the Department planned to oppose a bill, they explained the reasons, and present those at the Committee hearing. He noted that, if they are able to work out some amendments to those bills, they try to do that.

SEN. GAGE acknowledged that **Mr. Graham** has been appointed by the Governor, and his appointment is confirmed by the legislature, as is the Board or Commission. He further indicated that he has served on various boards and committees and, by and large, they will endorse what the Director and Executive Officer bring in. He asked **Mr. Graham** if, when he looks at a particular issue, assuming it varies with the issue, his first concern is what would be best for the people of Montana.

Mr. Graham indicated that gets back to the dual mission they are charged with, by law, which is balancing what is best for the people of Montana with their Legislative charge, to conserve the resources that Montana has. He pointed out that it could be said that conserving those resources is in the best interests of the people of Montana, so he thinks the first inclination is to look at that, and see if there is anything out of balance between the dual mission of conserving those resources for the people of Montana, from the recreational and conservation perspective. He reiterated that they work for all the people in Montana, and not just the people who pay their hunting license and parks fees, noting that may not be shared, nor does it endear him to those people, because they tend to get a fair amount of say in those issues they dicker with, but that he, personally, believes that he works for all of the people of Montana, and not just a select few.

SEN. GAGE asked how much opposition does the Department present to their federal counterparts, as far as what they want done in Montana, or mandates that may be handed down.

Mr. Graham reported that they have been active in a couple of areas. He indicated that, with regard to the Endangered Species Act re-authorization, they have strong feelings that the state needs a larger role, and that the Act needs to be changed to make it more workable, if it is to be continued, that it is not working the way it was intended to work. He further indicated that, regarding the drawn-downs of Hungry Horse and Libby Reservoirs, and also with the Ft. Peck Reservoir, they have worked vigorously to defend what they believe is in Montana's best interests, which is not necessarily shared with the best interests of down-stream states. He noted that, regarding the Bison issue, which has elevated all the way up to both the Governor's level, as well as the legislature, and in trying to define what is in the best interests of the people of Montana, the Brucellosis issue weighed out heavier than the hunting issue, in his mind. He indicated that this is an example where a constituent that the Department would normally be expected to advocate for, they did not feel was in the best interests, and agreed with the Department of Livestock and the Governor that their priority has to be dealing with the disease, before they start arguing about or addressing the hunting issue. He noted that those are some examples, that they try to identify what they think is in the best interests of the people.

Mr. Graham reported that, regarding federal issues, this administration has coordinated through the Governor's office, if they think there will be divergent opinions, for example oil and gas leasing on the Rocky Mountain Front. He explained that the Department had some issues and perspectives, that other departments also had issues and perspectives, and these were funneled into the Governor's office, and the Governor developed a position for Montana, that there were not five positions for the

state, there was only one. He noted that they feed their information into that process, and that is how it has worked.

{Tape: 1; Side: A; Approx. Time: 10:28 a.m.; Comments: None.}

SEN. KEN MESAROS indicated that he has several questions, but that he would like to make the statement that he concurs with **Mr. Gilbert's** comment that **Mr. Graham** does have the most difficult job, adding that, as anyone who has been involved in fish and game policy knows, everyone is an expert on those issues.

He referred to **Mr. Graham's** testimony regarding communications being a high priority, in particular with regard to public input, and indicated that, last session, there was concern about improvements at, specifically, Black Sandy Recreation Area. He reported that he received correspondence from a lot of people, including residents and sportsmen, who indicated that, with modest improvements, that area would be quite adequate. He pointed out that, in the minds of these people, there were over and above modest improvements, at major expense, at this site, noting that other sites were also identified. He asked **Mr. Graham** to respond to those concerns.

Mr. Graham reported that the Black Sandy Recreation Area is a State Park on Hauser Reservoir, just outside of Helena, that it is very heavily utilized all summer long, and in the shoulder seasons as well, and that it was basically unregulated use. He noted that, on one weekend, over 100 camper units were crammed in there. He indicated that, in 1991 or 1992, they conducted a public survey of users, and determined that one of the issues high on the list was overcrowding, and other issues were raised, as well. He stated that they went to the legislature for approval of a site development plan to address a variety of needs, that there were erosion problems on the shoreline, and there was no place for people to moor boats, other than the boat ramp, noting that there was a lot of day use, as well as camping use there. He explained that they conducted an environmental assessment on the site, that they received a lot of public comment and, as a result, the project originally envisioned by the Parks staff was scaled back, significantly, that a lot of things were taken out of that proposal because the public said they were going too far, and what ultimately was done was scaled back considerably. He explained that the difficulty was that, in order to address crowding, they had to reduce the density of people, and so they designed it in such a way that people can go in side by side, and then there is a space, and then side by side, so that users are spread out around the area, with approximately 37 sites available, now. He said that they did that, knowing there is a private campground just up the road which can address some of the overflow and, in fact, can absorb some of the additional use they have developed. He added that, third, they thought it would happen more quickly, but that there has been some litigation by the Department which slowed it down. He reported that the Montana Power Company, in relicensing all

their dams on the Missouri River System, negotiated a recreation mitigation package and, as part of that package, they propose to develop White Sandy, an area right around the corner from Black Sandy, into a similar recreational opportunity, which will make up for some of the recreational-use sites lost when they reduced the crowding at Black Sandy. He stated that he feels they were responsive to initial public concerns, that they did scale back the development considerably from what was originally proposed and, when he talks to people now, they seem quite pleased with how it finally came out. He noted that he thinks one of the things they learned with this, and other projects like it, is that their surveys indicate Montanans are divided, almost equally, on wanting more development, and not wanting any development. He remarked that, to some Montanans, a stump and a rock fire ring is a developed campground but, to others, they want someplace to park a camper in a flat spot, with a picnic table, and those kinds of things, so they are trying to balance the needs between those two groups of people. He noted that non-residents think our developed campgrounds are primitive, compared to what they are used to, that they come in looking for the electrical hookups. He stated that it is a constant struggle to balance providing for increased recreational demand on sites, and try to maintain quality, which is what they try to do. He reported that they went through extensive public comment on that process, that there were at least two different rounds of public involvement and, ultimately, it was appealed to the Fish, Wildlife and Parks Commission, so there was a third level of review of that project before it was actually implemented. He stated that their approach is to try to keep the balance, noting that they try to be as efficient as they can with the resources they have, that, usually, efficiency in government means doing something all at once, which is a lot more efficient than spreading it out over three bienniums and going through all the paperwork three times. He noted that Montanans are not necessarily ready for things to be done all at once, and you might overshoot your mark if you do that so, despite the fact that it's not as efficient, they have adopted the philosophy of upgrading those sites at a more gradual pace so they can try to find that spot where people are comfortable, and not go too far. He added that, ultimately, they might decide to go where they thought they would want to go in the long-run, but to go from nothing to that level of development, is a shock to some folks. He closed by saying they are trying to find that median ground.

SEN. MESAROS pointed out that the perception, real or perceived, from the public, regardless of any type of funding mechanism, is that it is government dollars spent, noting that he knows, a lot of times, there is confusion as to the funding sources. He then reported that he has worked with Department of Fish, Wildlife and Parks personnel around the state on various issues, and in trying to develop legislation, and that he personally feels the people closest to ground level may have a pretty clear focus as to some of the needs as far as policy. He asked **Mr. Graham** what his

policy is regarding employees working with Legislators on those endeavors.

Mr. Graham reported that, in developing their own legislative packages, they make department-wide requests for legislative initiatives, that they request any ideas people have that they can advance, and it is not just five or six people who get to bring that up, that they start out with 30, 40 or 50 different legislative proposals within the Department, which they ultimately cook down to a set of preferably six, although it usually ends up closer to ten. He emphasized that there is access and opportunity for any Department employee to advance an idea for legislation within the Department.

SEN. MESAROS noted that is looking from the top, and he is looking from the bottom up. He asked **Mr. Graham** to respond to that, as far as working with Legislators.

Mr. Graham stated that they do have the opportunity, even within the Department, to express ideas. He pointed out that **SEN. MESAROS** had said some of the best ideas come from the field, and he was trying to point out that they do allow people closest to the ground to participate, it is not four or five people in Helena who bring the ideas up, that they come from all across the state. He indicated that, with respect to addressing issues with Legislators, the way he has handled that is, if there is information that a Legislator needs relative to some piece of legislation they are trying to develop, to provide that. He added that, in terms of expressing Department policy, that is done through the Director, that they do not speak on behalf of the Department in terms of what the policy is. He noted that some do, a lot more regularly than he would care for but, from that perspective, policy comes through the Director's office, and information can come from literally anywhere in the Department.

SEN. MESAROS noted that he is somewhat concerned, that he believes the legislative process should be fairly open for all to speak freely. He indicated that, from time to time, he has worked with, not only Fish, Wildlife and Parks employees, but also with other government employees and that, while he is sure it is not confined to Fish, Wildlife and Parks, he has found that, if it comes to testimony, some people are restricted from voicing their involvement. He asked **Mr. Graham** to respond to that.

Mr. Graham noted that the example, if used last session, would have been game farms, and, if he said anyone in the Department could come forward and express their opinion in legislative hearings about game farms, there would have been a diversity of opinion which probably would have elevated the level of discussion a couple of notches higher than it already was. He pointed out that, even within the Department, regarding some issues, people will have different opinions, that a biologist may see it different than a warden, or a fisheries person, or a parks

person, and that he tries to work through those differing viewpoints to present a Department perspective. He indicated that, if they did not do that, he is not sure whose voice would be heard because, if it became common practice for his employees to testify on bills, there would not be a unified position, that one person may support a measure, and another would present a completely different perspective. He stated that is the kind of thing he tries to manage, as the Director, that employees are free to provide information but, when it comes down to weighing and balancing the policy perspectives, they try to be as objective as possible, while weighing all the information. He remarked there are some consequences to just opening the door wide open.

{Tape: 1; Side: A; Approx. Time: 10:43 a.m.; Comments: End of Tape 1, Side A.}

SEN. MESAROS indicated that one of the questions he hears very frequently has to do with land and population of certain species, how much land the Department owns, and how much is a goal as to what they should own, either in fee title or under easement. He noted that this question is commonly asked of him, and asked **Mr. Graham** to respond.

Mr. Graham noted that this question came up when he was at the Montana Association of Counties (MACo) meeting last winter. He indicated that, in their Wildlife Management Program, there are about 250,000 acres, which is the largest chunk, and there are smaller amounts in Parks and Fisheries, noting that Fisheries has a lot of sites for access, which typically are one or two acres, fairly small. He asked how much is enough, noting that was a point of some contention in 1987-1989, through the legislative sessions that created HB 526, now referred to as the Habitat Montana Program. He reported that, at that time, despite Legislative direction, they primarily acquired land in fee title, and were having difficulty getting conservation easements, for whatever reasons. He indicated that they have changed that emphasis, and are now acquiring, almost exclusively, conservation easements, adding that, when he presents their report to the Long-Range Building Committee on Monday, he will show a figure that, from the inception of the Program through 1992, they had approximately 41,000 acres of fee title purchased under that Program and, since that time, they have disposed of 17,000 acres, and bought a few more, but actually have fewer acres under fee title today than they did in 1992, that they have reduced that by about 13,000 acres. He reported that, at the same time, they have increased their conservation easement holdings from 400-500 to 85,000 acres. He stated that, when talking about fee title acquisitions, he thinks the question about how much is enough is very valid because of people's concerns over government ownership of land, pointing out that it is not taking that out of the tax base because they continue to pay taxes on it, but it does take it out of private ownership. He added that, with conservation easements, he does not think there is such a thing as enough,

because they are not actually acquiring the land, itself, in fee title, that the land remains in private ownership. He pointed out that the landowner voluntarily enters into that easement, that they are able to maintain that property in agricultural production, and the Department is able, as a result of maintaining it as open space, conserve it as wildlife habitat. He reported that the gentleman who asked him that question at the county meeting talked with him afterwards, and indicated that the three ranches around him in Meagher County are all for sale. **Mr. Graham** pointed out that, from that perspective, he thinks the program they have in place has allowed traditional Montana landowners to stay on the land and, in many cases, stay in agricultural production, noting that he does not see it in quite the same context as if they were still buying fee title. He added that he thinks the fee title question, if they were still doing that, would be a legitimate one for them to respond to, but they have, in fact, reduced the number of acres in fee title, not increased them.

SEN. BROOKE indicated that she sent **Mr. Graham** a copy of a bill regarding employees, and asked for his reaction.

Mr. Graham responded that there are two parts, that, in terms of the intent of the bill, they have tried to maintain an open atmosphere in the Department, and if people have concerns, they are encouraged to bring them forward. He noted that he also recognizes that, despite their efforts to be open and communicate that they want to be informed, there is obviously some fear out there. He cited the example of an anonymous letter he received regarding abuse of computer games on office computers, pointing out that no specific information was given, that there was no signature on the letter and, clearly that person did not feel comfortable enough to bring that information forward in a way that it could be used. He indicated that the other side of that is his concern that it is difficult, in government, to remove an employee from service. He cited the example of an employee who alleged, in court, that it was retribution for something he had done several years earlier. He stated that it was not, that the two were not even tied together, and his concern would be that, because of an allegation someone might make, they would be on the defensive of having to prove they were not doing what they are alleged to be doing, and this would put an additional burden on them in that process. He indicated that he is balancing, in his mind, how best to accomplish what **SEN. BROOKE** is trying to accomplish, without making it even more difficult, and it would seem to him that, if they are not careful in finding that balance, whenever someone got into trouble, they could make an allegation, and use that as a basis to prevent them from pursuing disciplinary action. He noted that he is not an attorney or a personnel specialist in knowing where that balance point is, and he appreciates the intent, but is not entirely sure if this is the right mechanism.

CHAIRMAN HARGROVE stated that there is a certain amount of feeling and accusation that the Department acts in an arrogant manner. Noting that he supposes that depends entirely on one's viewpoint, and he would suspect that **Mr. Graham** is sensitive to that, he asked if **Mr. Graham** would respond.

Mr. Graham stated that he thinks part of that is deserved, in the sense that the professional people they normally have in these areas are not necessarily as keyed into people skills as he would like. He acknowledged that, sometimes, in their communication, they come off as aloof and, even though it is not intended maliciously, it appears as though they know the answer, and can not entertain the fact that there might be an alternative answer. He reported that they have tried to work on that with training, that they will continue to work on that within the Department in training people in public service and communication, adding that they are working on that in their hiring practices by putting an increased emphasis on hiring people with better people skills. He pointed out that, in their law enforcement area, they have done a credible job, not only in their hiring process, but also in the training process. He indicated that, in the new Field Officer Training Program instituted last year, the new employees go out in the field for eight weeks, one-on-one with another Game Warden and, during that time, their participation is gradually increased, and they are evaluated throughout the whole period.

Mr. Graham acknowledged that he thinks there is some legitimate frustration, and that they contribute to that, but pointed out that it comes a little bit from the territory that they work in. He reported that he has been threatened with lawsuits recently by the non-motorized and the motorized people over the same issue, that they each are absolutely convinced the Department is ignoring their concerns, to the point where they feel like going to court over those issues. He added that he increasingly finds them in that position, whether it is the growing population in Montana, or the shrinking resource base, but that we seem to be bumping into each other more and more commonly. He indicated that he thinks this is being expressed in some of the legislation, referring to the trespass legislation and other things, that there is growing frustration, in that each side assumes the Department is not adequately listening to them, which creates the appearance of arrogance, remarking "you heard what I said, you didn't do what I said". He pointed out that they can not do what everybody says, and working through that is a daily challenge, which is why he is advocating that they are in a different role, that government's role is evolving and they are learning a new way of governing, which is getting those parties together more frequently, and, instead of the Department coming off as the decision-maker, helping the people make more decisions for themselves, and they can then help implement the resources we have.

CHAIRMAN HARGROVE indicated that the legislature is here, more than anything else, to look at how the money is spent in the interests of the people of Montana and, as a Director, his

Department controls a lot of that money. He asked **Mr. Graham** what he has, in terms of either procedure or policy, to save money, not necessarily on a day-to-day basis, but self-evaluation, looking back, noting that incremental budgeting always just looks forward. He further asked how he looks at the system each year, or each biennium.

Mr. Graham stated that there are two levels at which this occurs. He explained that one is that, biennially, they go through a process, noting that they have somewhere in the neighborhood of 700 individual work plans, whereby each project is required to have a work plan that lays out its objectives and tasks, and then assigns the dollars to that. He added that, each biennium, as they develop the budget, they ask for ideas on new legislation and on new work proposals, that they go through those proposals and, of those that are above and beyond what they currently have the capacity to do, they bring those into the legislature for consideration. He pointed out that a more common thing is what they call redirection, which is that they evaluate those ideas that come in against what is currently being done, and reallocate resources within the Department to meet those other priorities, pointing out that they have to stand the test within the Department, that it is an internal competition. He noted that is limited, in all fairness, by the funding sources, explaining that the different divisions use certain resources that other divisions can not use, that it is not like a General Fund where money can be shifted between all the divisions, and there are some limitations to that approach. He indicated that another aspect is that, periodically, as they did in 1991 and may do again in 1999, they come before the legislature and ask for approval to increase their fees. He noted that this thorough examination is then taken to another level, that they go out to the public to examine the alternatives to a fee increase, and those programs that could be eliminated as an alternative to a fee increase, letting the public weigh their choices of reducing expenditures, and in what areas, or paying more to maintain the same level of services they are getting now. He indicated that this is a little bit larger scale than the internal annual redirection, pointing out that it happens at both levels.

SEN. FRED THOMAS asked what they are doing about mountain lions, noting that there are too many, particularly in his area.

Mr. Graham replied that they have increased the harvest of mountain lions in the last six years almost three-fold and, despite that, the number of lions taken for other reasons, outside of the season, has increased from about fifteen to close to sixty or sixty-five. He reiterated that they have continued to increase the quota, incrementally, noting that mountain lions are a difficult species to quantify, so it is difficult to know how many are out there at any one time. Further, he indicated that, through redirection, due to the pressing needs of mountain lions, what was going to be a bear research project, which still needs to be done, has been redirected into a mountain lion

research program. He stated that they have tried to develop a more objective, quantitative way to set quotas for mountain lions, remarking that it is an illusive animal, and it is hard to know exactly how many of them they need to harvest. He then indicated that they have implemented an experimental season, for northwest Montana, which would allow for mountain lions to be taken during the general hunting season, reporting that there has been some concern expressed about that because of the potential for orphaning of kittens. He noted that, if you are out there specifically hunting them, you can determine what you have and what you should do, but that it is a little more difficult during the general rifle season, adding that they discussed this with the states of Idaho and Wyoming, which have some similar proposals, and they do not seem to have a problem, but they would evaluate that before they expand it on a larger scale. He reported that another proposal, which is before the Commission at this moment, was brought to the Commission and does not go beyond what they are doing now, and it proposes to utilize the public, to some degree, in trying to address these nuisance mountain lion problems that occur outside the general season, rather than using Department personnel. He noted that this is being debated right now, and he does not know what the Commission will do with that issue, adding that it is an issue which is constantly before the Commission and the Department. He stated that they have recently revised their mountain lion policy, in terms of defining conflicts and problems, and the steps that can be taken so they can act quickly, noting that there is a four-step process they go through, one of which is relocation, if there is a place to relocate it that is not saturated. He pointed out that, in all honesty, those places do not exist right at the moment, so reality is that the animals can be removed from the population, and it is just a matter of who does it. He pointed out that it is an area of growing concern, and one they are continuing to learn about. He indicated that one of the concerns, which was brought to his attention a couple of years ago but, after talking with the people in Idaho, is a growing concern, is that a lot of the outfitters, or recreational hunters traditionally look for the larger toms, and there is some thought that the density of mountain lions is kept lower when there is a dominate male in the population but, when those dominate males are removed, which are the first ones to go if they can get them, that may actually increase the density of lions. He noted that the way they are being harvested may complicate that, adding that, ultimately, it is a function of their prey-base, and large deer populations, particularly whitetail deer in western Montana, has contributed to the growth of the mountain lion population, that there are no two ways about it, that the two are intertwined.

SEN. MESAROS referred to a bill which would take a dollar from conservation licenses to be used for predator control, and asked **Mr. Graham** if the department supports that and, if they do, would that function be contracted out.

Mr. Graham responded that they have not taken a position on the bill at this point, that they have been talking with the sponsor. He stated that he has some reservations about the way the bill has been crafted, that he thinks a bounty type of system needs some good discussion before they decide if they want to get back into that type of management, and the perceptions that it creates. He reported that they have asked the legislature for a budget amendment, as well asking for additional spending authority through the Joint House and Senate Appropriations Committee, to do predator control work targeted in two specific areas, those being central Montana and northeast Montana, to evaluate both the effectiveness of the more intense predator control program, and the cost. He indicated that they launched a three-year program specifically aimed at coyote predator control, and offered to provide additional information to the Committee. He stated that they can spend a lot of money on it, and they want to make sure, if they are doing that, there is a pay-off and it is being adequately documented. He added that a plan is being designed for this winter to target the coyote population during its ebb, which is during the wintertime, January, February and March, and trying to reduce that population in those two areas, to see what the response would be both from the population of coyotes, and well as the population of deer and antelope.

CHAIRMAN HARGROVE thanked **Mr. Graham** for being very responsive to the Committee's questions, and offered him the opportunity to make any closing comments.

Mr. Graham indicated that he knows the Committee is busy, and he appreciates the opportunity to be here.

CHAIRMAN HARGROVE thanked **Mr. Graham**, indicating they appreciate his willingness to serve, and congratulated him.

HEARING ON HB 41

Sponsor: REP. JOHN COBB, HD 50, AUGUSTA

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, AUGUSTA, distributed copies of amendments to HB 41 (EXHIBIT 1), indicating that **Judy Browning, Chief of Staff, Governor's Office**, worked these out with him because the departments are a little concerned about the bill, and asked for some changes. He explained that HB 41 is an Act that is to try to increase the awareness, contents and cost of administrative rules. He reported that, each year, the agencies eliminate and revise hundreds of rules. He pointed out that the legislature may pass many statutes, noting that there are currently about

28,000 statutes on the books, but there are hundreds of thousands of rules and, if they are revised or changed, they are more aware of what they cost. He added that, every two weeks, the Secretary of State's office publishes proposed rule changes or elimination of rules, and that is the time they can find out what is being done. He referred to Section 1, on page 1, and indicated that, when the rules come out every two weeks, the language on lines 16-20 would require that information be included regarding increases or decreases in monetary amounts, the cumulative amount for people who will be affected, and the number of people who will be affected. He noted that some agencies do that now, but that many do not and, when they are raising fees, it would be nice to know just the total amount, and this also gives a Legislator a chance to find out, if they were told to raise their fees, that this is exactly what they are doing, and not doing something that the legislature is not aware of.

He referred to lines 21-22, and pointed out that this language will be taken out with the amendments, because the departments indicated the agencies would have a hard time figuring out how to do that. He then referred to the word "estimate" on line 18, and indicated that the amendments would insert "if known", at the request of the departments.

REP. COBB stated that currently, when rules are published, they have to give their intent and, with this bill, they would just have to give additional information such as what is the total number of people affected, and the total cost raised. He referred to Section 2, pages 2 and 3, the biennial review of agencies, and explained that each agency is supposed to review their rules. He reported that, last session, a resolution was passed asking to reduce the rules by anywhere from 5% to 10%, and almost every agency reduced their rules by at least 10%, that most of the rules are redundant. He indicated that this bill, with the amendments, will require that, in December, before the next legislative session, agencies will report on criticisms of rules, so the legislature has a better idea of what the criticisms were. He then referred to Section 3, Economic impact statement, and explained that, currently, the Administrative Code Committee can request an agency to prepare an economic impact statement on rules, and this would allow a group of 15 or more legislators to bypass that Committee, in case they could not get anything done, noting that there have been times, in the past, when there is a tie vote, that no one wants to do an economic impact statement, and this would allow Legislators to request an economic impact statement. He pointed out that, on page 3, lines 17-30 and on page 4, lines 1-2 explain what an economic impact statement is, noting that this does not happen very often, that not many economic impact statements have been done, but there have been times when Legislators attempted to get one, and the Committee could not agree and did not want it done, so this would bypass the Committee. He referred to item number 6 of the amendments, and reported that **Ms. Browning** wanted that language included, and that he agrees the language clarifies it.

REP. COBB then referred to page 4, New Section 4, and stated that this is a big part of the bill, and provides for regulatory notes, which will be similar to a fiscal note. He then referred to page 6, New Section 7, which explains what a rulemaking note is. He indicated that a rulemaking note can only be requested in the bill if the sponsor, through the presiding officer, which would be either the Speaker or the President of the Senate, or if the majority of a committee or a majority of the House ask for a rulemaking note, so this is narrowed down to how many can ask for one. He pointed out that the department would be required, up front, to indicate what kind of rules they anticipate, who these rules will affect, and the estimated cost. Referring to page 6, lines 18-19, he added that the department can then request that statute clarify an issue, to avoid the necessity for rulemaking. He noted that this will also allow departments to let the legislature know what type of rules they will be looking at, and that sponsors can indicate in a rule note that they disagree with how the department will make the rules. He reported that other states do this, on a larger scale, and indicated that agencies were worried they would be doing 200-300 rule notes every session, but that, because a majority has to request it, this will not be the case. He gave some examples of when rule notes might be requested.

He added that the remainder of the bill is simply cleaning up some language, and making it easier for Legislators to ask for economic impact statements. He indicated that this will be the same process as a fiscal note, but will be asking for a regulatory note which will outline general guidelines on what rules might be anticipated.

{Tape: 1; Side: B; Approx. Time: 11:16 a.m.; Comments: End of Tape 1, Side B.}

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. THOMAS asked what color paper these regulatory notes will be printed on.

REP. COBB replied that he does not know. He indicated that he assumed it would be a different color, but does not know what it will be. He apologized that he did not think about that.

SEN. MESAROS indicated that they went through the bill pretty fast, and he has not had a chance to review it. He noted that REP. COBB indicated he thought this would only pertain to the larger bills, and asked how he would identify those.

REP. COBB responded that he has limited it to who could ask for those, and he thinks it would be requested on the bigger bills.

He added that, if the committees all start asking for rules, the agencies will indicate they can not get them done on time and, at that point, as a result of the fiscal note, there will be complaints that it is costing too much, and he believes the legislature will back off. He pointed out that he could not require it only on big bills, say, anything over 200 pages, and he was looking at it from the perspective of what occurred in the House last session, that they were asking what was really going on in the bills. He added that, if it gets out of hand, the Governor will say they can not do all those notes, that they can not get them completed in time, and there will be complaints about the fiscal impact. He pointed out that he attempted to limit it by requiring a majority vote. He added that it also applies to the Revenue Oversight Committee.

SEN. BROOKE referred to page 3, the section regarding the economic impact statement, and asked **REP. COBB** to again explain how that works.

REP. COBB explained that the Administrative Code Committee or the Revenue Oversight Committee can request an economic impact statement, which is described on page 3, lines 17-30 and page 4, lines 1-2, and will outline what the rule will actually do. He indicated that a group of 15 or more Legislators can request this information from either the Committee or the agency, and that a summary of the economic impact will have to be included with the rule notes. He reiterated that a request of 15 or more Legislators can bypass the committee, noting that there have been problems getting this information, in the past. He stated that this does not stop a rule from being implemented, although the agency might delay implementation until this is done, that it just asks for more information.

SEN. BROOKE asked if **REP. COBB** is saying that, at any time during a rulemaking process, she could go out and find 14 other Legislators, and ask to have an economic impact statement done.

REP. COBB indicated that she could do that, noting that, if she did, it had best be a pretty good rule because she will get the heck beat out of her for holding up rulemaking. He pointed out that, if there were just 15 people who wanted to do this on every rule, they had better know what they are doing, because that would be abuse of the legislature. He noted that he has seen this done in cases where there is a real political bill going through, where it gets into a partisan fight, there is a tie vote and nothing gets done, which is where the concern came in. He added that this could allow any 15 Legislators to do that, but he thinks that, politically, it would be stupid.

SEN. BROOKE pointed out that what she wanted to know was not the obstructionist type of work that this would provide, but how it would be implemented. She asked if the way she described it is as simple as it is, that she could get 14 other Legislators if they all had a concern about how the rules work.

REP. COBB stated that, if she was concerned about a particular rule, as is proposed, the Administrative Code Committee can request it, and this bill would expand that to 15 other members could also request that information, that the only difference is that they can bypass the committee which would normally do these things. He noted that it is not used very often, but there have been a few cases where Legislators felt that it was necessary.

SEN. THOMAS asked if REP. COBB has any rule notes from other states.

REP. COBB responded that he would have to get a copy, that he has what their laws are, AND offered to get a copy for the Committee. He reported that the idea of rule making for big ones came out of New Jersey, that they went through it but never enacted it, noting that they wanted it on every one that was \$5 million. He added that, in California, it was based more on how it would affect small businesses.

CHAIRMAN HARGROVE asked REP. COBB if he selected the number 15 because of some statistical basis?

REP. COBB answered that he selected that because it takes 15 members of the House to stop something, noting that 15 was not necessary, and that this was the weak part of this bill. He indicated that, instead of having 5 bills, he put everything in one bill, and this is one of the ideas that was brought up, adding that it does have the affect of stopping a rule from being implemented, noting that it is not like SEN. LOREN JENKINS' bill, which puts it off, but that this would allow them to find out if there are any problems with a bill ahead of time.

CHAIRMAN HARGROVE said that was his other question, noting that SEN. JENKINS' bill passed in the House and the Senate, and avoided a veto by only one vote. He indicated that it is coming up again, and he supposes it might pass again, and asked REP. COBB if there is a relationship between these two, and would one affect the other.

REP. COBB answered no, this would not affect the other one, that this would just ask for the economic impact statement. He added that they can still keep doing the rule but, in effect, the agency would probably stop and just do this as fast as they can, but that SEN. JENKINS' bill stops it. He said that, last time, the Governor vetoed it and the question is if he will do it again, and he may.

Closing by Sponsor:

REP. COBB had no closing statement. He indicated he would get the information requested, and asked SEN. THOMAS to carry the bill, if it passes.

EXECUTIVE ACTION ON SJR 3

Amendments: None

Motion/Vote: SEN. BROOKE moved to TABLE SJR 3. The motion FAILED with SEN. BROOKE and CHAIRMAN HARGROVE IN FAVOR and SEN. THOMAS and SEN. MESAROS OPPOSED.

Discussion:

CHAIRMAN HARGROVE indicated that there may not be a sponsor for this bill. SEN. THOMAS asked if the sponsor has withdrawn, and SEN. BROOKE answered that he has. SEN. THOMAS asked if the sponsor would rather the bill be tabled, and CHAIRMAN HARGROVE confirmed that he would.

Motion/Vote: SEN. THOMAS moved that the Committee RECONSIDER THEIR ACTION ON SJR 3. The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. THOMAS moved to TABLE SJR 3. The motion CARRIED UNANIMOUSLY.

{Tape: 2; Side: A; Approx. Time: 11:32 a.m.; Comments: None.}

EXECUTIVE ACTION ON HB 182

Amendments: None

Motion: SEN. BROOKE MOVED that HB 182 BE CONCURRED IN.

Discussion:

SEN. THOMAS asked if this bill provides that, if a gubernatorial candidate dies within that many days, then the Lieutenant Governor candidate moves up, and there is a provision dealing with the Lieutenant Governor.

CHAIRMAN HARGROVE stated that he thinks that allowed the gubernatorial candidate to make the appointment.

SEN. THOMAS said that he does not know that he is opposed to the bill. He noted that this bill comes from the unfortunate situation when SEN. CHET BLAYLOCK died, and that SEN. JUDY JACOBSON was then nominated by the party to continue the campaign. He indicated that, in judging this bill, they are judging it based on that scenario, that SEN. JACOBSON was a well-qualified candidate for Governor, but pointed out that others, potentially, would not have those same qualities, and this bill is dictating that this person move right up the ladder.

SEN. BROOKE remarked that they are only a heartbeat away. **SEN. THOMAS** acknowledged that is true, pointing out that they are, however, still in the election process, that, if they are elected, that is a done deal, but before they are elected, this bill provides that they would move up on the ballot, regardless. He then indicated that another potential problem is that someone less than qualified could be elected because, perhaps, the original gubernatorial candidate was so popular, the people would elect that person out of sympathy.

CHAIRMAN HARGROVE indicated that the parties have given no input, that one would hope they are keeping track of these bills, but neither of them were represented at the hearing. He read the list of persons who appeared and testified.

SEN. THOMAS indicated that he is sure, mechanically, the bill is fine, that it provides a mechanism which is probably better than the current method of handling this situation, but that, with the scenario that existed, he thinks that the state as well as the party involved was in good shape with **SEN. JACOBSON**, but he does not know that this would be the case all the time.

Vote: The vote on the motion that **HB 182 BE CONCURRED IN** was inconclusive. **SEN. BROOKE**, **SEN. MESAROS** and **CHAIRMAN HARGROVE** voted **IN FAVOR**, with **SEN. THOMAS OPPOSED**. **CHAIRMAN HARGROVE** asked that the vote be held open for **SEN. WILSON** and **SEN. GAGE**.

COMMITTEE DISCUSSION

CHAIRMAN HARGROVE indicated that he was surprised at the Consensus Council hearing, that it was very interesting and very enlightening. He stated that he is a great supporter of the Consensus Council but that he thinks there are some questions about putting it into legislation. He asked that the Committee members think about it, talk to people, and look at the bill, that, in his opinion, it will require some real good thinking on the Committee's part.

SEN. BROOKE asked about **Rick Day** and **Mark Simonich**. **CHAIRMAN HARGROVE** indicated that he does not know the process, that he will have to go the Senate offices to find out for sure, but that leadership is concerned that they are backing up on the board too much before Transmittal, and have asked that the Committee consider not giving them any more before Transmittal. He noted that he does not suppose it makes any difference, but that the question is, can the Committee go ahead and take Executive Action or, if they do, would that immediately set things in motion for them to go on the board, which is what they want to avoid before Transmittal.

David Niss indicated that there may a rule requiring reading within a certain number of days after the report on the bill.

CHAIRMAN HARGROVE asked that he find out for sure. **Mr. Niss** indicated he could, but that his general reaction is that it is probably safer to hold them in Committee. **CHAIRMAN HARGROVE** agreed and indicated that the Committee would delay action until either shortly before, or after Transmittal.

SEN. THOMAS reported that he found he has difficulty with one of the Governor's Board Appointees and, noting that he will not go into the details, asked if the Committee will look at something of that nature.

CHAIRMAN HARGROVE responded that the Committee can do anything they want to, that they can be segregated from the list or they could be asked to appear before the Committee, adding that, in his opinion, some of them are hard to deal with because of the timing. He pointed out that some are getting their first appointment, after having almost completed their first term, or at least a couple of years into it. He indicated that the Committee could send a note to the Governor suggesting that he not reappoint someone because of particular concerns or a problem, or the Committee could recommend that a particular individual not be confirmed.

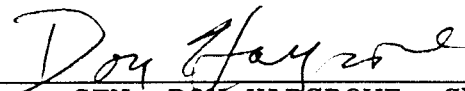
SEN. THOMAS explained that it was mainly attitude, and pointed out that, if a person's attitude was not good with him, then why would it be with the public, adding that he was kind of shocked. He reported that he has contacted the medical board, who are very difficult to contact because of their schedules, but did not encounter any problems with those individuals, who were the most difficult to contact.

CHAIRMAN HARGROVE suggested that **SEN. THOMAS** not dismiss that. He noted that, last session, he found a couple, one of which he just felt was in the wrong position. **SEN. MESAROS** reported that he found one, in particular, where several of the members commented that they did know if the board was really necessary, that they had never met.

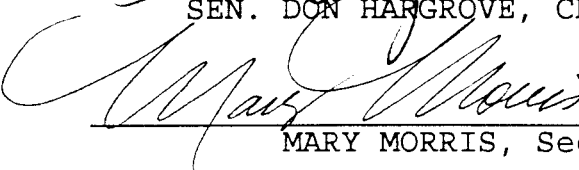
CHAIRMAN HARGROVE stated that he thinks those things should be passed on to the Governor, noting that the Committee's prerogative is to confirm or not confirm, but that they could certainly help the Governor in that regard. **SEN. THOMAS** said they could do a Committee bill to eliminate that board. **SEN. MESAROS** added that he found that most interesting, and that he told those board members he appreciated the comments.

ADJOURNMENT

Adjournment: 11:44 a.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

DH/MM