

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 21,
1997, at 3:00 PM, in Room 405.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

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

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJ 11, Posted Feb.20,1997
SB346, SB380, SB377 Posted
Feb. 18, 1997
Executive Action: SB377, SB380, SJ11, SB356,
SB363

HEARING ON SJ 11

Sponsor: SENATOR STEVE DOHERTY, SD 24, GREAT FALLS

Proponents: Patrick Judge, Montana Environmental Information
Center (MEIC)
Tara Mele, Mont PIRG
Ted Lange, Northern Plains Resource Council (NPRC)

Opponents: John Fitzpatrick, Mt. Mining Assn.
Larry Brown, Northern Mt. Oil and Gas Assn. and
Ag Preservation Association.

Steve Pilcher, Western Environmental Trade Assn.

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, SD 24, GREAT FALLS, believed that the federal government should follow the state's lead in adopting the "clean and healthy environment" clause to the Federal Constitution. The resolution, SJ 11 asked that Congress adopt this clause to Federal Constitution. The same resolution is being introduced in Maryland, New York, Indiana, and New Hampshire. He added that due to the infancy of the resolution, it may require wording changes concerning the present language.

Proponents' Testimony:

Patrick Judge, Montana Environmental Information Center, MEIC, stated MEIC was strongly in favor of this resolution. He stated that 25 years ago Montana adopted her own "Clean and Healthful Environment" clause in the 1972 Constitutional Convention. He read briefly from the minutes of the convention in 1972 when Delegate Cross introduced the concept of having a "clean and healthful environment and the right and responsibility to maintain or improve that environment. He recommended to the committee to also exercise prudent judgement and to ask Congress to adopt a similar right and to recognize this right of a clean and healthful environment.

Tara Mele, Montana Public Interest Group, (Mont PIRG), stated strong support for SJ 11.

Ted Lange, Northern Plains Resource Council, (NPRC), strongly supported this resolution. NPRC feels that is important to have the "bedrock right" underlying the existing environmental laws. The Constitution guarantees a number of important fundamental rights and essential rights and the right to a clean and healthful environment is as essential as those other rights. He urged the committee to consider this resolution.

Opponents' Testimony:

John Fitzpatrick, Montana Mining Association, stated the association opposed SJ 11. He summarized Article IX, of the Montana Constitution by putting the reponses to it into two eras. The first 20 years, there was little heard about Article IX. The last four or five years, environmental lobbyists have pushed this particular article as a harassment tool against industry. He also stated that this is an important employment bill for lawyers. This resolution he believed is not in the best interest for Montana.

Larry Brown, N. Montana Oil and Gas Association, Ag Preservation Assn., offered that they have the incentive and the technology to do the job, right out there on the ground and the laws that we have today. He hoped the committee would not pass this bill.

Steve Pilcher, Western Environmental Trade Association, (WETA), opposed SJ 11, but was not opposed to a clean and healthful environment. He argued in reference to statements made by the proponents of this bill relative to the legislation, the rules, regulation, etc., that are already in place are adequate. He thought the resolution unnecessary.

Questions From Committee Members and Responses:

SENATOR FRED VAN VALKENBURG, asked SEN. DOHERTY about what the language, "protection of the other natural resources."

SEN. DOHERTY reminded him that this legislation is in its early stage and the language needs to be fleshed out. He said that if it went to Congress it would likely be edited, and regard to the legislative intent, air, land, and water would cover it.

Closing by Sponsor:

SENATOR STEVE DOHERTY felt it was important for us to recognize that we in Montana did something incredibly good when we adopted those words in our Constitution and he thought the Feds could learn something from us.

HEARING ON SB 380

Sponsor: SENATOR GERRY DEVLIN, SD2, TERRY

Proponents: Larry Brown, No. Mt. Oil and Gas Assn, Ag Preservation Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. DEVLIN, SD 2, Terry, stated that SB 380 is trying to solve a problem with the preference rights of a lessee of the state land leases. He cited a few examples of problems in his district concerning the state lease procedures. Presently, when the lease comes due, a lessee is notified by the Dept. to complete a form and send back \$25.00. If one does not do this before the lease ends, you lose your preference rights. This occurred in his area, SEN. DEVLIN stated, and presented SB 380 to specifically guarantee that person to hold the preference rights for that lease until he does not meet the high bid or he loses his lease because of misuse or nonpayment or other similar violations. He hoped that through an amendment, which is needed, that we can have it directly impact the preference right in a way that the lessee does not lose that preference right.

Proponents' Testimony:

Larry Brown, Northern Montana Oil and Gas, Ag Preservation Assn., supported this bill and wanted to work with SEN. DEVLIN on this matter.

Opponents Testimony:

Bud Clinch, Director, Dept. of Natural Resources, handed out (EXHIBIT 1), to explain and view the present procedures of the DNRC. The Dept. concluded that SB 380 does not do what **SEN. DEVLIN** had intended to do. The language does get confusing, he said, and wanted to share their interpretations of the actions that take place and the current process of lease renewal. He handed out the packet of four sheets which consisted of: 1) Comparison of a time line of current process and the process of SB 380; 2) Letter from the Dept. of Natural Resources that is sent to the Lessee in December; 3) Application Form for lease renewal; 4) Letter from the Dept. stating what will happen if the lessee does not do what is required, dated January 15.

If the individual fails to do any of these things to meet the their expiration date there are legal obligations in the contract to terminate or expire. **Mr. Clinch** said it would not be appropriate to extend preference rights beyond the contract's stated time frame.

Questions by the Committee and Responses:

SEN. MACK COLE asked **Mr. Clinch** how many people have been involved with their lease expiring and not sending in their application.

Mr. Clinch replied that only one instance in ten years occurred where a person's lease was canceled by Dept. because they failed to respond to that issue. There are a number of situations where people have been canceled because of failure to pay their rentals on time.

SEN. TOM KEATING, asked **Mr. Clinch** about the bill referring to a lease, is this in a section that just deals with agricultural leases?

Mr. Clinch replied that the section covered dealt with the surface leasing, which would affect cabin site leases, grazing leases, and agricultural leases, but would not affect mineral leases.

Closing by Sponsor:

SEN. DEVLIN called the attention to the handouts by the DNRC and to keep in mind the lease expires Feb. 28th. The letter stating on item four that all applications must be returned to this office postmarked by Jan. 28th. He said that this is a month before the lease expires. Is there someway to address that small problem and the situation of the time frame. He closed by saying he would rather work something out with the DNRC if possible.

SEN. DEVLIN added that he believed there is a small time frame where a person is without their preference right, and without your preference right, you are probably not the best custodian of that land.

HEARING ON SB 346

SEN. BEA MCCARTHY, SD 29, Anaconda, requested to table bill SB346. She explained that for the last nine months a local committee had been working on this proposal and attempted for some period of time prior to this, to meet with the attorney general's office, with unsatisfactory results. The negotiations between the group were headed by Jim Flynn of Anaconda, Chris Tweeten of the Attorney Generals Office, and Judy Browning of the Governor's Office. She stated that last night they had got together and had a signed agreement by all the concerned parties. With the group's permission, she would like the committee to table the bill.

EXECUTIVE ACTION ON SB 346

Motion/Vote: SEN. VAN VALKENBURG MOVED TO TABLE SB 346,
MOTION CARRIED UNANIMOUSLY.

At this point in the meeting CHAIRMAN GROSFIELD handed over the gavel to VICE CHAIRMAN CRISMORE.

HEARING ON SB 377

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Denise Mills, Administrator, Remediation Division,
Dept. of Environmental Quality, (DEQ)
Page Dringman, PLP Caucus Rep.
Anne Hedges, Mt. Environmental Information
Center (MEIC)
Peter Nielsen, Missoula County Health Dept.
Steve Brown, PLP Caucus, Missoula
Ester Nelson, Local Government Caucus, Bozeman
Don Allen, Montana Wood Products Association
Ward Shanahan, PLP Caucus Alternate, ARCO
Lisa Hallenbeck, Attorney, Poore, Roth & Robinson

Opponents: None

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber, said that SB 377 arose out of SB 382 from last session. This bill was a long complicated bill with one of the goals being to do away with joint and several liability in our environmental laws. The committee found this provision somewhat harsh and decided to replace it with a provision that would require a study. The study was to be done by the Dept. of Environmental Quality and in a manner as stated on page 1 of the bill, "to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities." The Dept.

started the process, went through all the correct proceedings, formed a wide spectrum of interested parties for representation, and through a very lengthy consensus process, arrived with a consensus on all points. **SEN. GROSFIELD** said SB 377 is a consensus on all points, and handed out the amendment. (**EXHIBIT 2**). He then named the people involved in this long process under the leadership of the Montana Consensus Council: Page Dringman, attorney representing the potentially liable person caucus; Anne Hedges, MEIC, representing public interest group; Cindy Brooks and Carol Fox representing DEQ; Peter Nielsen representing local government caucus; Steve Brown, Attorney representative of the potentially liable party caucus.

SEN. GROSFIELD commented on the statement of intent of the bill, which was to provide an option to the concept of joint and several liability for potentially liable persons to have their proportionate share of liability determined. He explained that in that past, "if you had a deep pocket, lookout," even if the party only for example contributed 10 percent to the problem, you might be paying more of the share, even most of the entire cost if your pocket was deep enough. It was felt by the last legislative session that it was not the best or fairest way to do it, and the Dept. that was directed to look for an option. SB 377 is that option.

Proponents' Testimony:

Denise Mills, Administrator, Remediation Division, Dept. of Environmental Quality, provided a copy of her testimony and a briefing paper on the bill to the committee.

(**EXHIBIT 3**). DEQ supported SB 377 because it provided: A fair alternative to strict, joint, and several liability; Assurances that remedial actions will be accomplished in a reasonable time frame; A process for settlement of costs between multiple PLPs, including potential orphan shares without litigation or court actions.

{Tape: 1; Side: B; Approx. Time Count: 4:10; Comments: .}

Page Dringman, Potentially Liable Party Caucus, which included railroads, timber, mining, petroleum, landfills, any such entity that could be potentially liable under the state environmental laws. She handed out (**EXHIBIT 4**) that briefly outlined the whole bill. This bill offered an alternative scheme to joint and several liability. She said it allowed for liable parties to opt into an allocation scheme that allocated liability on more of a fault base system. She pointed out that no one is mandated to enter into the allocation scheme, this is entirely voluntary. However, there is a big incentive to enter into the allocation scheme because if they don't, **Ms. Dringman** says they remain subject to strict joint and several liability under the current law.

The criteria for eligibility was that your site:

- 1) Was on the state CECRA list. The present list contains 180 sites.
- 2) Can not be on Federal Superfund list nor national priority list (NPL).
- 3) Can not use the allocation scheme for natural resource damages, particular for remediation costs.
- 4) Can not collect past costs, but is limited to costs incurred after the date of the petition.

Ms. Dringman explained the controlled apportionment option and the time frame involved along with other major provisions and funding. See (**Exhibit 4**).

She went further into breaking down funding sources -

- * the metal mines tax of 8.5 per cent, currently going into the special abandoned mine account that expires in 1997.
- * \$200,000/year from the tax proceeds, not a guaranteed source.
- * \$200,000/year from the interest generated from the RIT starting in the next biennium.
- * Potentially penalty and fine money collected in environmental areas.
- * Penalties during process and settlement monies would go back into the program.
- * Federal funding may be available on a site by site basis.
- * Possible Dept. of Natural Resources grant money and other program.

Ms Dringman reiterated that the orphan fund is a reimbursement fund. They tried to limit the state's potential liability in that it is a reimbursement mechanism.

A party can't receive money from the fund until the cleanup is done. A party can't receive any costs except remediation costs. A party can't collect interest on your costs, and if there is no money in the fund, then the party waits.

There is no obligation of the state, therefore, to pay money out if there is no money available in this fund. Quantifiable money amounts to about \$1.4 million a biennium, which is a good starting point, she stated, however long term money is needed. She urged the committee to pass the bill.

Anne Hedges, Montana Environmental Information Center, (MEIC), Representative of the Public and Environmental Interest Caucus, said that this was a long arduous process, and she initially did not believe they would ever reach an agreement. She stated that this bill is a good start, although not perfect. She listed the people she worked with on this caucus and represented: Jeff Smith, Ester Nelson, Mark Johnson, Robin Billau, John Ray. Other groups that looked at this document and signed off included Montana Audubon, Greater Yellowstone Coalition, and the Montana Public Interest Research Group. She said the groups and people stated above did all feel this bill is a good step in the right direction.

Ms. Hedges stated the parameters that had to be met were environmental and public interest safeguards. She spoke of the

environmental safeguards and departmental safeguards that were included in this bill.

*The fact that natural resource damage liability is not covered.

*Reimbursement from the orphan share fund is very conservative.

*Previous costs incurred by the PLP before the date of this act is effective are not eligible for reimbursement.

*If insufficient money is in the account, reimbursement is not required and the orphan share fund, the department, and the state are not liable for making any reimbursements for the costs.

*Interest cannot accrue on outstanding claims.

*Only actual documented remedial action costs may be reimbursed.

*Attorney fees, legal costs, and operation and maintenance costs cannot be reimbursed.

*There is only one allocation allowed per facility.

*Site has to be on priority list.

She stated that one of the most important points was that somebody would always be in these proceedings defending the orphan fund ensuring that all the parties that entered into these proceedings don't try to dump off their share of responsibility on this orphan share to get reimbursed from the state.

The department will be required to represent the orphan share.

Our concern was this might overburden the department. The

department will not be required to be in more than five

allocations at one time. The public will be allowed to comment and innocent parties will be protected.

Ms Hedges stated that the allocation factors that are on page 43 in the document help guarantee that the irresponsible party will be held responsible.

The remedial action has to be completed before the party can seek reimbursement from the orphan fund.

The PLP has to begin cleanup while the allocation is moving forward or cleanup has to be concurrent with the allocation process.

The department has listed the sites by priority- low, medium, high, maximum. At high and maximum priority sites, if the responsible party does not comply with the requirements of cleanup, the dept. must take action.

The Caucus felt that with these provisions in the bill, there were enough safeguards regarding public interests and environmental protection. The people participating in this caucus were willing to support this bill and hoped the committee did also.

She handed out a letter of testimony from **Robin Billau**, a member on the Public and Environmental Interest Caucus. (**EXHIBIT 5**)

Peter Nielsen, Acting Director of Environmental Health, Missoula City-County Health Dept., Local Government Caucus. Other caucus members included: Gordon Morris, John Sesso, ReBecca Dupuis, Barry O'Connell, Ron Hanson, Alec Hansen, Cheryl Beatty, and Vivian Drake. **Mr. Nielsen** read his written testimony which are attached to these minutes as (**EXHIBIT 6**). He stated that the

Local Government Caucus supported this bill and its proposed funding mechanisms, but recognized that the funding will not be sufficient. The caucus does not support anticipated proposals to divert RIT funds to the orphan share fund. In closing, he wanted to acknowledge Carol Fox, DEQ Superfund Program, and Cindy Brooks, an attorney for DEQ and emphasize that without these people's participation, this consensus process would not have resulted in the present outcome. He thanked those individuals for their hard work and dedication.

Steve Brown, Attorney, Missoula, stated that he was also a member of the PLP Caucus, which represented all the businesses and individuals in Mt. who could potentially get caught up in the liability scheme. He focused his testimony on the protection of small parties that may have contributed a very small portion to the site. The existing CECRA statute had provisions to protect small parties, he stated, but they are fairly vague, and modeled from federal law, and they do not work very well. The Caucus developed some more specific standards concerning small parties and put them into two categories: demicromis and deminimis. See (EXHIBIT 7). He felt these provisions protected the small businesses and individuals who may be swept into the liability scheme and said the caucus supported the bill.

Ester Nelson, Nelson's Mobile Home Park, Bozeman, was a member of the Citizen's Caucus for the Governor's Consensus Council Study on Joint and Several Liability in CECRA. She read her written testimony which is attached to the minutes as (EXHIBIT 8). She added one recommendation concerning citizen recovery of damages, but felt SB 377 guaranteed the safeguards for public health and the environment.

Don Allen, Mt. Wood Products Association stated he did participate as an alternate on the caucus that **Steve Brown** referred to and stood in support of SB 377.

Ward Shanahan, ARCO, supported the bill.

Lisa Hollenbeck, Attorney with Poore, Roth, and Robinson, Butte, said a partner in her law firm, **John Davis**, was an alternate member of the Industry Caucus, and the law firm was in support of this bill.

Opponents: None

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY, asked **Anne Hedges** about the amendment that **Ester Nelson** requested about citizen recovery and the rationale of changing that.

Anne Hedges responded this was a result of some confusion on her part and it wasn't put in the final draft because of an error in the final discussion. She said she would have to contact all the

other participants in order to remove that section. It was something the caucus discussed and agreed to previously.

SEN. MCCARTHY then asked if she could talk to the other members before it is heard in the House to find out if an amendment is necessary.

SEN. DALE MAHLUM asked if this bill in any way will harass small businesses? She answered no, it would not. He asked if the county health department would be the entity to initiate the action against a small business? **Ms. Hedges** said she doubted it, but suggested to ask **Mr. Nielsen**.

Peter Nielsen, Missoula County Health Dept., said no.

SEN. VIVIAN BROOKE, asked **Page Dringman** about the allocator, is it somebody everyone agreed to, and who pays for this? She said yes, that is the first step. If everyone can agree on an allocator, then that is who they choose. If an agreement cannot be reached, then the District Court is asked to appoint an allocator. She explained that the PLP pays the first \$5000.00 and when the allocation is done then they will figure out, based on liability, the allocator's share.

SEN. BROOKE asked how much it would cost per biennium. **Ms. Dringman** replied there was a lot of disagreement on the costs but \$1.4 million per biennium would not reimburse all the orphan shares on the CECRA list. That is why this is considered short term funding but in the long term there is more funds needed. She said the short term funding got the ball rolling.

{Tape: 2; Side: A; Approx. Time Count: 4:50
; Comments: .}

SEN. BROOKE asked about the continuation of clean-up at the sites if there is a disagreement.

Ms. Dringman said the clean-up does continue and one can't seek money until the clean-up is done. There is an exception for hardship cases, she said, if you had a site that was all small businesses and they did not have the financial capabilities to clean up, they could apply to the fund for money to go ahead and do that clean-up.

SEN. BROOKE asked, what if there is no money?

Ms. Dringman said they would have to wait until there was money, and stand in line, or whoever paid for it would be out of pocket, which is no different than the current law, she said.

SEN. BROOKE asked about the eligibility of the sites and are the sites that involve voluntary clean-up eligible?

Ms. Dringman replied that they are eligible and wanted to ensure that people proceeding on a voluntary basis would also be able to seek reimbursement.

SEN. BROOKE asked **Anne Hedges** about who monitors the clean-up?

Ms. Hedges said the Dept. of Environmental Quality.

SEN. BROOKE asked about if there were past discussions concerning the available FTEs to monitor this clean-up process?

Ms. Hedges said there were discussions but no comments on the lack of FTEs, but the best she could say was possibly because of the limit to five allocations at any one time.

SEN. BROOKE asked **Ms. Hedges** about the pilot project that was inserted at the end of the last legislative session, where \$3 million dollars was appropriated for clean-up, was that used during the interim? **Ms. Hedges** said that it was \$900,000, not \$3 million and that the first three sites that applied for that money were eligible to receive \$300,000.00 each for abandoned mine sites. One site was completed and was going through the process of reimbursement.

VICE CHAIRMAN CRISMORE asked **SEN. GROSFIELD** to close.

SEN. GROSFIELD said it was a long complex bill and there was a complimentary House Bill, HB 584, that had the actual appropriations in it. He added that there are some technical amendments as the Dept. talked about, and these need to be made to both bills.

He stated that the only sites that were talked about are sites that are on the list, and belong on that list.

As far as the funding discussion, he said, this program just started and as for this biennium, the \$1.4 million would be adequate for this program. He said everybody was involved, various interests represented, including both large and small businesses.

Earmarking of fines and penalties was a slight concern he had with the bill, but he did not feel it would be an unsurmountable problem. He hoped the committee would pass the bill.

VICE CHAIRMAN CRISMORE closed the hearing on SB377. **SEN. GROSFIELD** resumed chair.

{Tape: 2; Side: A; Approx. Time Count: 5:00; Comments: Committee recessed for a 10 minute break.

EXECUTIVE ACTION ON SB377

Amendments: sb0377.01 alm

Motion/Vote: SEN. CRISMORE MOVED TO ADOPT THE AMENDMENT AS CONTAINED IN EXHIBIT 9. MOTION CARRIED.

Discussion: CHAIRMAN GROSFIELD pointed out on line 5, page 34, that it was the intention to not have that language in the bill.

Motion/Vote: CHAIRMAN GROSFIELD SUGGESTED TO STRIKE THE WORDS, "WITH SECT 26-36." SEN. COLE MOVED THE AMENDMENT, MOTION CARRIED.

Motion/Vote: SEN. CRISMORE MOVED TO ADOPT SB 377 AS AMENDED.
MOTION CARRIED.

Discussion: SEN. GROSFIELD wanted to commend the whole group on their work and the amazing solutions that resulted.

EXECUTIVE ACTION ON SB380

Motion/Vote: SEN. MIKE TAYLOR MOVED TO TABLE SB380. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SJ 11

Motion/Vote: SEN. TAYLOR MOVED TO TABLE SJ 11. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB356

Motion: SEN. VAN VALKENBURG MOVED A DO PASS FOR SB356.

Discussion: SEN. VAN VALKENBURG wanted to especially adopt section 2 of the bill, which takes the specific nitrate as nitrogen standards, with respect to ground water, out of statute, and instead leaves their determination up to rulemaking. For the future he thought the Board of Environmental Review should be the entity that decided those standards. He said he was least concerned about Section 4, waste being in a location where it is likely to cause pollution as opposed to being where they will cause pollution. Concerning the subject of revoking permits in Section 3, he thought some criteria needed to be added to the statute.

SEN. COLE commented on the fiscal note and thought the bill had so many problems in it.

SEN. MCCARTHY wanted to comment that she learned that a cow is a non-point source and a field lot is a point source of pollution.

SEN. VAN VALKENBURG responded to SEN. COLE'S concern about the financial consequences. He asked the committee to look at assumption no. 2 in the fiscal note. If the Board does not change the current rules, there would not be any fiscal impact to DEQ.

SEN. BROOKE commented that the Board seemed to be the best entity to make those decisions. She thought Section 2 was a good idea and should be allowed to survive.

{Tape: 2; Side: A; Approx. Time Count: 5:30; Comments: .}

CHAIRMAN GROSFIELD commented in regard to Section 2 that he agreed, it was the function of the Board to make the rules with

regard to their areas of expertise. However, any board can go overboard sometimes. He said that was what happened with the Board of Health and Environmental Sciences, the previous board. Therefore, the Legislature responded with those specific standards in statute. It was stated by one person that it had not been a problem with regard to nitrates. If we passed this, there would be a lot of pressure on the Board to start with the rule making process again, and he thought there was no reason to or need. He noted that no one from the Board or the Department had indicated any need to change these standards. In regard to the rest of the bill, **CHAIRMAN GROSFIELD** said Section 1 had been rejected in the house. Regarding Section 3, he discussed non-degradation policy and authorization to degrade. Who is going to apply for a permit to degrade? It is a person with a discharge permit or person who is trying to get a discharge permit, who cannot get it down to the background levels in the water that they are discharging to. Thus, they need an authorization to degrade. That does not mean they are going to go above the standard, but they can't meet the background level. Hence, they request an authorization to degrade and it becomes part of their discharge permit. If they violate their discharge permit, they can lose the discharge permit, then the authorization to degrade becomes useless (without the discharge permit). Therefore, he did not think Section 3 or 4 were necessary.

SEN. BROOKE thought the section on nitrates was crucial to her district being that the water supply in the Missoula Valley is from a sole source aquifer, which is located under an urban area. She said it was a worry and a concern to all public officials to put into public policy components to protect that aquifer. She emphasized the need to put those decisions in the hands of those qualified people at the Board of Environmental Review.

CHAIRMAN GROSFIELD responded that the Board did not come forward. He had not heard from them or the Dept. that there was a problem.

Substitute Motion: SEN. COLE MOVED TO TABLE SB356.

Vote: MOTION CARRIED, 8 TO 2 WITH SEN. VAN VALKENBURG AND SEN. BROOKE VOTING NO.

EXECUTIVE ACTION ON SB363

Amendments: sb036301.alm

Motion: SEN. GROSFIELD MOVED TO ADOPT THE AMENDMENTS AS CONTAINED IN (EXHIBIT 10).


Discussion: **CHAIRMAN GROSFIELD** explained the amendments at the top of page 9 and called attention to the fiscal note (\$9000).

Vote: AMENDMENT PASSED.

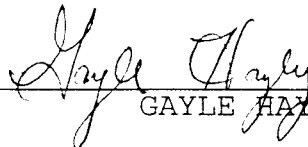
Motion: CHAIRMAN GROSFIELD MOVED A DO PASS FOR SB363. MOTION
CARRIED.

ADJOURNMENT

Adjournment: 5:50 PM



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH