

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 12, 1997,
at 3:00 p.m., 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: HB 383, HB 437; Posted 2/21/97
Executive Action: HB 31, HB 344

HEARING ON HB 383

Sponsor: REP. DICK KNOX, HD 93, Winifred

Proponents: John Arrigo, Department of Environmental Quality

Opponents: None

Opening Statement by Sponsor:

REP.KNOX said this was a straight forward bill which grants the Department of Environmental Quality discretion for the civil penalty provisions of the Metal Mine Reclamation Act and the Opencut Mining Act. He went through some of the amended sections of the bill. In Section 1. he pointed out on page 1, line 29,

"ability to pay" was stricken because it was too subjective and may lead to problems in the interpretation of that phrase. The reason he said it was in the bill to begin with was because the Dept. recognized the fact that small companies can not afford large fines, or bankruptcy situations may occur. Lines 7 through 10 were stricken on page 2, where it referred to minor violations being waived if determined that the violation did not represent potential harm.

REP. KNOX said there were no changes in the penalty amount in Section 2. He believed, overall, that this bill would reduce litigation.

Proponents' Testimony:

John Arrigo, Department of Environmental Quality (DEQ), read his written testimony attached as (EXHIBIT 1).

Opponents' Testimony:

Deborah Smith, Montana Chapter Sierra Club, handed in a witness statement.

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE asked John Arrigo how the Dept. reviewed cases.

John Arrigo replied that the department was still putting together components of the evaluation process.

SEN. BROOKE asked Mr. Arrigo in the situation where, for example, small miners were financially strapped so they could not pay the fines, would the Dept. take that into consideration.

Mr. Arrigo said that when the violation notices are given, they had to be consistent, regardless of economics. However, the Dept. would consider financial situations when violators were paying their fines.

SEN. BROOKE asked Mr. Arrigo where the money from the fines went.

Mr. Arrigo stated that the revenue from the fines went to the Metal Mine Reclamation Account to do reclamation and restoration efforts at mining sites.

SEN. BROOKE asked Mr. Arrigo when the Dept. would have their procedures completed. He said between 6 to 12 months, but it was an ongoing process.

CHAIRMAN GROSFIELD asked Mr. Arrigo about if the Dept. was done with these type of bills regarding flexibility for the Dept. He commented that last session, the Dept. had two bills regarding the same kind of discretionary concerns.

Mr. Arrigo replied that they recommended this legislation for the purpose of promoting consistency for the Dept.

CHAIRMAN GROSFIELD asked John North, Legal Council for DEQ, if the Dept. went after both large and small companies for both civil and criminal penalties.

Mr. North stated that during the last five years the Supreme Court broadened the double jeopardy cases to apply both to criminal and civil. The penalty actions involved would be the same for both entities.

{Tape: 1; Side: B; Approx. Time Count: 3:45; Comments: Tape damaged.}

Closing by Sponsor:

REP. KNOX closed in saying that he carried this department bill because he had in the past reviewed natural resource agencies' compliance and enforcement processes. He stated the "big hammer" approach was not always the most effective. He felt HB383 would reduce litigation and increase compliance so therefore hoped the committee would pass this bill.

EXECUTIVE ACTION ON HB31

Amendments: hb003101.alm (EXHIBIT 2).

Motion: SEN. TAYLOR MOVED AMENDMENTS FOR HB31.

Discussion: SEN. COLE asked CHAIRMAN GROSFIELD what the difference was on the bill with the amendments added.

CHAIRMAN GROSFIELD replied that sub (a) remained the same, and sub (b) was broadened a little concerning sovereign immunity.

Vote: MOTION CARRIED.

Discussion: SEN. TAYLOR commented that it was obvious that there was a tenuous relationship between the state and the tribe because of the tests which had to be met to comply with provisions. He congratulated REP. HEAVY RUNNER on trying to improve the state/tribal relations.

Motion/Vote: SEN. CRISMORE MOVED THAT HB31 BE CONCURRED IN AS AMENDED. MOTION CARRIED 8 TO 2, WITH SEN. KEATING AND SEN. MILLER VOTING NO.

{Tape: 1; Side: A; Approx. Time Count: 3:50}

HEARING ON HB 437

Sponsor: REP. HALEY BEAUDRY, HD 35, Butte

Proponents: J. B. Stone, Northwest Montana Gold Prospectors
Association

Jan Sensibaugh, Department of Environmental Quality

Angela Janacaro, Montana Mining Association

Tad Dale, Private Citizen

Ernest Nelson, Private Citizen

Harvey Frederick, Private Citizen

Opponents: None

Opening Statement by Sponsor: REP. HALEY BEAUDRY, HD 35, Butte, stated that this bill changes the Metal Mine Reclamation Act to make certain revisions for the small miner and hobby miners. In the past, small miners have been excluded from the act. This bill would provide opportunities for the entrepreneur to develop their mining activities and yet keep things environmentally sound.

This bill allows the areas covered by roads to be excluded from the calculation of the five-acre limit if these roads are bonded for reclamation. It also allows a small miner to simultaneously have a full operating permit as long as that operating permit covers an area of 100 acres or less. Currently, he can't have both. He said there has been abuse in the area of topsoil disturbances. This bill requires small miners to strip topsoil, save it, and use it for reclamation. Placer and dredge miners have to post a bond of up to \$10,000 and equal to the documented, demonstrated cost estimate for reclamation. He said basically, it was difficult to come up with the actual cost until the work was done and costs incurred. This bill excludes the area covered by cyanide processing facilities from the five-acre calculation because that area on those mines is already required to be bonded.

On page 7, Line 22, of the bill, it states an exemption for the weekend (hobby or recreational) miner, i.e. as long as you don't use motorized excavating equipment, blasting agents, disturb more than 100 sq. ft., move more than 50 cubic yards of material, leave unreclaimed sites less than 1 mile apart or use a suction dredge that's greater than 4" in the wet part of the stream. This is included because it gives the Department a chance to handle situations where a piece of property might be deemed hot for gold prospecting by many people. They might come in by the hundreds, each getting a 10' X 10' plot, but create a lot of disturbance.

The dredging is covered if you're using a suction dredge with a 310 permit. In order to get that, a fisheries biologist has to review the plan and then you submit the plan of operation to the U.S. Forest Service. There are six suction dredges in Montana and four small miners with cyanide operations. The situation now is one can't move from small miner to full blown miner because of the money and manpower involved. The permitting process is complex to become a full blown miner, therefore, small miners probably would have to shut down during the interim, thus it

prohibits local Montana people from expanding their operations. He asked the committee for their support.

Proponents' Testimony:

J. B. Stone, Northwest Montana Gold Prospectors Association, stated their 200 member organization was comprised of recreational prospectors. The association was interested in Section 3, where activities were defined to be exempt from regulations. He said the members were law-abiding citizens, who in their daily practices, try to take out more trash than they take in. They just want to simplify things, and felt that if this bill passed, government agencies would not have to be pestered with questions quite so much. **Mr. Stone** stated they were a low impact group and the entire membership worked the eight claims they had. He added that the association was submitting a plan of operation for their lease claims, because of the type of testing they wanted to do, which required it. He thought the bill was an excellent idea and would be helpful for understanding the requirements.

Jan Sensibaugh, Department of Environmental Quality (DEQ) read her written testimony attached as (EXHIBIT 3).

Angela Janacaro, Montana Mining Association, said this bill clarified the five-acre limitations and excluded the roadways and process areas when they're bonded. However, if a miner chooses not to bond it, they are included in the limitation. It would require a property owner to get a small miner exclusion if others are allowed to mine on this property. By the request of DEQ, in order to prevent costly efforts, this legislation would exclude recreational hobbyists from regulations unless they were using motorized excavation equipment or blasting agents, disturbing more than 100 sq. ft. or 50 cu. yd. per site, or using a suction dredge of more than 4". The dredging is covered by the fact the miners had to go through the SCS to obtain a 310 permit. A biologist from Fish, Wildlife & Parks comes to determine the fish habitat and the Conservation District can issue a dredge permit. She said that HB 437 required topsoil be saved and used for reclamation. It raises the maximum reclamation bond from \$5,00 to \$10,000 so there's more protection. She summarized HB 437 as a team effort by small miners and the DEQ, to resolve many unclear portions of the law and encouraged responsible behavior of small miners. It also provided a middle ground for small miners who are looking to expand, by allowing them to hold operating permits but restricting them to disturb 100 acres or less. She recommended a do pass for HB437.

Tad Dale, Missoula Citizen, said he happened to be a miner who holds a small miners exclusion as well as a cyanide operating permit. He cited an example where in the process of building a leach pad, most of the area was taken up in the process so there was no room left to mine. Since he was 100% bonded in the cyanide portion, he felt the five acres should still be allowable

towards the mine portion. He said mining was capital-intensive and the small miner had many expenses, such as a generator for power, plumbing, loader lease, cat, fuel & oil to run the generator and equipment, assays, lab results, and dump trucks, etc. He recommended an affirmative vote for HB 437.

Ernest Nelson, Engineer, Missoula, asked for support of HB 437 because it allowed us to mine at a more economic rate as well as do our reclamation in a more timely fashion.

Harvey Frederick, Ravalli County Citizen, supported the bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. MIKE TAYLOR asked **Tad Dale** who they leased their land from and how much their bond was.

Mr. Dale replied that it was private, but they still had to go through the same permitting process as anybody else. The bond was about \$30,000, where part of it was a certificate of deposit or a surety bond.

SEN. TAYLOR asked if the five-acre permit expanded their bond. **Tad Dale** said under the small miners exclusion where a applicant swore not to violate the water or air quality laws of Montana, your operation had to be contained within that five acres. He said that the cyanide operating permit was a separate part of the law they had to meet. Because it was 100% bonded, that acreage should not be counted against the five acres.

SEN. TAYLOR asked **Tad Dale** how long they had been in operation. **Mr. Dale** replied that this would be their third summer for production, but they only worked seven months out of the year.

SEN. MACK COLE asked the sponsor to explain page 3, line 10, Section 82-4-310.

REP. HALEY BEAUDRY said it was explained on Page 7, Line 22.

SEN. COLE asked about the statement regarding submitting to the Forest Service, and wondered why that had to be done when it wasn't Forest Service land. **REP. BEAUDRY** said the Forest Service issued dredging permits. To obtain a 310 permit, one first went to the Conservation District, who sent out the Fish, Wildlife & Parks biologist to look at where you're going to dredge. They may or may not ask DEQ to request a bond. Then you went to the U.S. Forest Service to get an operating permit. This was called a plan of operations.

SEN. COLE asked if you had to go to the Forest Service no matter if the land was BLM, Forest Service, eastern Montana, etc. **Pete Strazdas, DEQ**, said only in a national forest.

SEN. DALE MAHLUM asked **Ernest Nelson** if HB 437 would make it easier for part time miners.

Ernest Nelson said it would be easier for both part time and full time miners. Actually, he stated, that it was all a function of money. If you expanded and grew out of being a small miner, one had to apply for an Environmental Impact Analysis, which was costly. Therefore, it was easier to start out small and then grow into the full fledged miner.

SEN. FRED VAN VALKENBURG referred to Section 3 and asked if it significantly expanded the permitted activities of a hobby miner versus those of a small miner. **REP. HALEY BEAUDRY** said it didn't.

SEN. VAN VALKENBURG asked if a hobby miner could currently use a suction dredge and **REP. BEAUDRY** said yes, but only up to 4 inches.

SEN. VAN VALKENBURG suggested the bill authorized a hobby miner to leave unreclaimed sites as long as they were less than a mile apart and didn't disturb more than 100 sq. ft. or 50 cu. yds. of material. He said since he didn't know much about the topic, and as the environmental groups did not come to the hearing, he was depending on **REP. BEAUDRY's** to tell him HB 437 was not expanding what a hobby miner could do.

REP. BEAUDRY said the bill gave definition to the area of a hobby miner, 10ft. X 10ft. He added that those groups were involved in the bill.

SEN. VAN VALKENBURG said those groups should be present as proponents, explaining the topic and information so he could make a decision which was in the best interest for Montanans. It was impossible for citizen legislators to be experts on every Montana industry and he needed expertise to help him make decisions.

REP. BEAUDRY said currently nothing controls hobby miners' activities and this bill would not expand but tighten their activities.

SEN. VAN VALKENBURG said he was glad to hear that because he was much more concerned with them than the small miners, who were business people with economic interests. He wasn't sure people who had a passing interest would be the same and they might give the small miners a bad name or cause problems for them later.

SEN. VIVIAN BROOKE commented she understood the cyanide part but asked for clarification on the impoundment situation where there was no more room to mine. **Tad Dale** said at the time [1989] everybody supported the cyanide concept that a person had to know what he or she was doing in order to be permitted. They got the

leach pad built, got ready to mine and then discovered they were out of acreage.

SEN. BROOKE asked how much acreage would be expanded. **Mr. Dale** said there was only so much material to be mined from a five-acre piece so the leach pad was directly tied to the area where mining would be done. However, it wasn't a great deal of land, maybe five or six acres of leach pad. Everything was tied to economics, the grade of ore, or type of vein system. Nobody would build a leach pad unless it was economically feasible.

SEN. BROOKE asked if the five-acre limit currently applied to **Tad Dale** and was told it did, explaining without HB 437, they were up against a brick wall because they had to take that quantum leap from the small miner into the big operating permit. They were trying to do that but had to first grow from the small miner into the big miner. They were trying to generate enough cash flow to get to that point. He said, in fact, 75 percent of all producing mines in the U.S. were started by the small guy.

SEN. BROOKE said they would be excluded from the five-acre limits if the bill passed. **Tad Dale** said the cyanide portion was already 100% bonded so if the bill passed, it would be separated from the five-acre limit.

{Tape: 1; Side: A; Approx. Time Count: 4:35 p.m.}

CHAIRMAN LORENTS GROSFIELD asked **Jan Sensibaugh** to explain at the top of page 4, where it said, a small miner "may" hold an "operating permit."

Jan Sensibaugh said it was in the regular Hard Rock Mining Law where if they were over the five acres, they weren't a small miner, and therefore had to get a hard rock operating permit. She clarified the word "may" by saying they may hold a standard bonded operating permit for a mine and be able to get a small miners exclusion as long as the disturbance was 100 acres or less. The five acres and 100 acres were two separate operations.

CHAIRMAN GROSFIELD asked, if there were a 90-acre disturbance, would an operating permit "may" be required. **Jan Sensibaugh** said a permit would be required because the miner would fall under the "greater than five acres" under the rest of the Hard Rock Mining Act.

CHAIRMAN GROSFIELD asked **John North, DEQ**, if he was comfortable with the "may" and didn't negate the five-acre requirement of the Hard Rock Act.

Mr. North referred to page 3, lines 9-15, and said there was a definition of "small miner," and one of the criteria was he didn't hold an operating permit under 335, except for a permit issued under 335, Sub (2). That was a small miner's cyanide permit and then this adds "or a permit that meets the criteria of

subsection (15)(c)" which said a person didn't lose his or her status as a small miner by holding an operating permit as long as it was under 100 acres. That was why it said "may."

CHAIRMAN GROSFIELD asked if the acreage was surface acreage and **John North** affirmed.

CHAIRMAN GROSFIELD referred to Page 3, Lines 10-12, and asked if the meaning coincided with what he thought it said if he was a rancher who let some people do weekend mining, they may not be small miners but he was. **REP. HALEY BEAUDRY** stated that those lines meant a person wasn't allowed to cause disturbance without taking care of it.

CHAIRMAN GROSFIELD commented since he would be the landowner, he would be the person responsible for taking care of everything that needed taking care of. **REP. BEAUDRY** said that was correct, if it was your land, and you have allowed someone to come on it, the disturbance still had to be cleaned up.

{Tape: 2; Side: A; Approx. Time Count: 4:40 p.m.}

CHAIRMAN GROSFIELD wondered of the six suction dredges in Montana, how many were less than 4inch. **REP. BEAUDRY** said they were all 4inch dredges.

CHAIRMAN LORENTS GROSFIELD asked **J. B. Stone**, a suction dredge operator, where did he do this dredging?

J. B. Stone said he had a 2-inch dredge but had not yet used it in Montana. He said it was used in the streambeds so it would not affect banks. One of the provisions was to disallow the enlargement of stream pathways.

CHAIRMAN GROSFIELD asked if he was likely to use a 4-inch in a larger stream or was it more related to kinds of materials being dredged. **Mr. Stone** said it was related to both but a 4-inch dredge was quite a bit bigger than the 2" because of the size of the pickup hose and a much more powerful pump. One person can't carry a dredge larger than 4inch to the stream. Larger dredges were not something a hobbyist would have or could afford. A 2-inch dredge costs about \$700 and would keep a person busy for about half a day and the other half would be used to pack it in and out, while a 4-inch dredge would kill him in comparison.

CHAIRMAN GROSFIELD referred to the bottom of Page 7, and wondered if it applied to suction dredges and how one would reclaim suction dredge activity in a live stream.

J. B. Stone said basically, you have an intake and discharge and as long as you weren't gouging into the banks, you weren't changing too much around. One is trying to get to bedrock through loose gravel, which is already laying there and has been

in the stream for millions of years. He thought that the spring runoff did much more activity than suction dredges.

CHAIRMAN GROSFIELD asked **John North** why the date of May 15, 1997, was used in the Applicability Date.

John North said it was because Section 2.1 (d) required the small miner to salvage and protect the topsoil so the Department chose that date because it would give the Dept. enough time to before that requirement goes into effect to notify everybody.

CHAIRMAN GROSFIELD asked **John North** under current law, if another permit was needed to operate a suction dredge, other than the 310 permit.

John North said a 310 permit was needed as well as a water quality permit to make sure that water quality was protected.

SEN. MIKE TAYLOR asked **Mr. Stone** what size horsepower the dredges were.

J. B. Stone said about 5 hp, with the motor weighing about 30-40 pounds. It was a transportation device to get the material from the bottom of the stream to the sluice box.

CHAIRMAN GROSFIELD asked **Pete Strazdas** if he had experience with regulating suction dredges and was told he had.

CHAIRMAN GROSFIELD referred to a court case from the Upper Yellowstone River, Yankee Jim Canyon, involving a 4" suction dredge and the denying of the 310 permit. By exempting 4" or smaller suction dredges from any size stream, we then are relying on the Conservation Districts 100 percent to deal with the issue. He asked if the Department was comfortable in not providing permitting for those kind of situations.

Pete Strazdas said they were, explaining currently a small miner could file a small miners exclusion statement and without any further permitting, except the 310 permit and the water quality law restrictions.

CHAIRMAN GROSFIELD commented that he was also disappointed that the environmental groups did not show up for this hearing.

{Tape: 2; Side: A; Approx. Time Count: 4:50; Comments: None.}

Closing by Sponsor:

REP. HALEY BEAUDRY said currently, in the state of Montana, the way this process is set up, the small miners can not continue to grow, or grow into a full-sized mine. He said most likely some company would have to come in and buy those mines. At one time, 85 percent of Montana mines were at one time small mines, and now they are run by large companies. HB 437 basically assists the entrepreneurs to continue in their business and expand their

mine. It also did a good job, better than we're doing now, of controlling some of the operations in mining and tightening the controls, which is good for the environment, small miners and State of Montana. He asked for support of HB 437.

EXECUTIVE ACTION ON HB 344

Motion: SEN. FRED VAN VALKENBURG MOVED DO PASS ON AMENDMENTS hb034401.alm (EXHIBIT 5).

Discussion: CHAIRMAN LORENTS GROSFIELD referred to (EXHIBIT 4) as he explained the amendments, saying the bold, capitalized letters was added language and shaded part was deleted language. He said he had not talked to REP. RAY PECK about the amendments but HB 344 as it came to the Committee, was something they shouldn't pass.

SEN. KEN MILLER suggested perhaps the bill should be tabled, but wondered about the elimination of "50 years" and asked if meant "not needed right now" or "never needed for educational purposes." CHAIRMAN GROSFIELD said if he sold property, it would mean he didn't need it.

SEN. MILLER said he was looking at "lease" rather than "sell", and wondered if it could be leased for a couple of months with the knowledge something would then be built.

SEN. BEA MCCARTHY asked if a parking lot could be considered "educational purposes," explaining in some cases, land had to be purchased for student and faculty parking lots.

CHAIRMAN GROSFIELD asked if that language should also be deleted and was told it should.

SEN. VIVIAN BROOKE said the intent being it wasn't needed for the University System educational purposes because a situation might arise where there might be land a school district was interested in.

SEN. MIKE TAYLOR said he didn't want to hinder the University System from being able to sell some land, should they so choose, to fund other projects. He understood people from around the state had given the System land which they would not be able to use for educational purposes; therefore, they should have the right to sell it, and there should not be so many regulations or encumbrances they couldn't move it. He didn't think the legislature should make it unreasonably hard for them to do business.

Amended Motion: SEN. FRED VAN VALKENBURG MOVED TO STRIKE SUBSECTION (C) ON PAGE 1. (He asked for the sentence to be added to his original motion).

SEN. VAN VALKENBURG encouraged the Committee to adopt the amendments regardless of how they voted on the bill because the Committee should try to put the bill into decent condition; also, the bill ought to pass, and that likelihood would be increased with the amendments. He said not only was the legislature dealing with HB 344, but also the Land Board which was on a rampage with respect to the University System, and citizens from several communities who were on a rampage. **SEN. VAN VALKENBURG** suggested the Committee had the potential of calming people down by passing a bill which did some of the things they were concerned about.

CHAIRMAN LORENTS GROSFIELD reminded the Committee the Board of Regents had the Constitutional authority to deal with the University System and it didn't seem appropriate to have the Board of Land Commissioners second guessing the Board of Regents, regarding educational issues. It seemed to him that alone was good enough reason to pass HB 344. He said a similar bill was passed last session in response to a situation in Missoula where the University System and Board of Regents sold some land. There was a huge outcry from the citizens of Missoula because they didn't have a chance to participate in a public hearing. He agreed with **SEN. VAN VALKENBURG** the bill would quiet things down a bit, especially in the light of the current concern in Bozeman.

SEN. BEA MCCARTHY said there were instances where the Board of Regents was given land not located in Montana, and requested the Committee, when tightening up the language, to allow them to sell or lease such lands because they couldn't be used for educational purposes as covered by HB 344.

Vote: Motion DO PASS ON AMENDMENTS hb034401.alm (with addition of **SEN. VAN VALKENBURG'S** sentence) CARRIED 9-1 WITH **SEN. WILLIAM CRISMORE** VOTING NO.

Motion: **SEN. FRED VAN VALKENBURG** MOVED HB 344 AS AMENDED BE CONCURRED IN.

Discussion: **CHAIRMAN GROSFIELD** commented that during the hearing reference was made to conflict of interest regarding **SEN. VAN VALKENBURG** because he sat on this Committee and because his wife worked for the University System. The rules said a conflict of interest needed to be noted and then all were required to vote, i.e. all legislators vote on every issue. He said he appreciated this aspect of a citizen's Legislature as we have in Montana and was sorry the witness at the hearing didn't seem to understand this.

SEN. VIVIAN BROOKE said she lived 1.5 blocks from the University and wanted them to have some evaluation criteria on how they sold land. If that constituted conflict of interest, she wanted to be on record.

SENATE NATURAL RESOURCES COMMITTEE

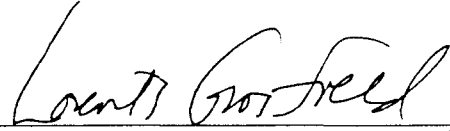
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Vote: Motion HB 344 AS AMENDED BE CONCURRED IN CARRIED 9-1 WITH
SEN. BEA MCCARTHY VOTING NO.

ADJOURNMENT

Adjournment: The meeting adjourned 5:20 p.m.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH