

## **MINUTES**

### **MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 21, 1997,  
at 3:00 PM, in Room 325

#### **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  
Mary Gay Wells, Committee Secretary

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

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 483, Posted March 4, 1997  
Executive Action: None

*{Tape: 1; Side: A; Approx. Time Count: 3:10 PM; Comments: N/A.}*

#### **HEARING ON HB 483**

**Sponsor:** REP. DOUG MOOD, HD 58, MISSOULA

**Proponents:** Tom Livers, Department of Environmental Quality  
Mark Simonich, DEQ  
Ray Beck, Department of Natural Resources &  
Conservation  
David Elias, Anaconda/Deer Lodge Co. Engineer  
Jim Kembel, City of Billings  
Alec Hansen, League of Cities and Towns  
Gloria Paladichuk, Richland Development  
Gordon Morris, MT Association of Counties

SEN. TOM BECK, SD 28, DEER LODGE

Frank Crowley, MT Solid Waste Contractors Assoc.

Doug Sparrow, City/County Sanitation Service

(Private)

Mark Johnson, Flathead Disposal, Ronan

Henry Hoy, We Haul Garbage Service, Columbia Falls

Jim Leiter, Browning-Ferris Industries, Missoula

Tom Daubert, Waste Management, Great Falls

Dan Keil, MT Rural Water, Conrad

Dennis Peppenger, MT Right to Work

REP. ROGER DEBRUYCKER, HD 89, FLOWEREE

James Roane, Town of Grass Range

Albert Mollignoni, Rocker Co. Water & Sewer

Phillip Lauman, Somers W/S District

Irwin Bangen, Hot Springs

Harley Schmidt, Zortman

Opponents:

Bill Leonard, Rural Development Specialist,  
Whitefish

Paul Torok, Seeley Lake Water District

Dan Frazer, Helena, Engineer

Dean Chaustee, Independent Contractor,  
Environmental Services

Bobby Broadway, Sun Prairie Valley Water & Sewage

Donna Jensen, Independent Water Quality Consultant  
and South Hills Environmental Management  
Consultants

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, MISSOULA. I bring before you today, HB 483 which, in its infancy, certainly was a simple bill. I would like to describe that bill in its simplicity and then go into a second portion of my prepared opening comments and describe the amendments. The reason so many people have followed me to this room is because of the amendments.

HB 483 is designed to expand a currently existing wastewater state revolving fund. This fund provides loans to communities throughout the state. It would expand the wastewater state revolving fund to include drinking water and nonpoint source pollution projects. In 1991 the federal government realized, in recognizing the requirements they had placed on small and medium sized communities for wastewater treatment requirements, they were seriously challenging the financial capabilities of those small and medium sized communities. They, at that point, set up the wastewater revolving fund loan program. Monies were available for wastewater projects throughout this country at 4% interest rate. The money was generated by a \$20 Million state contribution which was then matched by \$100 federal capitalization grant. Montana generates its \$20 Million through general obligation bonds which are issued at the beginning of the program. Page 1 of the handout (EXHIBIT 1) has evidence of how successful this program has been here in Montana. There are a

number of communities from the East to the West who have participated in this program. These communities are listed on this handout.

In the 1995 session of the Montana Legislature, we passed the Montana Safe Drinking and Water Revolving Fund Act. This was passed in anticipation of federal legislation which was designed to expand the existing wastewater treatment program to include drinking water and nonpoint source pollution. Later in 1995, the federal government did in fact pass that legislation; however, there were some unanticipated changes in that legislation and thus we have to go through HB 483 into currently existing statutes and reopen those statutes in order to amend them and to align the statutes with the federal legislation.

I would have you open to the second page of the first handout. You have a list of communities that have written either to me or the Department supporting this legislation. **(EXHIBIT 2)** contains the letters from each one on that list. That in a nutshell is what HB 483 is designed to accomplish. However, in my short time here, I have found out that life is not that simple. At this point I would like to go into the two amendments.

It is the two amendments that have brought the people to this hearing today. The first amendment **(EXHIBIT 3)** that I would like to address is the second amendment placed on the bill. The amendment is found on page twenty of the bill, lines 5-10. **Larry Mitchell** of the Legislative Services Division has an amendment that I asked him to draw up. It is my understanding that the language on this page describes only one entity in the State of Montana. The "department is authorized to pay costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons." and "The costs under this subsection (1)(G) must be contracted by the Department through a nonprofit organization or organizations that have: (I) a representation of at least 5% of the systems referred to in this subsection (1)(G) through a membership program; and (II) at least 5 years of experience in providing technical assistance to systems of the size referred to in this subsection (1)(G). I will be interested in hearing the testimony on this amendment. However, this amendment is going to be up to you to decide whether it is ingenuous or ignoble. I would also suggest to you that it is the latter.

The second amendment which has drawn so much attention is found on page four, lines 21 through 23 and is the definition of a project. This amendment which I offered in committee and was put on in committee at my request, excludes solid waste management or dumps and transfer stations and amends them out of the definition of projects. My reasoning for this amendment is that I was concerned about passing this bill because there are serious objections by the solid waste management lobby. I did not want to derail the passage of this bill as a result of that language.

Again, I will be interested to hear the debate that takes place in this committee on this amendment. I would offer one suggestion, keep your eye on the goal. As we listen to the testimony, remember the goal is to align our state statutes with federal statutes so that we can loan this money to small water treatment projects. That is my goal.

*{Tape: 1; Side: A; Approx. Time Count: 3:18 PM; Comments: N/A.}*

**Proponents' Testimony:**

**Tom Livers, Department of Environmental Quality.** We are in support of HB 483. DEQ in conjunction with the Department of Natural Resources & Conservation operates the State Revolving Fund Program which provides below market rate financing for construction of improvements to wastewater facilities across the state. This bill takes three actions. One is it provides for certification of operators of small systems, noncommunity, nontransient systems. Two, it expands the existing wastewater program to include nonpoint source pollution projects; and three, it establishes the companion program to the existing one which would offer financing for public drinking water systems.

Very briefly, I will touch on all three of these. First is the certification of operators of nontransient, noncommunity water systems on page 2, line 25. This is a relatively small, straightforward provision but an important one. It provides for certification of these operators. The systems include schools, businesses and hospitals that serve at least 25 of the same people day in and day out for at least six months of the year. This certification is a federal requirement passed on to the states by Congress. Congress has provided a funding mechanism. States are allowed to use a small portion of the drinking water revolving funds to pay the costs of the necessary operator training and certification. The rest of the bill has an immediate effective date. This portion does not take effect until July 1, 1998, the start of the 2nd year of the biennium. This is at the Department's request. This delayed start gives the Dept. time to get the necessary training contracts into place and the training out to the operators.

The second action taken by the bill is the expansion of the existing wastewater program. This change would expand the definition of eligible projects under the existing program to include funding of projects that address nonpoint sources of pollution. The bill also changes the name of the existing program from Wastewater State Revolving Fund to Water Pollution Control Revolving Fund, reflecting the broader scope and it would slightly revise the definition of eligible private entities from private concerns to the broader term, private persons.

The third action, and by far the most substantive action of the bill, is the establishment of the drinking water program. That begins on page 13, line 21. This is the primary focus of the

legislation. What this does is essentially change the existing law to coincide with the existing federal law so we are able to receive the federal capitalization funds. I will talk briefly about the cash flow of the program and how it works. The State Revolving Fund operates using no State General Funds. The bulk of the money comes through federal grants. The state is required to provide a 20% match for these funds which Montana chooses to do through state general obligation bonds. The debit service on the bonds is then covered by the loan repayments we receive. Because of the 80% contribution of federal funds, we are able to repay the bond debt service, rebuild the loan principal so the fund exists in perpetuity and still offer below market rates. By rebuilding this principal we are able to make sure the fund will remain after federal capitalization grants cease.

We recognize there is widespread support for the bill and most of the disagreement focuses on the two amendments. I will provide some brief background on the solid waste issue as we see it. And then present for your consideration the options DEQ sees. The flexibility to finance nonpoint source projects exists in the federal legislation. Our Dept. has received requests from several communities to provide financing for such projects and since we do not have the statutory authority to do this, we included this provision in the bill. As originally written, the bill would have provided below market financing both to municipalities and to private companies for landfills and related activities. On the other side of the issue, the private landfill operators and solid waste haulers in the state have indicated that they believe this puts municipalities in direct competition with private industry. In addition, under current federal tax laws, the program would be able to offer tax exempt financing to municipalities but only taxable financing to private businesses, a difference of typically about 1½%.

The private operators view this as another series of inequities in the playing field. We met with private operators a couple of times to hear their concerns and see if it would be possible to find compromise language but we were unable to reach a compromise. Because of this, we believe it is now our role not to make the policy decision but rather to outline what we see as a range of options available to the committee. On one end of the spectrum, certainly, the committee could approve the bill as it is currently amended and this would serve the interest of the solid waste contractors at the expense of some of the interest of local governments. On the other end of the spectrum, this provision could be removed from the bill which would clearly serve some local government interests at the expense of those landfill operators and solid waste haulers.

We see a couple of potential middle ground options which would limit the definition of nonpoint source projects to cover only those aspects of landfills with specific impact on water pollution--liners, caps, storm water diversion, etc. Another middle ground would be to do this and to also specifically

excluded certain items such as garbage trucks, compacting equipments and transfer stations. We do believe there is a range of options for the committee to consider. Thank you.

**Mark Simonich, Director, Department of Environment Quality.** I will follow on **Tom Livers'** testimony and will explain the first amendment that **REP. MOOD** distributed to the committee. The Federal Safe Drinking Water Act provides the state the opportunity to take up to 2% of the total capitalization grant in any one year and set that aside for technical assistance to small communities. The Dept. has provided those types of services previously through contracted services. The amendment that was added on the House floor, was drafted in such a way that the bill now directs the Dept. to provide those technical services, the full 2% of the technical services, through contracts, through essentially what will amount to only one organization in the state being able to provide those technical services. We do not believe that is wise policy for the Legislature to be setting. In fact, it goes against virtually all the other procurement laws that have been established that require the agencies of state government to follow. Any time we go out for a contract for more than \$5,000, we are not allowed to sole-source that contract. We cannot go to one entity and provide that contract to a single entity. We go through request for proposals or a request for bids to insure that the state gets the best value for the dollar and to make sure that we are getting the best contractor. We believe the language that is currently in the bill locks us in and makes us provide these technical services through only one contractor that is currently available in the state.

There are a variety of engineering and consulting firms in the state that can provide this kind of assistance. There are a number of occasions where the Dept. may well need to be in the position of going out with multiple contracts to focus on different types of assistance, very technical assistance in terms of helping find leaks in systems, having the right kind of equipment and helping find ways to fix their problems. There are times when we need the ability to work with contracts that focus on the regulatory nature, helping communities understand the regulations and be able to remain in compliance with those regulations. The language in the bill is very detrimental in the Dept.'s ability to accomplish that. In the future, if the language is in the bill, it means that we will have somewhere between \$200,000 and \$300,000 a year in contracts that would go to a single organization without any competitive process. It also means we would be in a bind if we got to the point where that contractor was not providing adequate service. What do we do? If we terminate the contract, under the law, we don't have the ability to go find another contractor even. We urge the committee to adopt the amendment that **REP. MOOD** has presented. Thank you.

**Ray Beck, Department of Natural Resources & Conservation.** For your information, we support HB 483. Our Dept. is responsible to

do the financial review, issue the general obligation bonds and make loans to the borrowers under the existing wastewater program. Through this bill, we will be doing the same for the proposed drinking water bill. The drinking water program works with EPA dollars and matched by State of Montana general obligation bonds and it is going to be modeled after the wastewater bill. Currently we have about \$38 million loaned out under the wastewater problem. These are essential infrastructure projects around the state. It has been very beneficial to the State of Montana. This program will allow some of the other grant programs administered by Montana to go further for similar projects. Potentially, this drinking water program could give the state up to \$80 million more for water projects. **Anna Miller**, financial advisor, is here to answer questions from the committee.

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At this time, **CHAIRMAN GROSFIELD** announced that he would like to start with the solid waste issue. He asked those who were proponents to the spirit of the bill but who then agreed or disagreed with either of the amendments to speak next. He tried to segregate the witnesses first as to solid waste issue. If they had concerns with both issues they could express that. At the end, more testimony could be heard on the whole bill. He then called witnesses on the solid waste issue.

**David Elias, Anaconda/Deer Lodge Co. Engineer.** I rise to speak in favor of the bill. On the solid waste issue, I would like to address the amendment placed on the bill. It is time for us in the State of Montana to see the large picture and have a better understanding of the nature of landfills and how they do affect ground water and the state waters. To categorically exempt solid waste facilities from loan interest funding denies everyone in the state a cheaper means of financing projects that are mandated by the state. In Anaconda/Deer Lodge Co., we are nearing closure of our landfill and we are now engaged in a 30 year monitoring program. We have so far managed those costs at \$13,000 per year. Recently, we have had some hits of dry cleaning fluid and we are edging up to the trigger point at which point in time it will cost our constituents considerably more dollars. If we have to get in remedial action, there is not enough money in the county to clean a ground water plume without some availability of some low interest dollars. In the spirit of this bill, we need to continue to protect what mother nature has provided.

**(The microphone went dead and we lost one minutes' worth of testimony.)**

**Jim Kembel, City of Billings.** We are also in support of the legislation but with the amendment for the solid waste as it relates to clean water. Within Montana we have 34 active landfills with 29 of those being operated by local governments. With the increasing government requirements, we are all faced

with additional funding that we must pay for the gas collection and monitoring of the ground water. Without the loan program, it makes it very difficult for us to pay for those systems and keep it operating. We are proponents of the bill with the amendment.

**Alec Hansen, League of Cities and Towns.** We support the entire bill for obvious reasons. This has been good for the state, for the cities and towns and especially good for the people who live in those communities and pay water and sewer rates and enjoy the benefits of modern systems that we are able to provide. With regard to the amendments on the solid waste amendment, I would support, on behalf of the cities and towns, the middle ground position suggested by the Dept. of Environmental Quality. They are suggesting that the bill be amended to allow solid waste facilities to qualify for low interest loans as long as the money is used for those aspects of the operation that are directly related to pollution control: liners, monitoring systems, etc. These things are required under federal law. They are complicated and sometimes costly and I believe the rate payers of Montana deserve the break on their monthly garbage bills that they would be afforded by this bill.

On the second amendment, I received numerous letters and phone calls regarding the 2% for technical assistance. The small towns across Montana support renegotiation of the contract with Rural Water to provide this technical assistance. The reason is that these people have had this contract for many years and my members across the state believe that they have received good services from Rural Water. We support the bill; we support the amendment that will allow landfills to receive financial help for pollution control related facilities and we support finding a way to get Rural Water back in the technical assistance business.

**Gloria Paladichuk, Richland Development.** We support HB 483. We are, however, opposed to the amendment on page 4, lines 21 and 22 which exclude solid waste management systems and resource recovery projects. Since it is federal Subtitle D regulations that have escalated the costs of these projects, we feel it reasonable for this committee and Legislature to allow both private interests and local governments to apply for low interest loans to comply with the very expensive federal regulations. Probably the most expensive projects for every household in Richland County have been the closing of the old landfill and the opening of the new one. It has been a real hit on our senior citizens on fixed incomes as well as on our rural, agricultural community. Due to contaminated ground water at our old landfill, we may be faced with a gas extraction project which could cost \$1.2 million in the very near future. This is a conservative estimate. I can only imagine what this will cost each and every household in our rural county. We have no where else to go but to the Legislature and we are asking for your help and support to help us be eligible for a low interest loan. Thank you.



**Gordon Morris, Director, MT Assoc. of Counties.** MACO does stand in support of HB 483 and we would support consideration of the amendment that would allow for landfills to be entitled to qualify for loans insofar as they would relate to clean drinking water.

**SEN. TOM BECK, SD 28, DEER LODGE.** I stand in support of the bill, and I have been contacted by my local county commissioners. They are asking that this amendment be removed in that it wouldn't allow them to take a look at solid waste. I understand **REP. MOOD** said the amendment was put in so it would enhance the bill and get it through the system. I would hope this committee would ask questions along that line to see where the amendment comes from and see what the background of that amendment is. I hope you would consider taking the amendment back out of the bill. Thank you.

**Frank Crowley, MT Solid Waste Contractors Assoc.** One of the Associations primary goals is to maintain a viable and diverse solid waste industry in Montana. We are very concerned with the original version of HB 483 which would have expanded the bill to include solid waste management projects beyond the original use of this fund for wastewater projects and the new drinking water program both of which are very valuable. In the House, the bill was amended to restore the original scope of this program plus the drinking water component. Our Assoc. is here to support this bill as amended. Some of you may not be aware of the official state policy encouraging private sector solid waste services. In the public policy section of the Montana Solid Waste Management Act, **(EXHIBIT 4)** which hopefully has by now been distributed to you, the Act provides the private sector industry is to be utilized to the maximum extent possible in the provision of solid waste management services in the state. The Act, with that section, was enacted in 1977 and has never been changed. That policy exists because study after study has shown that the private sector provides solid waste services more efficiently than government. I say that with no disrespect to our colleagues who work in government. Moreover, I have passed out a list of taxes **(EXHIBIT 4A)** that are paid by the private solid waste sector. They are not paid by local government providing essentially the same services. As you can see, there are some 13 taxes that our members pay that local governments never pay. To allow this bill to expand SRF funding to solid waste systems would be inconsistent with the state's long standing policy encouraging private sector solid waste systems and would subsidize local governments where local government operations often times compete head to head with private sector businesses.

The amount of money we are talking about here is substantial and it also would be expensed over a number of years. Our members have to meet the same kinds of requirements. They are managing the same kinds of operations as local government. In the 28 pages of the introduced bill, the word landfill nor the word

solid waste never appear. However, our Assoc. was aware that the Dept. might attempt to use this Legislature to expand the SRF funds to solid waste because in 1995, there was a draft rule that was proposed to do this very thing. Eventually, this rule was pulled back because the Dept. agreed with our comments that they really had no authority to expand the program to solid waste. However, the rule is very instructive because it shows us the nearly unlimited scope that the departments and local government apparently have in mind for these millions of dollars. Remember, SRF has really been a wastewater program for years and now there is a drinking water component, but in the draft rule, there were definitions that would have covered virtually every aspect of a landfill. Solid waste systems include storage, treatment, recycling, recovery or disposal of waste; improvements to a solid waste system include acquisition of land, installation of liners, monitoring of wells, construction and closure of landfills, transfer stations, container sites, incinerators or composting facilities, etc. I believe that rule gives you a sense of the very broad sweep that these funds would be used for.

**Mr. Livers** spoke here about a middle ground and I appreciate the fact that he has mentioned this because there were some discussions. Frankly, I am not sure that this definition could be worked that would be sufficient to limit this. Under section C of the rule that I was just referring to, the amount of money that could still be spent on ground water issues is still enormous. It has to do with planning, feasibility studies, engineering, architecture, acquisition and construction of land facilities and other sites. I don't know if there is a limitation that would be meaningful given the way these problems are addressed. My question to the departments is that nonpoint sources go way beyond just solid waste management systems. We have lots of nonpoint sources of water pollution in the state that have no viable means to clean up. There are no parties around to clean it up. Here we have ratepayers in the cities whose waste it technically is and if they need to pay for the cleanup of the problem, then I believe the ratepayers should do that. The rates should be as low as possible. But let me give you an example of the kinds of nonpoint source issues that there are out there that don't have any funding. I am reading from the briefing paper which the Dept. sent to the Governor on this bill. Nonpoint sources include municipal systems, municipal landfill systems, irrigation/mitigation projects, habitat restorations, stream channel reconstruction, watershed management projects, forestry grazing BMP's, dewatering stream problems, return flows, information and education projects, etc. This is from the Dept's own project. Indeed this committee just this past Wednesday heard a bill on TMDL's much of which relates to nonpoint source pollution. I submit to the committee there is no shortage of need for funds to address nonpoint source pollution. My question is strongly, why do these funds, millions of dollars, have to go to address local government municipal landfill issues?

There is an avenue for private business to apply for these low interest loans. However, the bill does not have equal grounds for private sector applicants. The interest rate is higher and there are collateral and security obligations that would be required of a private sector applicant that are not required of a public, local government applicant. Conscious of the time, I would like to state that local government in this state needs a healthy, private sector industry. The public ratepayers need to have a healthy, private solid waste industry because they provide the competitive environment in which services are to be provided as efficiently as they can. Without a healthy, private sector industry, there is little incentive for local governments or for a monopoly to operate efficiently. And a subsidy of this magnitude to the local government communities can have nothing but an adverse affect on a viable solid waste industry in the state. I have a letter from a **Mr. Jim Flynn, former director of the Department of Fish, Wildlife and Parks**, and would like to read a paragraph from it as my closing. "There has been a lot of talk of allowing private sector access to these funds along with local governments. However, given the genesis of the expansion of the fund and the resistance to the private sector's concerns by the state, we are concerned that private projects would not receive favorable consideration in the allocation of funds for these projects. Further, we feel that if a project is not do-able by local government without the benefit of low interest federal money, then perhaps the local government ought to be talking to the private sector to see if it can be done cheaper by the private sector." Thank you for your time and attention.

*{Tape: 1; Side: B; Approx. Time Count: 3:50 PM; Comments: LOST ONE SENTENCE AT THE TURN OF THE TAPE.}*

**Doug Sparrow, City/County Sanitation Service, a private company.** The main point is it would put us at a competitive disadvantage because we compete basically against the local government in Helena. In that aspect, we really don't want to see this money used there and as far as landfilling, we all know the potential of ground water problems which can happen in landfilling and it is a substantial amount of money. As we look at that, it could possibly throw us into bankruptcy. We see there is a need in that respect, but the need doesn't outweigh the fact that if we are going to compete in this business with local governments, we need to have a fair playing field. Thank you.

**Mark Johnson, Ronan, Flathead Disposal.** We have been hauling solid waste in the Lake County area for the last 18 years. I have been a member of the Lake County Refuse Board. I am here as a family man and a private businessman who has been through an experience with federal funding and its effect on small businesses when you go into direct competition with it. Back in the 1980's when federal revenue money sharing was available, our local sanitarian decided he could haul trash cheaper than I could primarily because he could buy his equipment for free with this money. The result was we lost a third of our gross. We laid off

two people, discontinued service to many of our rural customers which we have since recovered. This was 16 years ago. When the federal revenue money sharing dried up, the county had to raise its assessment to my customers as well as its own by a large amount to keep this service intact. I am a bit gun shy about \$100 million floating around the state for, if not my county, someone else being hit like I was. I would like to point out to you that with my limited experience in this particular field of solid waste and as a recycler, which is a losing operation but something the public demands, if you give people subsidized solid waste projects, you encourage waste and abuse and misuse of those systems. What I am getting at is commonly known as pay-as-you-throw or at least as close as you can get to it. And that is if you put out a lot of trash, you pay money for it. And if you have funds coming in from other sources to reduce the cost to the user, there is absolutely no incentive there to sort, recycle, etc. And in a business sense, it is not cost-effective. A contractor can't afford to recycle when he is going into competition with someone who is not going to recycle. There has to be a reason to reduce your volume of waste. With this, I really feel for this lady who was talking about Petroleum County. To me this is a water problem which perhaps this bill could cover without getting into the solid waste business. Lake County for one and I know Sanders County, Missoula County, Ravalli County, Flathead County have all been putting money aside for the last several years to meet these Subtitle D regulations and if someone is coming to you now saying they need money to meet Subtitle D, I would ask if they aren't playing the role of the grasshopper compared to us ants who have been biting the bullet and paying a little bit more money and being prepared for Subtitle D. We have all known it was coming. Thank you.

**Henry Hoy, We Haul Garbage Service, Columbia Falls.** My wife and I have been in business since 1973. We have done it without the help of any low interest money or grants. I don't see why the cities or counties should be able to get low interest money. We have had to get our money from the bank and money enough from the customers to pay our bills to buy our trucks, etc. One of my biggest customers is Flathead County. They have 34 four-yard containers in the middle of my permitted area that they haul for nothing. Anyone can put whatever in there and they haul it off. I have a little bit of competition there. And I have a little problem with them being able to get low interest money to buy this kind of equipment. The other thing is the small counties in this state that are trying to maintain landfills. Flathead County looked at this situation a year or so ago and tried to decide whether they had enough population to afford one. We realize it costs a lot to put a liner in and monitor it. That is why the federal government has given us two or three years to decide whether we wanted to maintain a landfill or whether we needed to get out of it. Landfills are going to be very expensive and this water monitoring is terrible. I think with the low interest money, many of these small counties with low populations, are going to try and maintain a landfill that

further on down the line they will no longer be able to keep up with it and they will have to get out of it and truck it to bigger landfills. I don't think there are going to be very many landfills in this state that are affordable. We are in support of HB 483 with the amendment that excludes any money for refuse industry.

**Jim Leiter, Browning-Ferris Industries, Missoula.** We are here as a proponent. I will give my testimony and hand in a written copy (EXHIBIT 5). Thank you.

**Tom Daubert, Waste Management, Great Falls.** I had planned to come and tell a number of stories to make some points, but **Mr. Crowley and Mr. Leiter** and others have already done that. So in the interest of your time and patience I will amend my testimony and try to keep it coherent. I would join those others who are here today to ask you to please not remove the solid waste amendment. I would be willing to work with others on possibly amending that amendment. It is crucial to reiterate one key point. Please understand that the playing field in regard to solid waste is already not on a level playing field. This bill without some restrictions would further skew that playing field. As you have heard, the private operators in this state pay numerous taxes that the public sector does not. Often times we find that various laws and regulations are enforced much more rigorously and swiftly where the private sector is concerned than with the public sector. Allowing low interest loans to the public section seriously threatens the viability of the private sector.

I have a handout (EXHIBIT 6) that will help illustrate my next point. This is a background of where Subtitle D regulations come from. The handout is an abbreviated timeline to show the history of these regulations. (He then explains.) My client and others in the private sector responded promptly to the promulgation of those rules and began investing immediately so they would be in compliance when they had to be. Today, having done that, in effect they are going to be penalized for being in compliance, having invested and based their rates on that process. The point is the rules are the same for everyone. We have gone from a great number of landfills down to only 30 some in Montana. I wanted to make sure you are clear that Montana is not unusual in that regard. In fact that was the entire idea behind these regulations. It was to force everyone to move in a direction of regional landfills so with fewer landfills and by bigger pools of people working together they could control the costs.

I would conclude by telling a story of what happened here in Helena over the last few years. I wanted the correct facts and called the Department of Environmental Quality and talked with a key staffer who oversees the solid waste program. In 1990, Helena was deciding whether to build a new landfill, whether government should build a new landfill or whether we should use the private sector. At that time, as you can see in the time

line (EXHIBIT 6), everyone knew that Subtitle D regulations were about to come into effect. We basically knew what they were-- things like the required liner. At that time Helena decided that they could build a landfill for a far lower cost than the private sector proposals they had received even though Helena's proposal did not meet Subtitle D requirements. As Helena progressed in building a new landfill, sure enough, it failed. To the taxpayers they talked as if those regulations were new, as if no one could have known what those requirements were going to be. Suddenly, we found our new landfill was going to cost a lot more than was originally predicated on. Our old landfill here had to close before our new landfill was ready. What that meant was at least for several months Helena had to ship its garbage. It turned out that it was cheaper for us to ship our garbage from here to the landfill in Great Falls than it now is for us to be using the new government-built landfill that we are paying for here. Without some rigorous controls on how this money might be used and loaned, we are only inviting similar kinds of problems for taxpayers in the future. We have to have a marketplace where the competition makes some sense and we fear without an amendment like this, this bill would skew things even further and in the wrong direction. Thank you for your consideration.

*{Tape: 1; Side: B; Approx. Time Count: 4:14 PM; COMMENTS: N/A.}*

**CHAIRMAN GROSFIELD** announced that the committee would now hear testimony on the water amendment and he would like to start with those proponents who want to speak for the bill in the present form with respect to the water amendment. The water amendment is on page 20.

**Dan Keil, Farmer, Board Member of the Tiber County Water District, representing the MT Rural Water, Conrad.** The 1986 amendments to the Safe Drinking Water Act were passed by Congress with no consideration of what the cost would be to systems of fewer than 1 million population. Because the smaller communities were not included in the affordability studies, the new regulations became increasingly more difficult on them. The EPA began pressing the state regulatory agencies to press ahead with the implementation of the new rules with a BIG "OR ELSE". Montana was threatened with the loss of primacy if we did not comply. Montana Rural Water Systems requested then Governor Stephens to address this issue by forming a task force of affected groups. Several lengthy meetings were held to design a program to present to the 1991 Legislature. The Department of Health and Environmental Science, the predecessor to DEQ felt the interaction of the group was very beneficial and stated that a dialogue with the regulated community would continue. As of this date, MRWS does not know of any meetings that have been held using this format. The National Rural Water Assoc. led the formation of a coalition of national associations to reform the Safe Water Drinking Act. It required a great effort to get the job done. The Senate passed its version in 1995. It was my honor to represent the State of Montana and the other rural water

systems by presenting testimony on how the 1986 amendments were creating problems before the U.S. Environment and Public Works Committee. After this bill was passed by the Senate, the House took up the action. The House bill quickly became, again, a captive of the large populations. The House succeeded in getting all the members of the coalition to agree on their version except for the National Rural Water Assoc. We held out for the Senate version because it favored the small systems. The systems of Montana were about to be sold down the drain again by ASDWA, Association of State Drinking Water Administrators, the National Governors Assoc. and the Metropolitan Water Systems and others. We were the only ones who stayed there for the small water systems. Hence, the bill that we are here to address today.

This bill has certain parameters that allow the states to decide what they feel is necessary to give the states the assistance to provide to the public a safe, clean water supply. It has allowable set-asides that the state may use. The word, state, does not necessarily mean regulatory agencies. The states must each year develop an intended use plan and have it approved by the EPA on how the SRF, the State Revolving Fund, annual allocation will be spent. We believe those systems or the representatives should have a major part in drawing up the plan before it is brought to public hearings. This would allow the people to assist the regulatory agencies in implementing a useful plan. One of those set-asides is for up to 2% of the annual allocation to be used for technical assistance of a nonregulatory aspect in each state for systems under 10,000 population. I believe that in this state there are only 10 or so communities that are over this base. The allocation this year of \$14,708,000 could bring in \$294,000 to be used. However, next year the allocation will be much lower because the allocation from the federal government will be much lower and the multiplier effect says that money will be decreasing. Therefore, the program money must be banked each year to allow for an on-going process.

I have representatives of several other water systems here that are members of MT Rural Water, which is a statewide organization of almost 400 members with their water and wastewater systems and they would like to present testimony on our behalf.

**Dennis Peppenger, Hill County Water District, Great Falls and also a member of MT Rural Water Systems Board of Directors.**

As a member of the Board, I have been made aware of many systems that are afraid to give oral testimony or written testimony to this committee because of fear of retribution. I will give testimony for Mayor Labbe from Deer Lodge (**EXHIBIT 6A**).

**REP. ROGER DEBRUYCKER, HD 89, FLOWEREE.** I stand here in strong support as it is right now with the amendment on it. That amendment gives it to the rural water districts where it belongs. I hope you see fit to pass this bill as it stands right now. I would like submit letters in support of my amendment (**EXHIBIT 6B**) Thank you.

**James Roane, Operator for the town of Grass Range.** I would like to address some of our concerns in Grass Range. Regarding technical assistance, I believe we have to have this. Technical assistance from the regulatory end which is the DEQ's primary concern, is in the area of compliance and public health and safety. That has to be our greatest concern. However, in the small systems, that only represents 10-15% of our total technical assistance needs. We have the grass roots technical assistance requirements--daily operation and maintenance, water conservation, management and finance concerns, outreach assistance. Some history of technical assistance in Grass Range follows. Seventeen years ago I took over the system. We did get some on-site technical assistance for a couple of years from the Water Quality office in Billings, primarily in the areas of regulation. That dried up. The only technical assistance we could count on was from MT Rural Water Systems. Before we became a member, we received technical assistance at no charge from MT Rural Water Systems covering rate structuring, operational maintenance, telemetry and engineering. At the MT Rural Water Systems annual conference in February in Great Falls, there were some 510 people in attendance representing about 125 small systems from Montana. There was an EPA input request form that was handed out and filled out by about 305 people which indicated what we felt were our needs for technical assistance. Those needs identified by that survey in priority ended up being: daily operation; water conservation; management and finance; compliance; public health and safety; and outreach. As you can see, we feel that the priority of our needs in technical assistance differs from environmental quality because of being a regulatory agency. I would like to ask for your support for the bill including **REP. DEBRUYCKER'S** amendment. It provides for the high standard and total spectrum assistance that the ratepayers of my system deserve as well as the level of support structure that I, as a certified operator for the State of Montana, should be entitled to. Thank you.

*{Tape: 1; Side: B; Approx. Time Count: 4:25 PM; Comments: N/A.}*

**Albert Mollignoni, Rocker County Water & Sewer, Rocker.** I support the bill and its amendments for the following reasons. Number 1, because of MT Rural Water Assoc. the Rocker County Water & Sewer has received great benefits toward training of their operators and correcting problems we had with our plant. The one time we were mandated under EPA and the State of Montana to correct our system in the amount of almost \$35,000 a day. With the MT Rural Water Assoc., we corrected that problem quite uniquely. The reason I am in support of this entity receiving the money is that they have done a wonderful job for small rural systems throughout the state. We are out there in no-man's land sometimes and we do need these people to come and visit with us now and then and give their expertise on our system and what to do to rectify certain situations. I would be one of the first to appear before you two years from now if this does not work properly, and say take their funding away from them. But let us at least give them the chance



to do the job that I think they can do far superior to anyone else. Thank you very much.

**Phillip J. Lauman, General Manager, Somers Water & Sewer Dist.** I am here in support of this bill and its amendments. I will give my testimony and hand in my written statement (**EXHIBIT 7**).

**Irwin Bangen, Mayor, Hot Springs.** The 2% money set aside for technical assistance is crucial to many small communities. When we have had problems, MT Rural Water has shown up within 24 hours or less. They have done much for us as well as train our new public works directors. We could not operate as efficiently if MT Rural Water had not been there to help. We can count on them. With this in mind, I urge the committee to vote yes on HB 483.

**Harley Schmidt, Director, Zortman Water Users Assoc.** I am in support of HB 483. I will give my testimony and hand in my written testimony (**EXHIBIT 7A**). Thank you.

**Opponents' Testimony:**

**Bill Leonard, Rural Development Specialist, Whitefish.** I stand in opposition to this bill. I will give my testimony and hand in my written statement (**EXHIBIT 8**). Thank you.

*Comments: CHANGED TAPE IN MIDDLE OF MR. LEONARD'S STATEMENT. HE FINISHES ON Tape 2; Side A; Approx. Time Count: 4:35 PM.}*

**Paul Torok, Manager, Seeley Lake Water District.** I have no fight either way on this TA bill. The whole point of this thing is that this bill does not get sidetracked. We have called four different technical assistance groups, because no one technical assistance is best suited for each question that we may have. I will hand in written testimony (**EXHIBIT 9**) in support of my testimony. Thank you.

**Dan Fraser, Engineer, Helena.** I will give my testimony and hand in a written copy (**EXHIBIT 10**). Thank you.

**Dean Chaustee, Independent Contractor, Environmental Services.** I support HB 483. I was involved in the same survey that **Mr. Fraser** just spoke about and EPA just gave Congress this report on infrastructure needs survey. It says that in the next 20 years, Montana will have to spend \$662 million for infrastructure improvements and that is just on drinking water. I do have some concerns about this amendment. The MT Rural Water Assoc. has certainly provided a lot of technical assistance across the state and they have done a good job. However, there are a number of contractors that are available to provide technical assistance in the environment field and I believe that they should also be considered. There are a number of different types of technical assistance and it is seldom that one firm can provide all of the various types of assistance that are needed. For these reasons I

would like you to strike this amendment and allow the contracting procedure to flow as it will.

**Bobby Broadway, Board of Directors, MT Assoc. of Water and Sewer Systems and manager for Sun Prairie Village County Water and Sewer District.** I would ask the committee keep in mind that there are a variety of aspects to technical assistance and I feel that the Dept. in allocating the funds for TA should be in the driver's seat to determine what is needed because they have a better scope across the state as to where those needs are. There are a number of organizations as has been stated for profit and nonprofit that have the expertise to do this. I don't feel that as the amendment is stated a membership organization is necessarily best suited to drive the TA program in the State of Montana. I stand in support of HB 483 but without the amendments. Thank you.

**Donna Jensen, Independent Water Quality Consultant and representing South Hills Environmental Management Consultants, LLP.** I will give my testimony and hand in a written copy of this (EXHIBIT 11).

*{Tape: 2; Side: A; Approx. Time Count: 4:48 PM; Comments: N/A.}*

#### Questions From Committee Members and Responses:

**SEN. FRED VAN VALKENBURG** asked how much money is involved in this 2% issue regarding the contracts for technical assistance? **Mr. Simonich** replied the 2% is of the total amount of the capitalization grant. The grant should be just under \$15 million. That would make the figure for TA's just under \$300,000. The following fiscal year, the federal grant should be in the area of \$10 million which would make the 2%, \$200,000. The Dept. is looking at, over the course of the next biennium, nearly \$500,000 being made available for TA's. **SEN. VAN VALKENBURG** then asked if the Dept. has a contract now with MT Rural Water Systems? **Mr. Simonich** said no, the Dept. does not currently have a contract with them. The Dept. did have a contract with them for a period of a couple of years. About a year ago, the Dept. went out with an RFP for a new contract and through a competitive process, they selected a new contractor. He would envision that as this new program comes on-line, this would be an additional source of money for TA. They would again look at what kinds of assistance local communities would need, whether it would be technical from an operational maintenance, administrative, financial or regulatory. The Dept. would then put out contracts for those specific areas.

**SEN. VAN VALKENBURG** asked **Mr. Leiter** if the bill from Browning-Ferris Industries to a residential customer in Missoula is about \$42 a quarter? If this is typical of a Missoula BFI customer, can you tell us how much of that bill is reflective of the cost that BFI has in terms of satisfying these Subsection D

requirements that the EPA has put in place? **Mr. Leiter** wished that he could answer the question specifically, but offered some numbers that might be helpful. The state has determined that an individual generates about 1,300 pounds of solid waste a year. For a family of three, that would be about two ton a year. BFI charges Missoula residents approximately \$18 per ton. So for a family of three, the charge would be about \$36 a year. This is the disposal fraction of that bill that is paid. The majority of the bill is for collection, trucks, drivers, etc.

**SEN. VAN VALKENBURG** asked what the range of monthly or quarterly charges are across the state for solid waste disposal? **Mr. Leiter** said that he would have to address disposal only, because he does not know a great deal about collections. Two years ago, after state licenses were applied for, that particular information was requested of the state solid waste program because they keep records of what is charged per ton or per yard. At that time, BFI's charge was \$18 per ton to new customers. They were in the bottom half, rate wise, for the remaining landfills which, two years ago, were \$45 or \$50. This will be updated this year with the applications due in April. There is a problem in doing this. There are 35 landfills, 29 are publicly operated mainly through refuse-disposal districts where one actually pays a fee per residential unit per year on the taxes. When they report back their disposal fees, it is often in a very different format than per ton or per yard like BFI does. It is hard to compare. The national average for solid waste disposal is around \$42 per ton. All of our rates in Montana are very reasonable. **SEN. VAN VALKENBURG** asked if the Missoula BFI site takes in solid waste from other jurisdictions? And, if so, how far away is that reach? **Mr. Leiter** replied that there are only three municipal landfills left in western Montana: one in Flathead County, one at Polson and the one in Missoula. From western Montana BFI takes in all the Bitterroot Valley, all of Mineral County and west to the Idaho State line, the Seeley Lake area, eastward to Powell and Granite County, exclusive of the City of Deer Lodge. Twenty percent of their volume of waste comes from neighboring Idaho counties, Kellogg, Wallace, and as far as Grangeville, Idaho. Their area, of course, includes Missoula County with a population of 75,000 people with a customer base of 150,000.

**CHAIRMAN LORENTS GROSFIELD** said that according to the fiscal note, DEQ is looking at 7 FTE's and is that correct? **Mr. Livers** responded that DEQ is requesting one for the Dept. of Natural Resources and Conservation and 6 would be for DEQ. Of that, they are looking at 5 engineering positions to accommodate the increased project workload and one clerical support staff.

**CHAIRMAN GROSFIELD** asked what the total federal grant is for this year? **Mr. Livers** said the total grant from the drinking water program is approximately \$14.8 million. Four percent of this amount can be used for administration. An administrative budget has been projected for less than that and their base has been to extrapolate from the existing wastewater program and take into

account there should be some efficiencies of scale given a certain similarity in the two programs. Costs should be closer to three percent. **CHAIRMAN GROSFIELD** pointed out an error in the fiscal note. Four percent of \$14 million equals about \$600,000 not \$965,000. **Mr. Livers** agreed. He could not respond at the moment and asked for an opportunity to look into this. **CHAIRMAN GROSFIELD** pointed out another error in that the fiscal note shows \$12 million next year, and **Director Simonich** said \$10 million and the **CHAIRMAN'S** understanding was that it would be about \$6 million next year. So how can 6 FTE's be funded at 4% of \$6 million next year.

**SEN. VAN VALKENBURG** said that the Dept. indicated that they would not object to some possible amendments concerning the solid waste issue and there was a suggestion by some of the people from the Powell County area or **Mr. Elias** from Deer Lodge County that if the solid waste issue was limited to just water issues, then that would satisfy their concerns. What is your opinion, **Mr. Livers**, concerning an amendment of this kind? **Mr. Livers, BFI**, said that amendments that were non-competitive to private industry would pose no problem.

**SEN. VAN VALKENBURG** said that **SEN. BEA MCCARTHY** was going to offer an amendment and since she had to leave, **Larry Mitchell, Legislative Services Division**, was going to explain the amendment. It was an amendment offered by a city/county manager in Anaconda who had also conferred with Butte-Silver Bow. It was drafted by **Mr. Mitchell, (EXHIBIT 12)**.

**Mr. Mitchell** explained the amendment. On page 4, lines 21 through 23, it strikes the language that was added by the amendment that said "the nonpoint source pollution control dollars could not be spent on a solid waste management system or resource recovery facility that is regulated under state solid waste laws". Instead, what it does is adds a second definition to the term project for which these dollars can be spent. Project includes as it says, in the original bill, nonpoint sources but then (b) defines project as something that does not include a solid waste management system defined in our state solid waste law unless there exists a direct relationship between the solid waste management system and the protection of surface water and ground water. It attempts to focus in on those sorts of expenditures at solid waste management systems and facilities that are designed to protect pollution of surface and ground waters.

**SEN. VAN VALKENBURG** asked **Mr. Crowley**, who represents all the solid waste contractors at the hearing, if he would like to comment on the proposed amendment? **Mr. Crowley** said that he had not had much time to consider it, but he believed that the concept is in the same vein as the comments that **Mr. Leiter** made regarding the limitation on the use of these funds. His Association had discussions with DEQ concerning some language to limit the breadth of activities and communities this could be

used for. They were particularly sympathetic in trying to develop language to address the small communities who really don't have the ratepayer base or the tax base or other assets to address some of these problems. He felt that at one point they were close to developing some language along those lines. This particular amendment, as he sees it, does not make any differentiation between the types of communities that could use the monies. He felt that the communities could use the monies for any solid waste purpose because they don't have an alternative. This would appear to allow these funds to be used by any community as long as there was a limitation to surface and ground water. He proposed that they would be committed to working on appropriate language. His initial response would be that the amendment is still somewhat broader than what they had been discussing with the Dept. Surface and ground water entail a great deal of work in terms of hydro-geological investigation. There could still be an enormous amount of SRF funds spent by the larger cities who might apply for this even with this limitation.

**SEN. BEA MCCARTHY** asked if the Dept. would comment on the proposed amendment? **Mr. Simonich** responded that this is the kind of amendment that they had been attempting to get at when working with the solid waste people on the House side. We were not able to come to an agreement. We have a concern that all would understand what it means when it states: "exists a direct relationship". At the end where it states "surface water and ground water", our suggestion would be to state: "surface water or ground water". They would be willing to work with others on the amendment.

**SEN. TOM KEATING** asked the sponsor of the amendment who would determine that there exists a direct relationship between the solid waste management and the surface water or ground water?

**SEN. MCCARTHY** asked if that were currently being done by the Dept? **SEN. KEATING** responded that he felt that all of the landfills that he had discussed in this committee over the years, almost every one had well monitors around the landfill in as much as there is almost always ground water wherever one goes. There would be a direct relationship between the system and ground water at every landfill in the state. **SEN. MCCARTHY** had no answer but had only offered the amendment and was willing to work through it with others.

**CHAIRMAN GROSFIELD** returned to his previous question on the fiscal note and asked if the Dept. had an answer? **Mr. Livers** responded that he now had an answer. First, to correct a mistake in response to a previous question on FTE's. There are seven FTE's associated with this program within the DEQ. DNRC also considered the additional workload associated with the drinking water program and they have dealt with any staffing concerns they might have in HB 2. Previously he had stated 5 engineering positions and one clerical support position for DEQ. He had overlooked one FTE that goes toward operator certification with respect to the amount of expenditures and the discrepancy between

the 4% limit in the \$965,000. That \$965,700 includes contracted services that would fall under the various set-asides allowed through this bill. For example, on the back page of the fiscal note, there are operating expenses of \$711,000 which includes roughly \$294,000 for technical assistance and also some estimates with respect to additional set-asides for capacity development work and source water protection. Those are allowable set-asides that where there is an ability in the first year, with respect to source water protection, to use some money for that capacity development it is a required objective under the federal legislation. It would be contracted out from the Dept. This would not count toward the Dept.'s administrative limits. Personal services in the Dept., under this program, are estimated at under \$241,974. The operating expenses out of that \$700,00 that are related to that personal services are roughly 1/3 of the personal services--about \$320,000. This is well under the 4% amount in the first year.

You, **CHAIRMAN GROSFIELD**, had asked about allocations in subsequent years. In preparing this fiscal note, the Dept. was working with early estimates of second year funding. They don't have exact numbers from EPA in terms of what their allocations are going to be. The \$10 to \$12 million has been the range of assumptions that Montana has been dealing with. He had been made aware of and did not know that some recent discussions at the national level would reduce the total allocation to this program nationally and their estimate of the bottom range of what they would see in a subsequent year, if these reductions were made, would be about \$7.75 million. The engineering load is strictly dependent on the project load. Fewer projects would be available for funding with smaller federal funding which would result in a lower work load and there would be the ability to directly scale those down.

**CHAIRMAN GROSFIELD** asked, with respect to both years or either year, where is the money coming from. Has that been dealt with in HB 2? **Mr. Livers** stated that the money has not been included in HB 2 at this point. They have alerted the Governor's office that if HB 483 is to pass, that consideration will need to be brought up in pre-conference committee.

**SEN. MIKE TAYLOR** said there was some testimony earlier about the bidding process and that it should be done fairly and openly. He then would like to ask some questions about the bidding process that occurred in April 1996. When that bid was done in April 15, 1996, could **Mr. Simonich** explain how it worked?

*{Tape: 2; Side: B; Approx. Time Count: 5:18 PM; Comments: THE LAST PART OF THE QUESTION AND THE BEGINNING OF MR. SIMONICH'S ANSWER WAS LOST.}*

**Mr. Simonich** responded. Basically, the type of assistance that the Dept. wanted provided, they had asked contractors to submit proposals to them in terms of how the contractors would provide

that. When the proposals were returned the Dept. with a team of people sat and reviewed each one of those proposals and went through a ranking and rating process to come up with a numerical score in order to score those proposals so that a selection could be made that would best fulfill the requirements that were being sought. The RFP proposal is actually done jointly with the Dept. of Administration to insure that the process is moving forward and is being done in a fair manner and is being done consistently throughout state government. The ranking and rating itself takes place within DEQ.

**SEN. TAYLOR** said that when the contract was awarded, who was it awarded to? **Mr. Simonich** said that South Hills Environmental was awarded the contract. This company was represented by some of the individuals who had spoken in front of the committee today.

**SEN. TAYLOR** asked if he understood, for the record, that South Hills and environmental consultants who had come from DEQ had formed a new company that year? **Mr. Simonich** said he only knew personally one of the individuals within that organization. That person used to be a staff member within the Dept. of Health and Environmental Sciences. He understood that the other two also had worked for state government at one point in time. None of the individuals currently work for state government and as private citizens of Montana, they formed a company and went into business for themselves. **SEN. TAYLOR** asked who monitors the technical field work and how much is done in the field? Are there logs? **Mr. Simonich** said that they do need to keep track so that they know the contract is being fulfilled. Another staff member could give more specific information on how this is done.

**Mr. Jon Dilliard, Community Services Bureau, DEQ,** responded that when the RFP has been put out, part of the conditions in that is for the contractor to submit reports to the Dept. for the activities that they are undertaking out in the field. The reports must indicate what they did, approximate time frames, what kinds of technical assistance that they provide to a community and what the results of their technical assistance was. **SEN. TAYLOR** said that they go out in the field to all these rural communities and they monitor and check out things and their work is a hands-on approach. Is this correct? **Mr. Dilliard** said yes, that is correct. The idea of the contract is to have the contractor, or the technical assistance people, out in the field, assisting the communities at their particular site. **SEN. TAYLOR** asked if the Dept. checks these logs to see if the contract is being fulfilled? **Mr. Dilliard** said that the program does review all the reports and logs submitted by the contractor. **SEN. TAYLOR** asked if he could get a copy of a log for a couple of months like June and July of this year? **Mr. Dilliard** said that they could provide a log from this present contract.

**SEN. KEATING** stated that under the Safe Drinking Water Act, the State Revolving Fund was established for drinking water and wastewater treatment. According to the fiscal note, the

wastewater treatment is handled in DNRC and they also handle the loans and then DEQ handles the safe water part of it. Is this correct? **Mr. Simonich** answered that the way the Dept. works is that DNRC has handled the loan or financial part of it and that SRF is dependent on bonds being issued. So rather than duplicate and generate that kind of expertise in DEQ, DNRC provides that portion. Historically, DNRC has provided that part of the program and DEQ has handled the technical part of it. That was true in the wastewater treatment program and the dirty water program. And now in the clean water program or the safe drinking water program it will be done the same way.

**SEN. KEATING** asked if the clean water and dirty water programs are in the same or different bureaus? **Mr. Simonich** didn't know. The SRF program, the loan program, within DEQ is all within one bureau. **Mr. Livers** is the bureau chief of that bureau. They deal with regulations through bureaus in the permitting and compliance side of the Dept. The SRF which is the part dealing with the loans and the technical assistance from that side is in the planning division within **Mr. Livers'** bureau. **SEN. KEATING** then asked that if they expand into the nonpoint source pollution in regard to the waste management part of this and if they are making loans to the cities and towns for their waste management programs, will that involve a different bureau in your Dept. then? **Mr. Simonich** said that as far as that SRF loan would go, they are still talking about a State Revolving Fund, low interest loan, whether it is for safe drinking water, wastewater treatment, a landfill or the nonpoint source. That part of the program would all be handled within **Mr. Livers'** bureau. The Dept. has tried to coordinate so that they pull together all the technical assistance kinds of programs into one single bureau, so all the expertise would be in one bureau rather than going to various bureaus for that. **SEN. KEATING** said then there will be a different kind of work involved with the addition of the solid waste part of this. Will the staff have to be increased? **Mr. Simonich** replied that with the solid waste portion, they were not anticipating bringing in additional staff or an increase there. That was originally a part of the federal program under the wastewater treatment program and the Dept. felt they ought to be able to cover that same area of expertise with the same staffing. The additional staffing is being asked for because they do expect the safe drinking water portion to be a fairly large increase of activity within the Dept.

**SEN. KEATING** asked if the bureau is going to be funded out of the fees that are charged against these loans? **Mr. Simonich** requested **Mr. Livers** to answer that question. **Mr. Livers** answered that part of the money will come from within this federal capitalization grant. There will be no fee money used in this bureau. The funding source for this portion of the bureau, SRF programs, will come from set-asides. Those monies that they receive from the EPA capitalization grant matched by bond funds, a portion of those at approximately \$320,000, will come out of the EPA money and out of a portion of the bond proceeds. The



repayment of the loans goes into a fund that essentially rebuilds the corpus of the loan fund in perpetuity. No fees are involved.

**SEN. MCCARTHY** stated that **David Elias** from Anaconda is here and she wanted him to comment on the language of the amendment. **Mr. Elias** said that a consensus has been reached among those interested in the solid waste language. It is fairly wordy and it must have been written by an attorney. **Someone went to make copies and the discussion will carry on later.**

**CHAIRMAN GROSFIELD** said that in regard to the solid waste issue the bill without the amendment allows the use of some of these monies for a variety of solid waste purposes. Since this is low interest money that some of the folks are saying would put them at a competitive disadvantage, is this low interest money available to the private sector. **Mr. Dilliard** said that this is correct. This money is available to the private sector for loans as was brought up in several different testimonies. They can get the money; however, their interest rate would probably be one to one and a half points higher than for local governments.

**CHAIRMAN GROSFIELD** then asked is the point to point and a half the problem. In other words, if that were equalized in some fashion, would that negate some of the concern. **Mr. Crowley** said that in his testimony, he had mentioned some disparities in eligibility or conditions on these loans. The first one is what you have just discussed. That would certainly be Constitutionally correct to equalize those rates. In his experience and in his association's experience, there has never been an occasion where a private sector entity has actually come in to apply for one of these loans. These compliance issues are issues that are budgeted for. It is rather unusual for us to be in here asking for better conditions for access to low interest financing. It has never been part of the general lexicon of our industry. But it certainly would be an advantage to have that equalized. I don't think it would change our objection to the bill nor would it eliminate our request to have some type of amendment to limit the scope and breadth of this bill. He also pointed out that in addition to the differential and interest rate, there is a condition for private applicants to provide such security, collateral as the Dept. deems appropriate, including personal guarantees and letters of credit. For some of our smaller operators, that could be an obstacle that might dissuade them from applying even if interest rates were the same. **Mr. Daubert** added that even though the path is opening up for consensus, that point has not yet been reached. He hoped that all would be able to get to that point by the time executive action is taken.

*{Tape: 2; Side: B; Approx. Time Count: 5:35 PM; Comments: N/A.}*

**Mr. Elias** now took the podium to explain the amended proposed amendment of **SEN. MCCARTHY**. (EXHIBIT 13) This language keeps in tack our interest in obtaining the low interest money and

addresses water issues. It is specific to ground water issues and closure and post-closure activities which contain those unknowable costs. It is a function of what was placed in a landfill so many years ago that it is impossible to know what was there. He also concurred that these folks have to check with their constituents to be sure that all are comfortable with this language. He felt that they would be. If the committee can put this bill on hold for a short while, allowing them to get that concurrence, he would be appreciative.

**CHAIRMAN GROSFIELD** asked for comments from someone from a big city and someone from a small city. **Mr. James Kembel of Billings** said that he would check with his people. He and **Mr. Crowley** are working together on it. **Ms. Paladichuk of Richland County** said that as she read the proposed amendment, it would address the \$1.2 million project that is imminent in their area. Thank you.

**CHAIRMAN GROSFIELD** asked if the Dept. would like to comment on the proposed amendment. **Mr. John North, DEQ**, stated that the one question he had when he looked at the amendment was whether it is an existing landfill at the effective date of the passage of the act or is it an existing landfill at any time in the future. It is, he believed, meant to be as of the effective date of the act. That would mean that those that were closed prior to the effective date of the act, undergoing some kind of remediation, would be covered and ones that come on line in the future, but not existing landfills.

**CHAIRMAN GROSFIELD** said that if the committee passed this conceptual approach, and looking at the whole program or bill, would the Dept. feel applications would be coming forth from around the state that would utilize the money that the federal government is giving the state? **Mr. Livers** said yes, this is correct. One of the rationales for expanding this was to fully utilize the money available from the federal government. He was not sure he could answer the question, but he believed it would be a much smaller subset of projects than originally anticipated in the original language that would open it to landfills in general. He would try to quantify that prior to executive action.

**CHAIRMAN GROSFIELD** encouraged the people in the waste industry to think about some of the smaller more remote locations in Montana and if this approach takes care of them or if there is something additional the committee can do to take care of them. He then asked the DNRC about the interest situation, and if there is a way to reasonably equalize the interest? **Mr. Ray Beck, DNRC**, said that currently the loans are going to be at 4%. They expected that this would be an issue raised at this hearing and have been looking at some other opportunities. There may be some flexibility in the recycled funds. Currently, the way this works is EPA gives the state 80% of the dollars and they match with 20% from the G.O. (General Obligation) bonds. Once the loans are repaid, the monies stay in the state and they can be reloaned

out. There is some possibility that the interest rate can be lowered to meet some of the private demands as well.

**CHAIRMAN GROSFIELD** said that a great deal of mail had been received from people around the state supporting MT Rural Water and supporting the amendment that was put on in the House by **REP. DEBRUYCKER**. In reviewing this support, all come from the smaller or more rural systems from around the state. Could you, **Mr. Keil**, talk about the amendment with respect to the various types of assistance that might be needed. **Mr. Keil** responded that the 2% is only used for technical assistance to systems with under 10,000 population in a non-regulatory basis. His association works with the larger systems when it is possible we do training of operators and work back and forth with them. They have other programs that are operated and these are funded by federal monies. The question about the contract from a couple of years ago, that program was for small systems and was funded out of DHES which became DEQ. Basically, their technical assistance varies and what the people and the systems are referring to in the communities is the fact that they would like to see that same type of technical assistance program. That is where there is a difference of opinion with the regulatory agency about what the communities would like to see. They want a similar type of program as to what they have been accustomed to seeing from MT Rural Water and some other programs that work with the smaller systems. They want a hands-on type of technical assistance.

**CHAIRMAN GROSFIELD** stated to **REP. MOOD** that there needed to be more work done on the bill. Executive action will not be taken till Wednesday, 3/26/97, of next week. He hoped that it would be possible to get the loose ends tied up before then.

**Closing by Sponsor:**

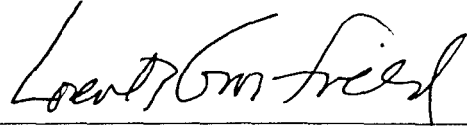
**REP. MOOD** closed. I appreciate your patience and feel somewhat apologetic for bringing you a bill which still needs so much work even after having gone through the House. There was no time in the House to deal with the amendment on page 20. It was offered on the Floor and we did not have an opportunity to debate that issue here. I come from the private sector and I certainly don't begrudge anyone the opportunity to make a living, but I will leave it up to you to decide what is the proper way to handle that situation. As far as the amendment on page 4, the wastewater treatment amendment, it appears that there is a way to work that out to the satisfaction of all the parties.

Briefly, I would like to tell you why I stand in front of you with this bill. The Seeley Lake Water System is required to put a filtration system on their municipal water. It is a requirement that is mandated by the federal government through the DEQ. Because we don't control the land above the area where we take the water into the pipe--we use surface water from Seeley Lake--we are required to put a filtration system on the water. There is no sediment; there is no problem with the water, but we

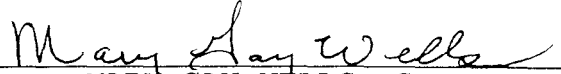
are required to do that anyway. I felt that if the federal government is going to mandate a municipality to buy something they really don't need, there is some obligation to make it affordable. Seeley Lake is not unique. There are a number of communities across the state that are very interested in this program. Again I would remind you that the goal is to put the program in place. What we have heard here today are no opponents. They are all proponents. I would ask all involved to work out their differences and make sure this bill is passed on. Thank you for your time. **SEN. GARY AKELSTAD** will carry the bill.

ADJOURNMENT

Adjournment: 5:48 P.M.



LORENTS GROSFIELD, Chairman



MARY GAY WELLS, Secretary

LG/MGW