

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 26, 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:

Members Absent:

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: N/A
Executive Action: HB 546, HB 483 Amendments, HB
284

EXECUTIVE ACTION ON HB 546

Amendments: hb054601.alm (EXHIBIT 1).

Motion: SEN. WILLIAM CRISMORE MOVED DO PASS ON AMENDMENTS
hb054601.alm (EXHIBIT 1).

Discussion: SEN. VIVIAN BROOKE asked the reason for the first
four amendments and why they hadn't been in prior to this. Larry
Mitchell answered those amendments were originally in REP. BILL
TASH'S amendment; however, they showed up as amendment #1 and #2
amending on page 4 the definition of a threatened water body.
REP. TASH added the phrase "or stream segment" to that. In
reviewing the rest of the bill, the term "water body" is in here

about 29 different times, so rather than go through there and add "or stream segment" each time it was mentioned, amendment #1 and 2 were added to the **SEN. GROSFIELD** amendments to also add that phrase to the term "impaired water body" in the definitions. "Impaired water body" means a water body or stream segment.

CHAIRMAN LORENTS GROSFIELD said it was to avoid confusion with the phrase "water body", i.e. does "water body" mean the Yellowstone River all the way from Corwin Springs to the North Dakota border, or is it stretches. In a lot of legislation we dealt with over the years, (water leasing, for example) we talk in terms of stretches. **CHAIRMAN GROSFIELD** thought the impaired stream list talked in terms of stream segments as well as streams; however, he thought it broke out segments, and avoided confusion.

CHAIRMAN GROSFIELD said he had asked Kathleen to look at the possibility of drawing some amendments which would directly put some money into this bill; however, they may not be here today. His sense was there was a commitment to fund this bill, but some people were nervous because there was no money specifically in the bill; therefore, he suggested putting money in the bill which would come through discovering it before somebody else did. He didn't, however, want to take final action on the bill quite yet.

SEN. TOM KEATING wondered why there was no money in HB 2. **Mark Simonich, DEQ**, answered that there was no money for HB 546 in HB 2 yet because HB 546 was one of those bills which hadn't passed both bodies yet. He talked with **SEN. CHARLES SWYSGOOD** who made a commitment to dealing with this during the Conference Committee. He indicated it would be his preference to deal with the funding during Conference Committee.

SEN. KEATING said in their work on HB 2, they did not amend the bill wherever there were appropriations or money bills going through, and they would all be coordinated through the Conference Committee.

CHAIRMAN GROSFIELD said they may not need to -- if it was too difficult to do we may not do it; however, he just visited with **SEN. SWYSGOOD** about this concept and he indicated they could put some funding in the bill.

SEN. KEATING said there was some talk early on about the debate over whether it would be General Fund or some other source, so that may be a consideration for the Conference Committee as well. If we start tacking in General Fund in this and if the funding will be taken care of by the Conference Committee, leave it up to them, whether it's General Fund or some other source.

CHAIRMAN LORENTS GROSFIELD replied it was just a matter of utilizing some money before it got utilized by someone else. One of the suggested sources was money sitting in the Junk Vehicle Program; if it was grabbed, we wouldn't have to worry about it in

HB 2. He said he was willing to listen to the expertise of the Finance and Claims members on this Committee as to how they ought to proceed.

CHAIRMAN GROSFIELD wanted to talk a little bit more about funding. **SEN. FRED VAN VALKENBURG** commented that although he was sure the answer would be NO, he wondered about the potential of some kind of fee they might assess to generate some revenue specifically for this purpose.

CHAIRMAN GROSFIELD asked who was going to be taxed and **SEN. VAN VALKENBURG** answered the point sources and the non point sources, because they were the ones who created the problem that needed to be solved -- perhaps it could be a dime a cow or something like that.

CHAIRMAN GROSFIELD stated he was not comfortable with putting a fee in this bill, but if **SEN. VAN VALKENBURG** thought he could get the votes from this Committee, he should put \$.10 a cow on; however, he would have a hard time supporting it.

SEN. KEN MILLER tended to agree with **SEN. KEATING**, i.e. pass the bill on its merits and hope it gets addressed in Conference Committee. He suggested **CHAIRMAN GROSFIELD** could address the Conference Committee with whatever source was found and hopefully they won't spend it somewhere else. Then, too, they could easily take it away even if it was put in. Let them have something but don't necessarily have the funding until HB 2 has passed.

SEN. TAYLOR said this bill relied on funding alone and is going to be up against several bills that are going to be asking for a small part of the pot, and that pot is pretty small right now. He asked what kind of dollars were needed. **CHAIRMAN GROSFIELD** answered the fiscal note was about \$1.4 million over the biennium. **Mark Simonich** replied they put together the fiscal note with their best estimate and nothing would indicate the fiscal note had changed.

SEN. KEATING commented if the fiscal note was right, the \$800,000+ was federal funds, which was part of 319 money. **Director Simonich** said that was the original idea; however, it would have to be changed somewhat due to actions taken in Subcommittee.

SEN. KEATING said the other almost \$600,000 was General Fund; however, if getting squeezed out of the General Fund was a possibility, the Water Storage Account or Renewable Resource Account could be looked at because they are the water types, water projects that had funds in them and were related. The Junk Vehicle Fund was mentioned but that money is to keep the barrow pits clean and keep those junkers hauled off to be sold as scrap.

CHAIRMAN GROSFIELD commented he thought based on the discussions, it was probably better off to put it to the Conference Committee;

however, he didn't want people to have the impression they were backing off of funding the program. He explained it was a bit awkward when that the HB2's appropriation's process kind of controls the money and that worked separately from this process.

SEN. BROOKE asked if the money would be there for this bill.

CHAIRMAN GROSFIELD answered for this and several other bills, explaining the Committee that had been dealing with HB 2 had not been funding bills that had not yet passed both Houses. He said that was a prudent way to go because if they started funding bills that only passed one House and they ended up getting killed in the second House, they'd have to go back and start over again.

SEN BROOKE said she objected because as prudent as it seemed, all were members of the Legislature which had a way of prioritizing how they wanted the money spent. Before she voted on this bill, she needed to know where the money was coming from, what was cut in order to fund it and how it was going to be funded. She didn't think it was a prudent thing that before it was programmed, it needed to be funded at that level. Also, it was being left up to six people to figure that out, and she had yet to see the priorities she would like for this type money to go to. She said she couldn't vote for this unless she knew where it was coming from or what was being cut.

CHAIRMAN GROSFIELD commented dozens of bills had been passed during the past month which were sort of in this same predicament; unfortunately, that was how the process worked.

Motion: **SEN. WILLIAM CRISMORE MOVED HB 546 AS AMENDED BE CONCURRED IN.**

CHAIRMAN GROSFIELD stated he was going to enthusiastically support this bill because it was a concept Montana had to deal with, in that there were water quality impaired streams out there which needed to be removed from the list; this process would work. He said there were people who said it was too slow, but he reminded the Committee these weren't simple tasks but tasks which required education, changing traditional practices and that sort of thing. The bill would put something in place that would allow and require them to proceed in addressing that issue. **CHAIRMAN GROSFIELD** reminded the Committee a lot of people worked on this and not everybody agreed on every single detail; however, on balance it was a program that would work and one that Montana could be proud of. He said he understood the concern of the "trust me" part of the funding, but he was confident the funding would be there.

SEN. TAYLOR wondered what the question would be if it wasn't done in the compliance time of five years. **CHAIRMAN GROSFIELD** answered the five years was the time to develop the TMDL. He felt it was a reasonable time frame because this whole process was going to take a little time to gear up -- maybe several

months or even a year or two. He explained there was a deadline here because if things weren't working, it had to be looked at again in 10 or 15 years; if there would be a lot of dissatisfaction over how the program was working, more teeth could be put into it, which may be appropriate at that time.

CHAIRMAN GROSFIELD contended if they could get people starting to think along the lines of protecting the impaired waters, there would be better success on a voluntary sort of approach; however, it would take some time. He guessed the 319 program had funded a lot of TMDL related projects. He said in his district there was a little creek called Otter Creek that was rather like the Sun River out of Great Falls; as you drive along you see this plume of mud and murk or whatever you want to call it going down the Missouri, and it was the same situation in his county with a little watershed. He explained there had been a lot of 319 money (TMDL related) spent on both of those streams but it had helped. He pointed out the legislation passed in 1972 but it was 1991 before the EPA issued their first regulations on it -- 21 years later. He doesn't know why it took them that long.

CHAIRMAN GROSFIELD referred to **SEN. TOM KEATING's** question if there was a specific level of effort that had to be demonstrated and said he didn't think there was; however, he thought EPA said certain specific things had to be done to show a level of effort. **Mark Simonich** replied there was no indication there had to be a specific level of effort. The federal Clean Water Act requires the states to identify those streams or water bodies that were impaired; once they've been identified and listed, we are to identify and develop a TMDL for that stream. However, it didn't specifically say certain steps had to be taken.

SEN. KEATING commented part of the work was determining there were certain streams that didn't fall under this whole study, that they'd be taken off the list and wouldn't have to worry about them. Then you're going to find the streams that need to be worked on; it may not be necessary to fund this thing with a million dollars in the first biennium to get things going because they may be able to have a level of effort that didn't cost much, but would at least get the thing going and up and running. He suggested once it was in statutes and working, they'll know better what's in front of them. He thought it was a worthwhile, valid, necessary project; especially if there was to be any kind of federal-free life in this state.

CHAIRMAN GROSFIELD said under the bill, the first thing that happened is that Department would have to look at the list, and if streams were included for which there was no documentation, they would have to go out within the first field season and get some information on those streams. That would be an up-front cost that could happen quite soon and if there were a number of water bodies, it could amount to some dollars. He believed right now the fiscal note said \$1.4 million in this biennium; however, he thought they were talking about pumping that to \$1.8 million and then over \$2 million by the third biennium. **Mark**

Simonich answered it was roughly \$1.4 million this biennium, the following biennium would be closer to \$1.7 and the third biennium probably \$1.8; that path will probably be continued through the course of about five bienniums over a 10-year period. \$1.85 million was about as high as they've anticipated per biennium over that ten-year period. After ten years that ought to be decreasing dramatically, because during that period of time either the listing removal of the streams that weren't impaired will have been accomplished, or the TMDL's for those impaired streams will have been accomplished. HB 546 directed us to do that within the 10-year period of time; even though there's not a required level of effort, we have to move as quickly as we can with the appropriate amount of funding in the beginning to make sure the targets in the bill are met.

SEN. TAYLOR said he wanted to be clarified again on funding, federal funds vs. General Funds or 319 money. How much would be needed from the General Fund for this biennium. **Mark Simonich** said they initially estimated if the legislature directed them to try to utilize funds they currently had appropriated, available within the Department, the one area deemed most appropriate would be 319 dollars; at one time, they thought they could maybe fund up to 60% of this with 319 dollars. As they continued to look at that and work with particularly the Subcommittee in the meantime, they came to the conclusion with the Subcommittee it was very important to ensure they didn't shortchange all the 319 project efforts on the ground they currently had in terms of demonstration projects, working through conservation districts and others. The Subcommittee put a restriction on their appropriation that 50% of their total 319 money had to be routed through conservation districts, which changed the numbers somewhat. Therefore, at this point in time if the legislature were to say DEQ should use 319 monies, they were probably closer to \$250,000 to \$260,000 of 319 money that could be available per year; the remainder of the money needed would have to come from some other source. **Mark Simonich** said they had always thought General Fund, explaining they were a bit reluctant to come in and suggest RIT money because they knew there was no surplus for RIT money and we didn't have any other appropriate source of money to turn to that tied back directly to non point sources of pollution.

SEN. TAYLOR replied he understood somewhere they had to come up with approximately \$1,250,000, give or take. **Mark Simonich** said the \$250,000 would be per year, leaving about \$900,000 additional money needed over the biennium. They estimated the total grant award received from EPA for 319 would be roughly \$1,300,000 per year, and 50% of that had to be routed through conservation districts because of language put into HB 2; that removed \$658,000. Some of that money is pretty well committed to certain programs or funding existing FTE's; therefore, by the time that's backed out, what's left was about \$253,000 of what we expected per year of those 319 dollars. He said Bob Rice was downstairs trying to work with Kathleen on the amendment being considered,

and he indicated Greg Petesch had somewhat different ideas on where to be looking for those funds.

CHAIRMAN GROSFIELD commented they'd already realized they weren't going to resolve that today because a lot of mail had come from conservation districts and he knew 319 funding had been a big concern; besides, the bill originally talked about taking 60% of 319 money and it was \$250,000 out of \$1.3 million, which was 20% or something. He wondered if that was an acceptable level.

Mike Volesky, Montana Association of Conservation Districts, said from the conservation districts' perspective, the effect of that was the fact the money was not going out on the ground to actually address some of these problems. They recognized the importance of this program, in light of the impending lawsuit because the money would be diverted for 10 years from money which could actually be addressing the problem, and used for funding a state program, some FTE's and some management plan type of effort.

CHAIRMAN GROSFIELD answered the money was going to be spent, not just running another bureaucracy, but trying to fix some water quality problems; therefore, it seemed to be appropriate to use some of that money. He was sure some of the money funneled through districts was currently going for TMDL-type projects; anyway, more than just \$250,000 would actually end up being spent on TMDLs.

SEN. KEATING said there was a statutory allocation out of the RIT for \$1.2 million for ground water assessment, a project that actually did something for remediation and getting a handle on water and getting it clean. He suggested looking at that ground water allocation to see if they needed to have the whole \$600,000 a year or if it could be used for this program. They could still be cataloging some ground water out there with half as much money.

CHAIRMAN GROSFIELD said perhaps that was something else which might come up in the Conference Committee.

SEN. VAN VALKENBURG commented he still had the sense this bill was here primarily because of the filing of the lawsuit, explaining he realized the bill was introduced before the lawsuit was filed, but there was notice given prior to the start of the session that the lawsuit might be filed. He didn't think there was an indication yet there was anything other than trying to come up with some kind of a response to the lawsuit; the discussion over the funding was real indicative of that. If the Department was really serious about doing this, it would come up with a means of funding, but it hadn't; that was indicative of how little commitment the Department had to this process.

CHAIRMAN GROSFIELD responded the notice of lawsuit was dated Dec. 2, 1996, and at that time there had already been several months of ongoing meetings amongst a wide variety of groups; in fact,

there was a meeting just a very few days before that letter was sent. The people who filed the lawsuit were at that meeting and there was talk to the effect they were working together and keeping this out of court; in fact, nobody gave any indication they were about to file a lawsuit. Within the next few days, the letter appeared; however, it was some months before anybody knew about the lawsuit and there had been quite a bit of work done on this issue. **Mark Simonich** said it was about a week after the meeting they received the letter indicating the 60-day notice of intent to sue.

CHAIRMAN GROSFIELD stated at that meeting there was no indication of any intent to sue and nobody had a clue there was going to be a lawsuit. **Mark Simonich** said there were a lot of questions and discussion because that was in the forefront of everyone's minds; however, there was no definite expression that a lawsuit was what could be expected to happen in Montana.

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

SEN. WILLIAM CRISMORE commented a lot of work had been and was being done on a lot of these streams, and a lot of data could be used on this. He said there would be a tremendous amount of help from private industry, the Forest Service and others that have been collecting data; therefore, they would be able to move on with this thing and get something. In his area, the forest products industry didn't want to be shut down because this wasn't being done; therefore, they'll be doing it -- it was going to happen and basically all of western Montana was also going to be doing it for the same reason.

Vote: Motion HB 546 BE CONCURRED IN AS AMENDED CARRIED 8-2 WITH **SEN. VIVIAN BROOKE** AND **SEN. FRED VAN VALKENBURG** VOTING NO.

EXECUTIVE ACTION ON HB 483

Amendments: hb048309.alm (EXHIBIT 2), hb048307.alm (EXHIBIT 3), (EXHIBIT 4), hb048303.alm (EXHIBIT 5), hb048304.alm (EXHIBIT 6).

Motion: **SEN. BEA MCCARTHY** MOVED HB 483 WITH AMENDMENTS hb048309.alm BE CONCURRED IN.

Discussion: **SEN. MCCARTHY** said this amendment would allow applications to the program from private or community entities for the loan under the Water Pollution Control Revolving Fund Act for non point source pollution control activity. It would include causes for solid waste management facilities projects which were specifically intended to cover costs of closure or postclosure with that 30-year requirement. The groundwater would have to be monitored and ground water corrective action taken, should the monitoring discover an off-site migration of contaminants. This would be at landfill sites existing prior to the effective date of the act or one that has been closed prior to the effective date. She said there was no limit in her

amendment on the size of the community or private landfill that would be eligible for a loan to help with the close or postclosure or ground water remediation. The funds could not be used by someone to open or develop a new landfill, nor could they be used for operational costs such as liners; just for closure. Landfill operations couldn't buy trucks, equipment or dozers, etc., nor would new public or private landfills opened after the effective date of the act be eligible for the loan money under this program for eventual closure, postclosure or ground water.

SEN. MCCARTHY stressed this wasn't going to help some other county get into the business of opening a landfill.

SEN. MACK COLE referred to Amendment hb048307.alm (**EXHIBIT 3**) and said his amendment would be a substitute amendment and is identical except for the last sentence, following "act" and accepts an annual average of less than 20,000 tons of solid waste per year. He said **SEN. MCCARTHY** had no objection to his amendment addition; the difference was for people to realize the Butte landfill compacted about 45,000 tons in their landfill, the Anaconda group hauled about 8,500 to Butte, Drummond was about a 1,000. People could look at where the landfill sat in the area by putting it into the 20,000 tons in the amendment. **SEN. COLE** stated it seemed to take in most of the Eastern Montana landfills, which were smaller landfills, but would not take care of the larger landfills in the state.

CHAIRMAN GROSFIELD compared the two amendments by saying **SEN. MCCARTHY'S** said except for project the landfill that was existing on the effective date of this act or was closed prior to, and **SEN. COLE'S** amendment went to those that stopped accepting waste prior to Jan. 1, 1994; the difference was slight.

CHAIRMAN GROSFIELD believed the significance of the Jan. 1, 1994, date had to do with federal Subtitle D and when they required landfills to either be on or be off.

Jon Dilliard, DEQ, said it was correct --the federal Subtitle D regulations became effective in October, 1993.

CHAIRMAN GROSFIELD asked if any landfills had closed since January, 1994. **Jon Dilliard** said maybe three or four had closed since then.

CHAIRMAN GROSFIELD asked if the language was adopted, would they be able to participate. **Jon Dilliard** said they wouldn't.

CHAIRMAN GROSFIELD commented the reason this issue was before them had to do with competitiveness with the private sector and efficiency (or lack of) resulting from private competition or whatever. He wondered if there were areas in Montana, especially Eastern Montana, Northwestern Montana, and maybe some other places, which were pretty remote and outside the economically feasible distances with which a private carrier might want to get involved. In those situations perhaps consideration should be

given whether to preclude those kinds of communities from being able to get at some of this low interest money. If there was no chance for competition and communities, he didn't know what Ekalaka did with their garbage, for example; he doubted they hauled it to Billings -- maybe they take it to South Dakota. He reiterated there were some pretty isolated areas around the state and he wasn't clear how that worked.

Anna Miller, Dept. of Natural Resources (DNRC), said they worked on the financial side of the waste water program; when a community came into us, they'd first gone through the prioritization list the DEQ set out. Every community, whether large or small, went through and looked at the validity of the projects, the health and safety issues and those types of things. Once they came onto that list, if they were ready to go to a project, could demonstrate the project was technically feasible, and could pay back the loan, they went through the loan processing. Any community would go through this, and small communities would probably have more issues, so they'd probably do better on the priority list; however, that screening would already be done under this process which was already evaluated. **Ms. Miller** said at this point in time they'd always had enough funds for communities to come in and help them so she didn't know if that delineation helped anybody; small communities that took their garbage to a larger landfill could be hurt because they would work with a larger city to take their garbage to a larger facility.

SEN. MCCARTHY said that in talking with the Butte landfill, part of their 45,000 tons included what they took from outside landfills; because of the amount they took from outside landfills theirs was way above what the other amount was. She suggested Billings was one of the largest land fills which took garbage from small areas such as Hysham; however they probably achieved some efficiency and did some things because of that. She stated she would have to make the judgment how Hysham vs. Billings could be evaluated.

Jon Dilliard said the issues of what a facility was going to do with their waste were studied on the local level. They looked at their options for handling their waste, whether it was to operate their own landfill for just their area or city, or to set up some system where the waste could be collected and then hauled off to a larger landfill within the region to handle it. He said they generally went through the throes of deciding what they wanted to do with their waste before they ever come into the Department or into the SRF fund. Generally, they looked at the cost of running the system, comparing the cost of handling their waste locally to shipping it off to another facility. **Mr. Dilliard** said sometimes local control played a role because some communities or counties might decide they wanted to maintain local control of their waste, even though it might not be their least cost option.

CHAIRMAN GROSFIELD asked about Ekalaka and **Jon Dilliard** said Ekalaka's waste went to a landfill in Baker which was operated by the county. Baker was fortunate enough to locate a wonderful site for a landfill in an anticline that had no ground water, had very tight soils; therefore, they were able to avoid, a lot of the costs associated with normal construction of a landfill.

CHAIRMAN GROSFIELD commented that must take care of a good part of Eastern Montana. **Jon Dilliard** agreed they took care of a good share of Eastern Montana and, in fact, that facility was also serving small parts of North Dakota.

CHAIRMAN GROSFIELD asked if there was a tonnage figure available on that and **Jon Dilliard** said 6,507.

CHAIRMAN GROSFIELD commented the answer to his question was there were not small towns out which had a big problem they should try to accommodate with this amendment any further than they already had.

Jon Dilliard said currently for the State of Montana, wastes were being handled for all of its citizens, going to some facility or another. He didn't know whether or not there was a problem because he supposed if the rate payers for some of those facilities were asked that question, they'd say there was one; however, in other areas people were very nervous about shipping their waste off to another facility where they didn't control their liability. He suggested the issue boiled down to the funding and financing for these landfills out there which were serving the citizens.

SEN. TAYLOR commented he thought he understood **SEN. COLE's** amendment, less than 20,000 tons because that put smaller cities in less competition with big cities or landfills. **Jon Dilliard** answered he believed that would provide a low cost funding source for the smaller facilities which generally weren't competing against the larger private facilities. It would provide them with at least a funding avenue to continue what they were doing now.

SEN. TAYLOR answered the intent was for the smaller communities, which in some cases didn't have the resources to draw from since they didn't have the ability to raise the rates because rural communities had less of a tax base, less dollars and less people to fund a particular landfill. **Jon Dilliard** affirmed.

SEN. TAYLOR said Billings had a large landfill but very low rates; however, they could raise the rates if they wanted to and needed to generate revenues. He wondered if **SEN. MCCARTHY'S** amendment put rural cities in competition with the big cities. **Jon Dilliard** said in a sense, you could say that, because it would allow the smaller landfills to continue operation as opposed to hauling their waste to a larger facility. As to your earlier point, there was economy of scale in landfilling business, i.e. the larger landfill, the more waste it took in and

therefore, had the ability to spread its costs more thinly out over the people paying. However, when dealing with larger landfills, the citizens would pay on a per capita basis, less than what a small facility that has a small population basis to spread to cost over.

SEN. MCCARTHY commented when considering what **Mr. Dilliard** just told them about some being caught in a time warp from 1994 to the effective act, it might be acceptable to take her amendment and the last sentence of his and put the two together; therefore, his amendment at the end would read his "and that accepts an annual average of less than 20,000 tons of solid waste per year". She explained the Jan. 1994, date would be removed because it penalized some of the smaller communities that have closed their landfill but might need that money for particularly monitoring that 30-year water leakage situation.

CHAIRMAN GROSFIELD replied he thought it was a good suggestion if **SEN. COLE** agreed; however, he wondered if there was a difference as far as existing on the effective date or in operation on regarding "existing on" in the **MCCARTHY** amendment and "in operation" in the **COLE** amendment. **Larry Mitchell** answered he thought the intention was the same; however, he suggested that "in operation" would be a more precise crafting of the language rather than "existing" because it was intended to apply to existing landfills.

SEN. BROOKE said she thought they'd defined what projects were eligible specifically in what was allowable to apply for and she thought that was what the **MCCARTHY** amendment did. She suggested since a lot of these large landfills really did help smaller communities, thus eliminating a lot of the creating of new landfills; therefore, she would really argue against the tonnage limitation.

SEN. BROOKE thought the Committee heard testimony that some invested incredible amounts of money and she didn't think they should be jeopardized simply because they put their resources into accommodating these regulations. She thought they should be able to access these funds if theirs was as legitimate an operation as is a small one.

CHAIRMAN GROSFIELD asked if she was suggesting she didn't want any tonnage limitation, or the use of a different number. **SEN. BROOKE** suggested no tonnage limitation but restrict it just in specific projects, or things she understood were in the current amendment.

SEN. MCCARTHY responded one of the reasons they put a specific tonnage in was the larger ones had in their fee process, a set aside which took care of the things the smaller ones couldn't afford to do. Each year as they charged their fees they did this and again, the bigger ones were being penalized for the little ones. She thought the point was they had a larger base to draw

from so they were able to do it. **SEN. MCCARTHY** wondered how many landfills in the state would be affected on this 20,000. **Alec Hanson** replied according to his calculations Private Waste Management of Meagher County was 95,000, Unified Disposal District was 22,000, Scratch Gravel in Helena was 38,000, Lake County was 40,000, Flathead County was 85,000, Billings was the 228,000 and Browning Ferris at 135,000. He explained Billings was the largest land fill in the state, taking garbage from a lot of small towns all over the south and central part of Montana, and they're very interested in being able to apply for low interest financing for their landfill. If the cost were to come down, obviously people in Billings and Yellowstone County as well as throughout the region would benefit. The Department had prepared an amendment but was not interested in competing with the haulers, nor did they want to try to get funds for trucks and things; what they were interested was those parts of the landfill operation which were directly related to water quality. He said that was where a lot of the costs came in and he thought this amendment was totally acceptable to them, explaining people in Montana should receive the benefit of the federal program, the low interest loan money, as well as those in some of the other states that are using this. Even though the amendment doesn't have any tonnage limit, it strictly regulates the use of the money and specifically says it can be used only for those parts of the operation which are related for protection of Montana waters.

SEN. GROSFIELD commented it was quite a bit different from what they were looking at. **Mark Simonich** said what they were looking at was not necessarily the preferred amendment by the DEQ. The Department recognized there were different places to land on this spectrum between the public and the private interests, and they understood the directions from the Committee at the hearing to try to hold the parties together to find places to land that might be acceptable to the different interests on this issue. **Mr. Simonich** said this was one attempt to identify one middle-ground-place to land, but may not be precisely in the middle. They started by looking at potential tonnage limitations as one way to qualify certain, but not all, facilities. They felt a more appropriate way to proceed was to tackle it from the standpoint of eligible activities, and they tried to recognize a certain status quo; in other words, not encourage landfills to come into existence, yet not necessarily discourage them or encourage them to go out of existence, either. He said they attempted to limit it to activities directly related to the protection of state waters and with landfills which were currently in existence or in operation. As to how wide this would open the door to other amendments, it would probably open it to more than the two others the Committee was considering.

CHAIRMAN GROSFIELD commented he wanted to be sure they were covering their local governments, especially the smaller, more remote ones, but he also wanted to ensure they didn't come up

with something which would result in disincentives to be efficient.

CHAIRMAN GROSFIELD said he understood that **SEN. MCCARTHY AND SEN. COLE** had agreed to combine their amendment into something that would read as in **(EXHIBIT 2)**. One alternative was "or that is in operation on effective date of this act" and accepted an average of less than 20,000 tons of solid waste per year, and the other was one more toward the middle which allowed any governmental entity to get at this low interest money. As long as it was related to protection of state waters, they could come after the money; however, it could not be used for trucks, compactors, equipment, transfer storage or treatment.

SEN. COLE commented there was really only the combined amendment or the one presented by DEQ. **Mr. Bulberr** said the fundamental difference between the two was the Department's amendment basically allowed any landfill access to the money whereas the **MCCARTHY/COLE** version tried to target only those landfills that would be less likely to compete with the private sector; therefore, they would be supportive of the **MCCARTHY/COLE** amendments, rather than those from DEQ.

CHAIRMAN GROSFIELD clarified how the amendment would read, 48309.ALM, amendment #3, insert b, "project does not include a solid waste management system, as defined in 75-10-203, except for a project that is intended specifically for the closure or postclosure care of or ground water corrective action at a landfill that was in operation on the effective date of this act and that accepts an annual average of less than 20,000 tons of solid waste per year or that was closed prior to the effective date of this act."

SEN. BROOKE asked if everything over 20,000 was eliminated, and if so, six landfills in the state were eliminated. **CHAIRMAN GROSFIELD** answered ten landfills were eliminated: Browning Ferris in Missoula, Butte-Silver Bow, City of Billings, City of Bozeman, Flathead County Solid Waste, Lake County Solid Waste, Scratch Gravel Landfill District, Gallatin County Refuse District at Logan, Unified Disposal District at Havre, Waste Management at Great Falls. They were all greater than 20,000; however, two were close -- Lincoln County at Libby was at 19,000 and Rosebud County was at 18,200. **Mr. Hanson** stated language might be considered that gave the effective date of the amendment because there was some concern there would be a few landfills that would close between passage of the act and this point in time.

CHAIRMAN GROSFIELD responded that it referred to this act, and the date was April, 1997. **SEN. KEATING** asked if this was effective on passage and was told it did.

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SEN. COLE commented some of the major ones already had their funds set aside, but some of the small ones didn't have the adequate funds.

Motion: **SEN. BEA MCCARTHY** MOVED DO PASS ON THE AMENDED AMENDMENT.

Discussion: **SEN. TAYLOR** said he was going to vote for this amendment, but might change his mind if it passed and went on, because he came from an area where he had a conflict, though not a personal one. He opined the rural areas needed to be supported, but from where he came there were two landfills in his county -- one larger and one smaller.

SEN. BROOKE commented **SEN. MCCARTHY** said if it was passed as 20,000 tons, but came back in two years to amend it to what was asked, the little landfills in the state were being given a little jump start on what they needed in the grant process. It didn't not bother her to come in two years to change it.

Vote: Motion DO PASS ON AMENDMENT hb48309.alm AS CHANGED CARRIED 8-2 WITH **SEN. VIVIAN BROOKE** AND **SEN. TOM KEATING** VOTING NO.

CHAIRMAN LORENTS GROSFIELD referred to the amendment suggested by **REP. DOUG MOOD** at the hearing, which was to strike the amendment put on in the House that raised this whole issue (**EXHIBIT 5**). He listed the three ideas before the Committee: (1) Leave the bill as it was right now; (2) Get rid of the amendment entirely; (3) Amendment hb048303.alm (**EXHIBIT 5**). He explained there were actually two items on the amendment: (1) The first clarified the percentage of at least 1.5% would be spent on technical assistance, though the bill said no more than two; (2) The other amendment would be an Advisory Committee that would provide review, comment and recommendations for the Department with respect to this issue (**EXHIBIT 6**). Intended use plan was defined on Page 14 and meant the annual plan adopted by the Department and submitted to the EPA describing how the state intended to use the money in the Revolving Fund. The Advisory Committee would review that intended use plan.

SEN. BROOKE asked what the sponsor's preference was, explaining she talked with him briefly and she didn't know if he was aware of their amendment; however, he wanted to keep his amendment because it removed the House amendment, which he didn't like.

SEN. TAYLOR said he talked to him about the amendments **CHAIRMAN GROSFIELD** had proposed, and he was agreeable, as he knew it conceptually. He asked how the Advisory Committee would be funded. **SEN. BROOKE** said about there was about \$12,000 for an interim study committee. **CHAIRMAN GROSFIELD** said he sensed there was not funding in the amendments but they would fund themselves. He assumed the meeting would be in Helena, with a representative from the League and representative from MACO (both were in Helena anyway) and two legislators. **Mark Simonich** answered the intended

use plan required a formal public comment from all across the state. As to the funding, he didn't know exactly where the funding would come from, but he didn't think it could be assumed that the representatives from League of Cities and Towns and the Counties would be their lobbyists here in Helena because they might select somebody else from among their group around the state. Either the city or county would absorb the costs of having that person involved or they would look to the state to participate. He suggested from the Department's perspective, this Advisory Committee was necessary because two years ago when they were beginning to embark on their reorganization bill, League of Cities and Towns came in with a bill that would have eliminated the Department. The reason was they had such a terrible working relationship with the Department; in fact, during testimony they said they would rather deal with EPA than with the Department. That caused the previous director, Bob Robinson, to sit down with them and write a memorandum of understanding (MOU), which they were still abiding by. It called for quarterly meetings among the Department, League of Cities and Towns and MACO on the second Friday of the second month of each quarter, except during the third quarter which was the second Friday of the third month; it ended up being February, May, September, and November. He was of the opinion those meetings were working extremely well because it was a way for municipalities to set the agenda when they had issues to discuss with the Department and work through problems. Nobody was paid to come; municipalities and counties came because they wanted to be able to work with the Department and discuss things. He said it was a perfect mechanism for communication where the Department could continually be assessing with those local governments what services they were looking for, what technical assistance they needed and what would be the best way to provide that.

SEN. TAYLOR said **Mr. Simonich** made a very strong point; however, term limits would become a real point and expertise on committees would be lost, especially Natural Resources Committee. Some of the intricate workings were dealt with by freshmen who were trying to get up to speed on some of the contracts and money that flowed in and out of these Departments; maybe it could be funded on a very limited basis because he thought it was pertinent that there be some information. He suggested the key was not necessarily the League of Cities and Towns or the Associations, but the two members from the Joint Legislative Committee on Natural Resources, one from each party, so there would be a balance on knowing what was going on and who would be able to instruct some of the newer people on agreement and contract follow-through. **SEN. TAYLOR** suggested this was a good compromise to **REP. MOOD'S** question on his guaranteeing a contract as was written in the bill right now. He thought it would probably open the competition bidding up; therefore, he was speaking on the amendment by **CHAIRMAN GROSFIELD**.

SEN. KEN MILLER wanted to return to the funding issue and said they talked a bit about the percentages not adding up because

only a certain amount could be spent on administration. He referred to item 12 on the fiscal note and said the administrative fee would be paid by borrowers for engineering and technical review, loan processing costs and financial review; however, it seemed it could be paid out of the administrative fees paid by the borrowers.

CHAIRMAN GROSFIELD replied it would be out of the 2%, which wouldn't be very expensive; however, a further amendment might be needed to cover it. **Larry Mitchell** said it would; otherwise, it would get thrown into the mix at the end. It was not a resolution to form a committee, but he didn't know that it would be funded.

CHAIRMAN GROSFIELD thought **SEN. TAYLOR** made a good point about some close legislative involvement here because they were talking about a pretty sizeable amount of money for a pretty sizeable length of time, maybe 10 or 20 years. However, it was difficult to predict how long Congress would continue to fund the federal capitalization grants, but the theory was there would be sufficient capitalization grants for enough years to establish the program so it would exist. It seems it would make sense to have legislative involvement so the concept is right.

Motion: **SEN. MACK COLE** MOVED DO PASS ON AMENDMENT hb48404.alm.

Discussion: **SEN. VAN VALKENBURG** said there wasn't much discussion about number one, and he assumed the amendment meant the entire thing, not just this Advisory Committee. He said he didn't care that much about the Advisory Committee but the first part would change the intent of what the House did. He got the impression the communities which were essentially the beneficiaries felt strongly they wanted the rural water system outfit to do the technical assistance as opposed to anybody else. The amendment gave the Department total discretion as to how they contracted with private organizations; they could give the full 1.5% to somebody totally different from the entity the House thought it should be given to.

CHAIRMAN GROSFIELD said the fiscal note indicated there was \$14 million the first year; it was his understanding Congress had already passed a bill and the amount was already set. He believed the amount in the next year was \$5.9 million. He didn't want to put solid FTE's in the Department when it was known that within a year the money would be cut in half. It seemed to him the reason for the Advisory Committee was to ensure they provided the recommendations to the Department to be sure the thing worked.

SEN. DALE MAHLUM said he wasn't thinking the Department should hire the TA's, but they should be on an outside contract; maybe some way or another they could work together because he didn't want any more FTE's in the Department. **Mark Simonich** responded **REP. ROGER DEBRUYCKER** offered the amendment because it had to be

ensured this money went out to local people who knew what they needed; more money should not be put into the Department. It was not their intent to provide this technical assistance directly through the Department, but to make the entire 2% available through contracts for technical assistance. The Department wanted to make sure it had the ability to use legitimate competitive processes to determine who got those contracts. The amendment added in the House precluded the Department from going through that competitive process to decide who was going to get the contract, to ensure the assistance would be provided in the most appropriate fashion. **Mr. Simonich** said it was their intent if this bill passed, we had the ability to set aside the 2%; they intended to send RFP's to contractors around the state to let them provide their ideas on the needed service. The Department would work with local municipalities in determining what services they needed and would build those contracts to provide that kind of assistance. They didn't plan to do it internally.

SEN. BEA MCCARTHY asked how many non profit organizations in the state would fit into this little, very tight one and was told by **Mark Simonich** said that line described just one single organization in the state of Montana.

SEN. MACK COLE stated Item #4 had a lot to do with making sure, and asked for **Mr. Simonich's** comment on (4), suggesting it showed the Department didn't plan to keep anything hidden because comments from this committee would be addressed. **Mark Simonich** answered if this amendment was adopted and that committee put into place; however, if the other amendment were adopted, their intent would be when an intended use plan was drawn up, there would be public comment. Before that intended use plan was adopted, they would look at all the comments they received and would respond. In the contracting portion, they would work with the Department of Administration to go through the formal procurement processes required by state law and would document everything they did in terms of determining who ultimately was successful in getting that contract. The unsuccessful parties could go to the Department of Administration and request any of the information about why they didn't get the contract; in fact, those protections were already in state law to ensure the Departments don't give large contracts to somebody they thought they wanted.

SEN. TAYLOR commented the reason the cities and towns which testified wanted the company that is here, and if he had to choose today, he would vote affirmatively on **REP. DOUG MOOD'S (EXHIBIT 5)** amendments because not allowing the system to work to a certain point was a setup for trouble. He suggested **CHAIRMAN GROSFIELD'S** amendment **(EXHIBIT 6)** allowed the Department to do what it needed but still gave public comment for feedback from this group; therefore, the right person who was bidding and continuously fit the consensus of the Leagues of Cities and Towns, associations and representatives of the Resource Committee, might see the bidding process as being a little

different from the Department. He said he didn't know that to be a fact, but it gave some direction. Obviously, the one that stayed the way it was right now tied the Department's hands completely because it said where it was going to go. The second one had input from these people.

CHAIRMAN GROSFIELD said he sensed from the hearing and testimony given, they might not be looking at just one contract or one need for technical assistance, but at different kinds of assistance they needed; also, about geographically different needs. He said they could end up with several different contracts to address various areas of the state on diverse issues. He said he was a little uncomfortable with putting into statute a certain person would be hired for this job, company, etc., and that was the reason for trying to find some middle ground. He said it didn't seem to be good public policy to pass the amendment like it was; in fact, if the amendment offered was killed he would probably vote for the bill as it came from the House.

SEN. VAN VALKENBURG suggested the middle ground was ensuring at least a portion of the money would be set aside for the existing contractor; perhaps **REP. DEBRUYCKER** went too far in saying it was the only entity it could go to. In order to meet the requests and desires of all these, the teeny towns have developed a trust relationship with this organization and then they're going to get thrown into this thing where the DEQ in big Helena decided they had a new contract with some guy they never heard of before who would take care of what was extremely important in their little community about drinking water. He thought there was some other middle ground but was not prepared to offer it right now. The other thing here was the entire bill was too important to be hung up over this particular item.

SEN. MAHLUM asked to return to the TA's. Perhaps someplace in Eastern Montana, there may be only one qualified because only one TA could make a living in that area. The Department would contract for this person, and if he needed to be in Baker at a certain time and Wolf Point at a certain time, that would be his job. The contract might not specify how much it was per month but it would be a contract which said when he was needed, he would get into his car and drive to where he needed to be. He contended it hadn't really changed from what it was now; perhaps the only change was the personnel doing it, but if the person was qualified and if the people in the area respected him because he lived in that area, the Department would take somebody like that.

SEN. COLE answered the reason for the letters was because those small groups were getting very good service and they had a certain working relationship with the "Hyshams" of the world.

SEN. MCCARTHY responded that was the same ground she was on. She wanted to leave enough flexibility so if that relationship was only with the group currently contracted, they would have an option of doing that. For example, if Geyser's water supply went

out tonight and that was the only person they felt could handle it, they should have the flexibility of contacting that person.

CHAIRMAN GROSFIELD commented he sensed the Committee wanted to be a little more comfortable with how the House was going to respond to #1. He asked **Larry** to scribble an amendment which basically said the administrative cost of the Advisory Committee would come out of (Page 19, Line 7) "money in the revolving fund may be used to" and then there's an "a" through "g". Just add an "h" which says "cover the reasonable administrative cost of this advisory committee". **CHAIRMAN GROSFIELD** said he wanted to ensure whatever little costs there might be would be covered and would be part of this amendment if it were offered in this form again.

SEN. COLE asked to withdraw his amendment and wondered if somebody was going to be meeting with some House people.

CHAIRMAN GROSFIELD said he assumed they would talk with **REP. MOOD** & **REP. DEBRUYCKER** and perhaps others; he wondered what the vote was. **Mark Simonich** said it was 98-0.

CHAIRMAN GROSFIELD wondered if there were any other issues regarding the bill that anyone wanted to discuss. **Larry Mitchell** replied one page was an unsponsored technical amendment which needed to get into this in some point in time. He referred to Page 23, line 18, and said at the end of that sentence "of natural resources and conservation" needed to be inserted because Departments were mixed and matched. DEQ had certain responsibilities while DNRC had others; this was a DNRC function so it will need a name.

Motion/Vote: **SEN. FRED VAN VALKENBURG** MOVED "OF NATURAL RESOURCES AND CONSERVATION" BE INSERTED AFTER "DEPARTMENT" ON PAGE 23, LINE 18. Motion CARRIED UNANIMOUSLY 10-0.

EXECUTIVE ACTION ON HB 284

Amendments: EXHIBIT 7

Discussion: **CHAIRMAN GROSFIELD** said HB 284 set up a program that both industry and environmental groups agreed needed to be set up; however, his problem was the funding source was fines and penalties. He said he just got a memo from Roger Lloyd, Legislative Fiscal Office, regarding another bill about which he felt obliged to inform the Committee. It earmarked a number of fines and penalties which were currently deposited in the General Fund; the earmarking was contrary to statutes enacted in 1995. **CHAIRMAN GROSFIELD** said this bill was exactly the same issue because an agency was being funded with earmarked money. He stated he was willing to give a little so his amendment sunsetted the funding source, not the program, in two years. That would give the Department two years to figure out a different way to fund this program, because the program was good and important.

Motion: SEN. KEN MILLER MOVED DO PASS ON THE AMENDMENTS (EXHIBIT 7).

Discussion: SEN. TAYLOR asked why 1999. CHAIRMAN GROSFIELD answered it would allow for this budget cycle and would end the next legislative year; hopefully, a different way would be found to fund it.

SEN. TOM KEATING asked why not make the effective date 1999. CHAIRMAN GROSFIELD answered he didn't want to do that because he thought this was a good program because it was trying to rehabilitate.

SEN. KEATING commented there were half a dozen other remediation programs and didn't know why a new account and program was needed.

SEN. BILL CRISMORE referred to the incident at Hobson and asked for affirmation of his understanding there was no available funding. Mark Simonich agreed, explaining the incident was a sewage lagoon was being washed away by a seep on the hillside and there was not another single funding mechanism that was readily available to reach out and help Hobson to prevent the total collapse.

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They put a pump in and were pumping the water into the sewage lagoon so it didn't wash out the side; however, the sewage lagoon couldn't take all the additional flow so raw sewage ended up flowing over the top. Mr. Simonich said they could take an enforcement action against them; however, they were choosing not to do that because they were honestly trying to deal with something. They didn't have the money to build this. They have looked everywhere to see what funding might be available; they kept tapping into RIT money which was put into the Resource Trust. This was a way to take money paid by those who created the problems to use it to fix those same problems.

SEN. KEATING suggested putting the word "prevention" in the Governor's emergency account. SEN. KEATING commented if prices were to be dealt with, it wasn't necessary to set up a whole new account and funding mechanism. He said that emergency account was capped at \$750,000 -- \$175,000 per year plus another \$125,000 set aside this time; it was almost like \$900,000 going into the fund. Mark Simonich answered the \$125,000 was another emergency account at DNRC, funded entirely by RIT monies, and separate from the Governor's account; until the emergency actually happened, that money wasn't available. The idea here was an alternative, an additional funding source which could readily be accessed when there were those problems, such as the Hobson sewage lagoon.

SEN. MILLER wondered how hard it would be change the wording in the Governor's Emergency Fund.

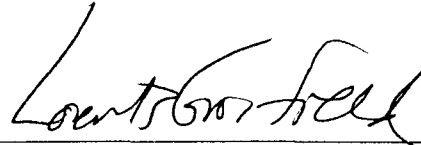
CHAIRMAN GROSFIELD said he thought that was a separate bill; the changing of that word wouldn't satisfy the title constraints of this bill. Also, it seemed there was a lot of money -- he didn't know if there had ever been an emergency which cost \$750,000 -- but it seemed it could happen. He said if "prevention" were added, the Fund would dwindle pretty readily; however, he wasn't sure if \$750,000 was the right number, but it seemed to make sense that a significant fund should be there for a potential emergency. He said there was another fund that could do the same thing at DNRC and maybe it could be changed; in fact, he carried the CECRA bill which dealt with CECRA sites, each type of site being dealt with by programs which were a little different. Some of the programs dealt with oil & gas, some with mining and some with oddball things like the one described in Hobson. The important thing was to be able to have some money to address a problem when it arose, which was something that currently couldn't be done.

Vote: Motion DO PASS ON AMENDMENTS IN (EXHIBIT 7) CARRIED UNANIMOUSLY 10-0.

Motion/Vote: SEN. WILLIAM CRISMORE MOVED HB 284 AS AMENDED BE CONCURRED IN. Motion CARRIED 8-2 WITH SEN. KEN MILLER AND SEN. TOM KEATING VOTING NO. SEN. CHUCK SWYSGOOD will carry HB 284 on the Senate Floor.

ADJOURNMENT

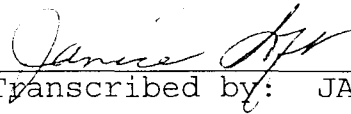
Adjournment: The meeting adjourned at 5:45.



SEN. LORENTS GROSFIELD, Chairman

 by (SH)

GAYLE HAYLEY, Secretary



Transcribed by: JANICE SOFT

LG/GH