

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - SPECIAL SESSION**

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on December 9, 1993, at
8:30 A.M.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Ed Grady, Vice Chairman (R)
Rep. Francis Bardanouve (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger DeBruycker (R)
Rep. John Johnson (D)
Rep. Royal Johnson (R)
Rep. Mike Kadas (D)
Rep. Betty Lou Kasten (R)
Rep. Red Menahan (D)
Rep. Linda Nelson (D)
Rep. Ray Peck (D)
Rep. Mary Lou Peterson (R)
Rep. Joe Quilici (D)
Rep. Dave Wanzenried (D)
Rep. Bill Wiseman (R)

Members Excused: Rep. Marj Fisher (R)

Members Absent: None

Staff Present: Sandy Whitney, Legislative Fiscal Analyst
Cathy Kelley, Committee Secretary

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

Committee Business Summary:

Hearing: HB 54
HB 60
HB 63
SB 2
SB 4

HEARING ON SENATE BILL 4Opening Statement by Sponsor:

SEN. TOM TOWE, Senate District 46, Billings, stated that this complicated bill would raise \$2 1/2 million. It would correct errors made in the past. It is introduced at the request of the Office of Budget and Program Planning (OBPP), Department of Commerce (DOC) and Department of Revenue (DOR).

He explained that the bill does four things. First, it corrects an error in the interpretation of the Treasure State Endowment. When that fund was created, the legislature's intention was that 50% of the funds that were to go into the permanent trust would go into the Treasure State Endowment Fund for 20 years. The funds would fall out of the bond sinking account, into the school bond sinking account, and into the Treasure State Endowment account. After that, 50% would go into the permanent trust fund and the other 50% would stay in the Treasure State Endowment.

Notwithstanding the legislature's intention, it was interpreted that the entire amount would have to be held in the Treasure State Endowment for one year, and after that time, half would flow into the permanent trust. That one-year hold costs the general fund \$700,000 per biennium. This bill corrects that situation, doing away with the one-year hold. **EXHIBIT 1**

Secondly, the bill deals with a problem with the clean coal technology. The clean coal technology demonstration fund was set up to receive \$5 million per year for seven years up to a total of \$35 million. However, there is apparently a mechanical glitch in the law that keeps the \$5 million in suspense, since there was no language in the law that says it goes into the permanent fund or that the income goes into the permanent fund. This bill corrects this situation so that the clean coal technology interest can be used.

Thirdly, clean coal technology was set up for a specific purpose, i.e. primarily to encourage the federal government to give the state a grant to renovate the Corette steam generating plant in Billings. That grant application was denied, so the project is essentially dead. This bill, however, provides that the clean coal technology demonstration fund be kept intact in the event that another federal grant possibility may arise. This bill insures that the monies in that fund will be invested properly. There is a requirement in a 1991 statute that money be transferred out of the permanent fund into a separate account, giving rise to a question as to how the interest on that account may be invested, i.e. long term at 6-6 1/2% interest or in STIP at 3.3% interest. The total amount of money involved on \$35 million is \$1,600,000 per biennium. This bill directs the Board of Investments (BOI) to invest that money in long term investments. If the clean coal technology project goes through, the state will then figure out how to get sufficient liquid

assets.

However, even though the statute directed DOR to transfer the clean coal technology money into a separate account, it never happened. The auditors have said it must be done, but at this point, it is not beneficial to do it. This bill repeals that requirement so that the money may be kept as a part of the permanent fund in long term investments.

Fourthly, this bill allows the money to be taken into the Treasure State Endowment Fund on a monthly basis instead of waiting until the end of the year on an annual basis.

Proponents' Testimony:

Steve Bender, OBPP, testified in support of the bill, stating that it essentially transferred money from checking to savings, and stated his availability for questions.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

REP. COBB asked Mr. Bender to explain the striking of new Section 2 on page 4 of the bill. Mr. Bender said that Section 2 was in anticipation of moving money into the clean coal technology demonstration fund. Then at the time LC 92 was being drafted, it was anticipated using that money for building maintenance. That prospect didn't materialize so the section was not needed.

REP. COBB asked why the clean coal technology demonstration fund still exists if the grant to renovate the plant in Billings did not come through. SEN. TOWE said it was the request of the Montana Power Company that the fund not be eliminated. They intend to continue trying to get the grant.

REP. COBB asked if the money would be used for something else in the future if it proved impossible to get the grant. SEN. TOWE said there was no intent to use it for anything else.

REP. KADAS asked why the legislature couldn't put a sunset provision on the clean coal technology demonstration fund. SEN. TOWE said he had no problem with a reasonable sunset, i.e. three or four years.

CHAIRMAN ZOOK said there was a bill to be heard later dealing with the elimination of the clean coal program. SEN. TOWE said that bill would allow the clean coal technology program to remain on the books and that bill would probably be the place to put a sunset provision. REP. KADAS said his concern was having an unused pot of money available to be stolen. SEN. TOWE said the point was well taken, but that money was still part of the

permanent trust fund, and it would take a 3/4 vote to get it out. **REP. KADAS** said his recollection was that the clean coal monies were a loan that was to be paid back.

REP. KADAS asked **Mr. Bender** if the \$2.4 million was all due to the difference in interest rates between long term investment of \$35 million and STIP rates. **Mr. Bender** said most of the money was due to moving the \$35 million from the bond funds to the permanent trust. The bond funds cannot be invested long term without significant penalties. \$800,000 of the money is due to the front end split between the permanent trust and the Treasure State Endowment program. In essence there will be \$9 million in the permanent trust a year earlier than before; the balance in the permanent trust for this biennium will be \$9 million higher than under current law.

REP. KADAS asked whether, if the split were not made, the monies would only be generating interest in STIP. **Mr. Bender** said it was an interest issue as far as where the interest earnings go. If the 50-50 split on the front end is rejected, those interest earnings would go to the Treasure State Endowment program. He clarified that \$35 million should be in the clean coal technology account, i.e. \$25 million from Chapter 722, Laws of 1991, and then a mandatory \$5 million draw per year. Neither of those transfers was ever made. At the end of FY93, the clean coal technology demonstration fund had a zero balance on SBAS. This bill does not strike the option which allows the Department of Natural Resources and Conservation (DNRC) to request up to \$5 million per year, but it does eliminate the authority to move \$35 million to that account.

REP. KADAS asked if that action would require a contract and a loan agreement. **Mr. Bender** replied that a number of statutes governed the duties of DNRC in applying for that \$5 million.

REP. KADAS asked **Mr. Bender** to confirm his recollection that the clean coal technology demonstration fund was set up by majority vote, with the understanding that the monies would be repaid. **Mr. Bender** said he assumed that was correct, considering the specification of interest, payback rates, etc. in the statute.

REP. WISEMAN asked **Mr. Bender** to confirm his understanding that the money was going to be invested at long term rates, subject to being pulled out early. **REP. WISEMAN** asked if the state was taking into account the risks of that procedure. **Mr. Bender** said that BOI was very careful with state money, being required to maintain a certain amount in STIP but wanting to maximize long term investment. He said that the coal severance tax earns roughly \$40 million, and half of that amount, \$20 million, is the amount going into the account under discussion. That is roughly \$5 million per quarter. BOI has the flexibility to divert that amount at any point in time.

REP. PECK asked if the one-time transfer of \$25 million referred

to on page 2 of EXHIBIT 1 ever took place. Mr. Bender replied that it did not because it was determined that it was not needed. REP. PECK asked if there had been two \$5 million transfers into the account. Mr. Bender replied that those transfers were never made either. Mr. Bender stated that this legislation repeals the mandatory \$25 million transfer. It gives legislative authority to transfer excess funds that have accumulated in the bond funds.

REP. PECK asked if this bill would reconstitute the clean coal technology within the trust account itself. Mr. Bender replied that this bill did not affect the clean coal fund except for bypassing that fund on \$35 million. It left DNRC authority to request up to \$5 million per year from the inflow into the trust.

SEN. TOWE said the authorization to transfer was still in the statute, but there was no transfer of funds or any requirement for transfer of funds to that authorized account.

REP. BARDANOUVE asked Mr. Bender to explain his assertion that there would be enough liquid assets to cover a \$5 million request. Mr. Bender stated that in today's interest rate environment, BOI was keeping the permanent trust very liquid so that if interest rates rise, they can capitalize on that.

REP. BARDANOUVE asked if the state would lose money by passing this bill since there wouldn't be much short term money left. Mr. Bender replied that the \$5 million can be covered out of the inflow into the trust. SEN. TOWE stated that this bill would need to be coordinated with REP. DEBRUYCKER'S bill dealing with the clean coal technology fund.

REP. ROYAL JOHNSON asked whether, if someone comes with a project for clean coal technology, the legislature had to authorize and fund that project, and if so, by what vote. SEN. TOWE said the answer to that was better addressed in REP. DEBRUYCKER'S bill, because SEN. TOWE'S amendment to that bill addresses that question. It proposes that, instead of eliminating the authority altogether, the authority be retained, but all the mandatory requirements that the department was given be taken out. Under SEN. TOWE'S amendment the department is given no requirements whatsoever, but the authority to qualify for low technology loans remains. SEN. TOWE felt that another 3/4 vote would not be required for renovation of the Corette plant since that had already been approved by the legislature, but he thought that any other program would probably have to be approved by the legislature. The statute does not, on its face, require a 3/4 vote. There was, however, a big interest subsidy in that bill, and his recollection was that it did pass by a 3/4 vote so if there was any question about that subsidy, it would have been protected.

SEN. TOWE stated, in any event, so long as the principal is not used, interest income only being involved, a 3/4 vote is not needed.

REP. ROYAL JOHNSON asked if SEN. TOWE was saying that so long as the clean coal technology fund is in its current state, the people who were going to get the loan before, which only required a simple majority vote, could still come back and reinstitute the program. SEN. TOWE said that was correct. REP. JOHNSON asked then if anyone else who wanted to use the money could also get it by a simple majority vote. SEN. TOWE said that was correct if they asked for money that comes out of the interest earnings on the \$35 million. If they asked for monies that were not to be repaid, that would require a 3/4 vote. A loan, however, with reasonable expectation of repayment, doesn't require a 3/4 vote, nor does the use of interest income for a grant or a loan.

REP. QUILICI asked SEN. TOWE to clarify whether the \$35 million had ever been transferred. SEN. TOWE said that it had not; however, BOI, anticipating the transfer, had put \$25 million in STIP, which doesn't pay the kind of interest that long term investments do.

SEN. TOWE reiterated that because of other language in the bill and because the interest income is not clearly used elsewhere, the interpretation had been made that the money had to go back to the beginning of the process, starting through the bond fund, school fund, and clean technology, time after time. It has been ruled that there is an arbitrage problem, and BOI couldn't invest the money long term.

Closing by Sponsor: SEN. TOWE closed.

HEARING ON SENATE BILL 2

Opening Statement by Sponsor:

SEN. DEL GAGE, Senate District 5, Cut Bank, stated that this bill was introduced at the request of OBPP and DNRC and deals with water reservations in the Little Missouri River basin and the Missouri River Basin below Fort Peck dam. He explained that the time for filing those reservations has expired, and the bill does not change that. The bill, on page 2, line 10 extends the time for the board to make final determinations from December 31, 1994, to June 30, 1997. The department wishes to use funds allocated for that purpose in this biennium to offset general fund reductions.

SEN. GAGE stated that there was concern during the Senate action on the bill that this would be the end of the reservation process. He had assured concerned Senators that he would request the department to make the reservations a priority during the next session. He would consider amending the bill so that the funds to finish the process would be the first funds appropriated from the grant from the Resource Indemnity Trust (RIT).

Proponents' Testimony:

Mark Simonich, Director, Department of Natural Resources and Conservation (DNRC), testified in support of the bill. The purpose of bill was to help the department meet its budget. He said that in 1985, the Montana legislature mandated that the water reservation process be extended to the whole Missouri River basin. That process was completed for the upper basin above Fort Peck in June, 1992. The existing legislation requires the board to act on applications for the lower basin and the Little Missouri River basin by December 31, 1994. This legislation proposes to postpone that deadline until June 30, 1997. So far the department has received applications to reserve water in the lower basin from 14 municipalities, 11 conservation districts, and the Department of Fish, Wildlife and Parks (DFWP).

Mr. Simonich stated several reasons why the department felt it was reasonable to extend the deadline. First, the water reservation process started in 1985 in response to a concern that the lower Missouri River basin states were working to take all water out of Montana. The department felt those states would be going into federal courts, trying to get the courts to apportion how much water out of the Missouri River system could be used in each state. The actual process is that the states are working with the Army Corps of Engineers in terms of how water is released from six dams on the main stem of the Missouri River to service the lower basin states.

Secondly, the legislature, in establishing this reservation process, established priority dates for any water reservations that would be adopted by the Board of Natural Resources. Those priority dates were established in 1985. Postponing the deadline for the board to act will not impact the priority dates of those applying for water reservations.

Mr. Simonich stated that one of the reasons the department pushed hard to complete reservations in the upper Missouri basin was because of the severe controversy between in-stream flows and consumptive uses. The DNRC is not seeing that kind of controversy in the lower Missouri basin.

The conservation district applications identify and analyze irrigation projects. The project designs included with the applications can still be used even if the water reservations are not adopted by the board.

Mr. Simonich stated that there was a concern on the part of the conservation district in Sheridan County about the continued development of ground water. They wanted water reservations so they would be able to have some local control as to the amount of development of the ground water. Mr. Simonich stated that the department believes there are other avenues under existing Montana state water law that would allow the conservation district to have some control, i.e. petitioning the Board of Natural Resources.

Mr. Simonich said that this process had been postponed once before last regular session to try and assist the conservation districts to receive a grant from the legislature to participate in the water reservations hearing process as a group. Postponing this process will not impact the grant money they have received.

Mr. Simonich said the department has completed a draft environmental impact statement (EIS). They are ready to print it and go to the public for comment to be included in the final EIS. The department believes that the draft EIS could be set on a shelf for a year and a half, and then taken to the public at the beginning of the next biennium. Any new data could still be put into the final EIS.

Mr. Simonich stated that this was the fourth committee this bill had been through. The department feels the bill should be adopted because the department did give up money.

Opponents' Testimony:

Mike Volesky, Montana Association of Conservation Districts, stated that Montana's 59 conservation districts opposed this legislation. EXHIBIT 2 He pointed out that over \$900,000 had been spent on the process so far and delay could cost more money. He proposed, as an alternative, extending the deadline to December 31, 1995.

SEN. DON BIANCHI, Senate District 39, Bozeman, Chairman, Senate Natural Resources Committee, said his committee had been responsible for the December 31, 1994 deadline set in last session. The original deadline was December 31, 1993. He felt his committee made a mistake in allowing the original extension. He felt the process should be completed in a timely manner. He stated that he had a problem with departments trying to backfill with RIT money rather than cutting from the general fund.

SEN. LARRY TVEIT, Senate District 11, Fairview, testified that in his previous dealings with the Army Corps of Engineers, they had said that Congress has given them direct authority to do anything they want to do with the Madison River system. He felt that their attitude had changed somewhat over the years, and now they are saying they will just manage the dams. SEN. TVEIT'S concern is the downstream states. He felt that Montana should place legal claim now to the water that it needs, reiterating the concern of the conservation districts that postponing the deadline would be more expensive. He also felt the state would be sending the wrong signals to Montana's congressional delegation by failing to complete the process in a timely manner.

Boone A. Whitmer, McCone County Conservation District, reminded the committee that this process had been ongoing in the state of Montana since the adoption of the new constitution. It was an important financial commitment to future generations. He felt that putting the EIS on the shelf for a year and a half was a bad

idea. He stated that the department was only \$200,000 short of completing the project and it needed to be done.

SEN. CECIL WEEDING, Senate District 14, Jordan, stated that he had served on the Board of Natural Resources during water reservation process on the Yellowstone River. He reiterated the concern about the EIS becoming outdated. He stated that the water reservation process was established in response to massive filings on the Yellowstone River during the early coal days. There was legislation during that time to put in abeyance all industrial filings and to allow time for reservations. There were two coal development companies who protested that reservations process, but because of changes in their circumstances they decided not to pursue the issue. Reservations have declined since that time.

SEN. WEEDING stated that even though there were no serious pending controversies now, back in 1973-74 the problems seemed to spring up overnight. He maintained that this was a good time to finish the process when there was no great interest downstream. To stop now would be penny-wise and pound-foolish. He reiterated **SEN. BIANCHI'S** concern with backfilling the general fund with RIT monies which were never intended for general fund use.

REP. FRANCIS BARDANOUVE, House District 16, Harlem, stated that this issue is very important in eastern Montana. If the process is delayed and the 1995 legislature is short of money, there could be another delay. He felt it was important for the process to be finished, as water is the lifeblood of eastern Montana.

REP. BARDANOUVE stated that his concern with this bill and similar bills was that instead of cutting government, services to the people were being cut. He felt the legislature was not doing what the people of Montana wanted it to do.

SEN. BETTY BRUSKI-MAUS, Senate District 12, Wibaux, stated that she represents five eastern Montana counties that are just now recovering from a 10-11 year drought. The reservoirs in those counties are not full. She testified that any delay in the program would be costly to eastern Montana.

Jim Jenson, Executive Director, Montana Environmental Information Center, stated that the purpose of an EIS is to involve people in an informed way so that they can make sure that the decision-makers are involved in a timely manner. It is essential for Montanans to know what they can do with their water. He stated strong opposition to using RIT money for general fund purposes.

Pete Purvis, Montana Association of Conservation Districts, spoke on behalf of the conservation districts. He felt that the program which started 10 years ago should be finished in a timely manner.

Don Iverson, Richland County Conservation District, dry land and

irrigation farmer, supported previous testimony.

Lorna Frank, Montana Farm Bureau, testified in opposition.

EXHIBIT 3

Questions from Committee Members and Responses:

REP. NELSON stated her opposition to the bill.

REP. KASTEN asked **Mr. Simonich**, regarding his statement that he didn't see changes in policy downstream that would affect the EIS of the lower Missouri, whether there were any guarantees to farmers and ranchers. **Mr. Simonich** said his point was that the department didn't see the lower Missouri River basin states applying to the federal courts for equitable apportionment. He said those states had been active in trying to keep as much water coming downstream as possible, and Montana had been active in trying to keep as much water in Montana reservoirs as possible, in fact participating in two different lawsuits against the federal government on that very point.

Montana is continuing to act in cooperation with Wyoming, North Dakota, and South Dakota in an Upper Missouri River Basin Governors Association. The state is working with the Army Corps of Engineers on water in the reservoirs and how quickly it will be let go downstream. The state has been arguing from the standpoint of economics that irrigation and recreation have a bigger impact than other activities downstream. Department personnel were in Omaha when the Corps of Engineers put out their preliminary draft EIS on the national dams, a 5,000-page document with comments from a number of states. The man who headed that project told the department that from an economic standpoint, the upper basin states had a stronger argument than the lower basin states.

The Army Corps of Engineers said that the single most important factor in their decision would be the Endangered Species Act, i.e. the fact that there are three endangered species in the Missouri River regions. Regardless of water reservations, water flows will need to be sustained in the river to satisfy endangered species. The department is trying to work with DFWP to determine what would satisfy those needs and still maintain adequate amounts of water within the reservoirs.

REP. KASTEN asked whether the two FTEs that were being taken out of the department would be switched to other projects. **Mr. Simonich** said they would. There are two FTEs actually being taken out of the department's budget. They have moved the two with needed expertise and not hired two other people.

REP. KASTEN asked how much the department estimated it would cost to re-evaluate the data three years in the future. **Mr. Simonich** said they believed what was being postponed now could be easily picked up in the future. The department did not anticipate any

additional costs. He stated that merely extending the deadline one year would cost extra money because the statute presently had a deadline of 1994. That extra year's extension would carry into the next biennium.

REP. PECK asked SEN. GAGE if the figures on the fiscal note were changed in any way, noting that SEN. GAGE had not signed the note. SEN. GAGE replied that the figures had not changed.

REP. ROYAL JOHNSON asked Mr. Simonich if the department was just using vacancy savings to cut two FTEs. Mr. Simonich said that two FTEs had actually been eliminated. Two FTEs would be moved to fill two vacant positions. He stated that the department had proposed eliminating nine FTEs in the DNRC during this special session. During the last regular session the department gave up about 18 FTEs.

CHAIRMAN ZOOK asked if those nine FTEs came from Helena. Mr. Simonich said that five of the nine came from Helena.

REP. PETERSON asked Mr. Simonich if the water rights adjudication could be finished in this biennium. Mr. Simonich said the entire adjudication would not be completed, but the reservations could be. If the department has the money, it fully intends to complete the reservation process on time.

REP. PETERSON asked SEN. GAGE about the 5,000 acres of beet fields by the dam referred to by SEN. TVEIT. She mentioned a similar situation with bean farmers. She asked if the beet farmers were as alarmed and disgruntled by their situation as the bean farmers were. SEN. GAGE said there was no testimony to that effect in the Senate.

REP. PETERSON asked SEN. GAGE if there was this much opposition to the bill in the Senate. He said there was similar testimony from the conservation districts. REP. PETERSON asked if there was any new information presented today that the Senate had not heard. SEN. GAGE said there was nothing substantive new.

REP. NELSON stated her opposition to backfilling with the RIT budget. She said it was her understanding that about 90% of that money comes from eastern Montana. She asked Mr. Simonich to respond to that concern. Mr. Simonich said he would be glad if his whole budget was entirely general fund. When he, as department manager, is told to come up with cuts out of the general fund, his flexibility is limited. Some general fund projects are the highest priority projects. Since about 65% of the department's projects are funded with non-general fund monies, the department tries to look at the programs on a priority basis inter-changeably within the department.

REP. NELSON asked where the department would cut if this bill didn't pass. Mr. Simonich said the department hadn't considered that since it hadn't expected this much opposition, even to the

point of Senators who voted for the bill in subcommittee speaking in opposition before the Appropriations Committee.

REP. KASTEN asked Mr. Whitmer if he had any information on REP. PETERSON'S question about sugar beet farmers. Mr. Whitmer said that the sedimentation at the end of a North Dakota lake is raising the level of salinity in that soil, making the growth of the beets smaller. Better ground is being sought in which to grow beets. Land around the Missouri River has been considered.

REP. PETERSON asked if sugar beet farming had advanced to the place where the soil was not going to be contaminated. Mr. Whitmer said the land in the Columbus and Poplar area was approximately 18 feet above the river so it didn't have a high salinity content.

REP. COBB asked Mr. Simonich if he had looked at other fees or monies that could be used to reduce some of his department's general fund programs in order to save this program.

Mr. Simonich said that the Governor had put together a specific task force on renewing state government. That task force will be looking at natural resource agencies. Aside and separate from that, because of a bill that REP. COBB sponsored in the regular session, the directors of the various natural resource agencies have been meeting from time to time and talking about ways to better align their departments. They have not yet gotten to the point of specifically discussing funding mechanisms.

Closing by Sponsor: SEN. GAGE closed by saying that he didn't think water reservations would make any difference when downstream states want Montana water, as Montana doesn't have as much clout in Congress as those states do.

HEARING ON HOUSE BILL 63

Opening Statement by Sponsor:

REP. RAY BRANDEWIE, House District 49, Bigfork, stated that this bill, introduced at the request of OBPP, would move the audit functions from the Department of Commerce to the legislative auditor.

Proponents' Testimony:

Dave Lewis, Director, OBPP, said this bill was a proposal that his office included in the executive budget. In 1977, the proposal first surfaced to combine the audit functions in state government. Right now, the internal audit function is performed by the legislative auditor, while the local government services audits, handling local governments and school districts, are performed by the Department of Commerce. Putting these two operations together could result in significant economies. Under

this bill, nine positions would initially be eliminated. The legislative auditor believes that six to seven additional positions could be eliminated after the 1st of July by additional contracting of local government audits. Thus 15-16 positions could be cut, providing the same service at \$235,000 less cost per year to local governments. The legislative auditor has approximately twenty audits that are contracted now and would like to expand contracting of local government audits.

Mr. Lewis stated that the legislative auditor would like an amendment to this bill to provide money for severance pay for the six to seven additional people that would be laid off after July 1. **EXHIBIT 4** The amendment proposes a contingent appropriation of \$67,200.

Opponents' Testimony:

REP. DAVID EWER, House District 45, Helena, stated that as a staff member of BOI, he uses audits almost every day in his job. He felt that the DOC does a good job of audits. His experience with the private sector is that the quality of work is uneven. **REP. EWER** had concerns with pages 14 and 15 of the bill, concerning deficiencies found in local government audits. It is up to the local government to respond to those deficiencies. Under the present statute, the department has the authority to withhold financial assistance if the deficiencies aren't resolved. This language will be taken out under this legislation which proposes that a branch of the legislature will have the responsibility. **REP. EWER** said that the legislature is a deliberative body, not charged with taking enforcement action. He felt that local governments knowing that DOC has that power is an effective enforcement tool. He also thought this issue should be considered in regular session rather than in the special session.

Cort Harrington, Montana County Treasurer's Association, testified that this legislation was premature and should be addressed in regular session. If the bill passes, he believes the effective date in July should be delayed for at least a year. He stated that the private sector was not as capable of performing these types of audits as the Department of Commerce. He also felt that in recent years the legislative auditor had become more involved in developing policy than in executing the laws passed by the legislature. He felt if the audit function was removed from the Department of Commerce, it should stay in the executive branch rather than moving to the legislative branch.

Alec Hanson, Montana League of Cities and Towns, said this was really a controversial proposal. There was an attempt in 1988 or 1989 to do away with state audits of local government. His association resisted that, because they felt that state audits kept a cap on the costs in the private sector. The 1991 legislature imposed an audit review fee which has caused more

trouble than anything the legislature has done to the cities and towns. He would have liked time to circulate the proposal to his members for their input. He asked the committee to defer action on the bill until 1995.

Gordon Morris, Montana Association of Counties, testified that his association had a good working relationship with the Department of Commerce. The members would like the committee to postpone consideration of this bill until the 1995 regular session.

Questions from Committee Members and Responses:

REP. PETERSON asked **REP. EWER** why he thought he didn't get as much reliable information from private auditors as he did from DOC. **REP. EWER** said he thought it was because the primary work of the private auditors was in private sector accounting which is different from government accounting. To effectively audit governments, firms need to be thoroughly familiar with Title 7 and know various federal requirements. He said there were some firms that did excellent work and others that did not do as well.

REP. PETERSON asked **Scott Seacat, legislative auditor**, if this bill, moving about 17 DOC auditors to his department, would require more training of those auditors. **Mr. Seacat** said those auditors would be assimilated into his department's training program for its own staff.

REP. PETERSON asked, regarding contracting with private auditors, how the department would go about that process. **Mr. Seacat** said that his department presently has an extensive bidder pre-qualification process. Firms that do not appear qualified are not allowed to bid.

Mr. Seacat stated, regarding **REP. EWER'S** comments on pages 14-15, that his office did not think it was appropriate for a legislative branch agency to be cutting funds to an executive branch agency. Further, his office did not think it was appropriate for any auditor to have that authority.

REP. COBB asked about a situation in Garfield County referred to by **REP. EWER**, where an audit had been done, reviewed by the Department of Commerce, and additional things found wrong. **REP. EWER** said he didn't find additional things wrong. He said in his analysis of the county's application which required the county to submit the most recent audit report, there were some deficiencies that concerned him. The most important recommendation by the auditors was that the county keep better records of what the county commissioners do.

REP. COBB asked **Mr. Harrington** about his remark concerning not liking what the auditors do. **Mr. Harrington** said his point was that the legislative branch should be involved in the policy-making part of government and the executive branch should carry

out those policies. REP. COBB asked if he had been saying that the auditor's office was biased. Mr. Harrington said he was saying that it might not be appropriate for the auditor to be involved in questions of policy-making in conjunction with the legislature.

REP. COBB asked Mr. Lewis if some of the people who were going to be let go would move into the private sector and do the same work. Mr. Lewis said that was correct. He said that 32 states have this proposed system right now. EXHIBIT 5

REP. COBB asked if the department could do what this bill proposes without the legislation. He said the legislature, without this legislation, could pull the money out of the department budgets and suggest that they privatize. Mr. Lewis said he thought it made more sense to use the contract issuing staff of the legislative auditor. REP. COBB recapped that the basis of the proposal was to eliminate duplication between the legislative auditor and DOC.

REP. PECK told Mr. Lewis that the committee did not have a fiscal note. Mr. Lewis said it had been prepared and stated basically that the legislation would save \$275,000 and 8 1/2 to 9 FTEs at DOC. EXHIBIT 6

REP. PECK stated that he was on the board of directors of a credit union and was chairman of their supervisory committee which is in charge of ordering audits. He said his committee worked with DOC and the financial institutions commissioner in terms of scheduling his audit on a fiscal year basis. The committee gets a private auditor on a calendar year basis. They change auditors every two or three years just to get a little different picture. REP. PECK asked Mr. Seacat if the financial institution audit was transferred under this bill. Mr. Seacat said that under this legislation the financial institutions are not affected.

REP. PECK asked why this big a policy change was being proposed during the special session. Mr. Seacat said that his office took neither a proponent nor opponent position in regard to this legislation. He felt if this transfer was going to be made, it would be more effective to do it immediately rather than let employees hang for a year and half. He felt that the private sector was in a good position to accomplish the needed audits in accordance with generally accepted auditing standards. He proposes to increase the quality control function of his office from 3 1/2 to 5 FTEs.

REP. PECK asked Mr. Seacat if his auditors specialized, working mostly with cities, mostly with school districts, etc. Mr. Seacat said they did not. His department rotated its experienced staff among the various agencies. The criteria are generally accepted accounting practices.

Mr. Lewis stated that this legislation was proposed by OBPP, not the legislative auditor. He wanted the effective date of 1994 rather than 1995 so that people who were going to be laid off could make their own plans in a timely manner.

CHAIRMAN ZOOK asked if the fiscal note would parallel the information in the Budget Analysis Book, EXHIBIT 11A (11/30/93). Mr. Lewis said he thought it more or less would.

REP. WISEMAN asked REP. EWER what was being done to identify private firms that were not doing an adequate job. REP. EWER said that BOI had no responsibility for the audit work done by private firms.

REP. WISEMAN asked Mr. Harrington to respond. Mr. Harrington said he had no specifics to respond to.

Newell Anderson, Administrator, Local Government Assistance Division, Department of Commerce, said that there were several regulatory oversights of public accountants. The society itself has a quality control group that reviews public accountants. The Board of Public Accountancy deals with standards for licensure and violations of those standards.

REP. ROYAL JOHNSON asked Alec Hanson about his statement regarding cities and towns being comfortable with the audits that are done by DOC. Mr. Hanson said that cities are increasingly going to private audits. A factor that needs to be looked at, however, is the availability of qualified auditors across the state. Cities rely heavily on qualified auditors from the department for technical assistance.

REP. PETERSON asked whether this legislation would create a problem for the Governor's committee set up to investigate reorganizational savings. Mr. Lewis, having helped write the charge for the task force, said that their task was incredibly broad. They were charged with looking at local government, state government, school districts, as well as the possibility of proposing constitutional changes. They have one year to prepare a package to present to the 1995 session. Mr. Lewis did not think that this legislation would cause them any major problems.

REP. BERGSAGEL said that, in regard to amendment EXHIBIT 4, \$67,200 was not enough money to cover costs associated with employee terminations. He asked the department to respond. Mr. Lewis said the amendment was for those people who leave after July 1, 1994, and was the best estimate his department and the legislative auditor could come up with. REP. BERGSAGEL said he could see where that figure could work if the payments were lump sum, but if they were paid over a period of time, he wanted to know who would be responsible for the years after 1995. Mr. Lewis said his intention was that the department would be liable for all costs for those people terminated prior to July 1, 1994.

REP. QUILICI asked Mr. Lewis why this legislation was being presented in special session. Mr. Lewis said that since the proposal is being considered, the people likely to be laid off are going to begin looking for work immediately. He felt that the July 1 date was best from the employees' perspective.

REP. BERGSAGEL asked Mr. Hanson what percentage of cities and towns were going to private auditors. Mr. Hanson said he didn't have a definite percentage, but said it was more of a trend in the larger cities.

REP. BERGSAGEL asked if anyone knew the answer to his question. Mr. Anderson said that 48% of county audits are done by the state and 52% by the private sector. He stated that 44% of the cities and towns audits are done by the state while 66% are done by private firms. Nineteen percent of school districts are done by the state and 81% done by private firms. He said that 22% of special purpose governments, such as water districts, etc. are audited by the state, 88% by private firms. He summarized that an average of 62% of all audits are done by private firms; 38% done by DOC.

REP. BERGSAGEL asked Mr. Hanson if his concern was for small communities rather than larger cities. Mr. Hanson said he had two concerns: increase in cost of the audits due to increased demand and availability of qualified auditors in some parts of the state.

REP. BERGSAGEL asked Mr. Anderson how many employees he had. Mr. Anderson said there were 29 employees in the Local Government Services Bureau of which 17 are full time auditors. Some are support staff; some are audit review staff. REP. BERGSAGEL asked if the committee could assume that the demand created by the 44% currently audited by the department would require 17 employees statewide. Mr. Anderson said the demand could change quickly. The department had already received notice from a number of entities who had used the state in the past that, in view of this legislation, were going to switch to private firms. He felt that it was important for the department to be in control of the transition.

REP. BERGSAGEL asked Mr. Seacat regarding the relationship between the 44% audits done by the department and the number of employees. Mr. Seacat said of the 29 FTEs, 3.5 are in systems function, and his office feels they should stay where they are in the DOC. Of the remaining 25.5, there are a number of people who are retiring and there are some additional terminations. They estimate that by July 1, 1994, the 25.5 positions would be reduced to 17. They feel they would only have to RIF two people because the others are going already. The department currently has 44 FY94 audits under contract and 4 FY95 audits. His office will do everything possible to contract out the audits. There will be situations where a city, county, or town cannot get private audit services, so his office proposes to retain 10

auditors beginning in FY95, which they plan to reduce to 6 as they become more efficient in contracting out.

REP. PECK pointed out item #3 on the fiscal note, which stated that \$146,068 would be retained to support early retirement buyouts and employee unused benefits. The amendment offered appropriated \$67,200 for seemingly the same thing. REP. PECK asked Mr. Lewis about the difference in the figures. Mr. Lewis said the \$146,000 applies to the people who leave before July 1. The \$67,000 would be for the people who leave after July 1 if the bill passes.

REP. PECK asked if the bill also contained language making those subject to budget amendment. Mr. Seacat said that language was not helpful to his department and was unneeded.

Closing by Sponsor:

REP. BRANDEWIE took exception to Mr. Harrington's remarks about policy and the legislative auditor. He stated that the legislators ask the legislative auditor for information; he is not making policy.

REP. BRANDEWIE said this legislation was being presented during the special session because the money was needed immediately.

REP. BRANDEWIE emphasized that many private auditors were capable of performing the work done by the state.

HEARING ON HOUSE BILL 54

Opening Statement by Sponsor:

REP. STEVE BENEDICT, House District 64, Hamilton, opened by presenting two amendments to his bill. EXHIBITS 7 and 8 He said that this bill resulted from the efforts of the forestry division of the Department of State Lands to save money. The purpose of the bill is to streamline the department's methods for obtaining compliance with the slash law and thereby reduce its operating costs. It is intended to provide an effective program supported only by the current fee structure with no increase in fees to the slash contractors.

The bill would eliminate hazard reduction agreements and performance bonds. It would also provide elimination of the certification of clearance, including the normally required final inspection of each individual slash operation. It would eliminate takeovers by the state of operations in noncompliance. It would maintain the requirement to notify the department before cutting any forest products on private land. It would retain the definition of fire hazard reduction or management, the requirement to perform most fire hazard reduction work within 18 months of commencement of cutting, and fee structure for forestry extension work.

The bill would add, in place of the bonding requirements that are now in law, enforcement provisions, including fines of up to \$10,000 issued by the department, orders given by the department to comply with slash standards, injunctions to cease operations found in violation of orders, and other requirements. It would also add express rule-making authority to address slash standards, large scale operators, bonding of purchasers, and assessment of penalties. Provisions for the basic authority, the emergency rule-making, go into effect upon passage. All other provisions would be effective February 1, 1994.

REP. BENEDICT explained his amendments, EXHIBIT 7. He said the first three items are technical amendments, but the fourth item addresses the question of who is ultimately responsible for the slash. It allows the department to obtain compliance from the owner of the land after first making every effort to obtain compliance from the slash contractor. REP. BENEDICT explained the amendments, EXHIBIT 8.

Proponents' Testimony:

Jeff Jahnke, Deputy Administrator, Forestry Division, Department of State Lands, said that department personnel saw this bill as changing the way they did business from entering into a contract with a logger to reduce fire hazard to requiring that the fire hazard be reduced, increasing enforcement, and inspection. They feel the legislation will have two impacts.

First, if there is less compliance with fire hazard reduction standards, there is the potential of increased fires. Second, the present process has been in effect for about 45 years, so there will be some trauma in instituting a new process.

Don Allen, Montana Wood Products Association, stated that his association supported the amendments. He said that in 1988 there was a task force composed of people from the department and in the industry who spent many hours on a major rewrite of the public slash law.

Mr. Allen presented several changes which his association felt would improve the bill. He suggested that "unabated" on page 4 (iii) be replaced with "unresolved." He pointed out that the 10-day time frame on page 6 (c) would be a difficult time frame to operate within. On page 9, Section 5, Mr. Allen suggested that the language "at any reasonable time" be changed to "at an agreed upon time." His association supports the provision on page 13 allowing the department to require a bond from those who have a bad record of compliance. On page 16, they felt the language requiring the person to "immediately cease further activity" was a little strong. Mr. Allen said his association would be more comfortable with the board, rather than the department, making the decision to conduct an audit as referred to on page 20 (d).

Dave Lewis, OBPP, noted that the general fund impact of this bill

was \$140,000.

Opponents' Testimony:

Janet Ellis, Montana Audubon Council, said that members of her organization are concerned about the inspection process. She pointed out that one fire because of lack of inspection could erase any budget savings this legislation could realize. They are also concerned about a piece of legislation passed in 1991 that relies on these inspections, i.e. the stream site management zone law. During the process of that legislation, an agreement was reached with the timber industry on specific best management practices that needed to be conducted in the stream areas. The Audubon Council was relying on the inspection process with respect to fire hazard reduction agreements. By eliminating those agreements, there is no assurance the inspections will happen.

Jim Jenson, Executive Director, Montana Environmental Information Center, said that there had been a battle between environmentalists, loggers, the timber industry, communities, and others for many years, beginning in 1972.

He felt that the stream site management zone law passed in 1991 and supported by the environmental community had not had a chance to prove itself. That legislation involved negotiations between all the environmental groups and industry groups. Inherent in those negotiations was the assumption that DSL would have an inspection on every site at least one time. Under the slash hazard reduction agreement contracts, the operator posts a bond, and in order to get the bond back a state inspection is required.

Mr. Jenson stated that the stream site management legislation and the state inspections were inextricably linked, and his association opposed any change in those inspections. This proposed bill will bring his association back to the legislature. He pointed out that the bill only saves \$70,000 per year of general fund. The inspection program is primarily funded by fees. His association has prepared an amendment increasing the fees to offset the general fund contribution, with a sunset on the increase at the end of September, 1995. This would allow all the people who relied in good faith on DSL inspections to negotiate changes during the next regular session. **EXHIBIT 9**

Questions from Committee Members and Responses:

None

Closing by Sponsor:

REP. BENEDICT reminded the committee that the bill was not brought by request of the Montana Wood Products Association, but by the Forestry Division, Department of State Lands. The bond

requirement which had worked in the past has been replaced by a potential \$10,000 fine. The average bond is \$500. REP. BENEDICT felt the potential fine is adequate motivation to insure compliance. He stated that there is no decrease in this bill of inspection fees. DSL will do its best to do inspections as it has done in the past.

HEARING ON HOUSE BILL 60

Opening Statement by Sponsor:

REP. ROGER DEBRUYCKER, House District 13, Floweree, said this bill is a repealer bill. It takes care of the clean coal tax. REP. DEBRUYCKER stated his concurrence with an amendment to be presented by SEN. TOWE.

Proponents' Testimony:

Ray Beck, Administrator, Conservation and Resource Development Division, Department of Natural Resources and Conservation, said this bill was requested by the department. He gave a brief history of the clean coal program. EXHIBIT 10 He said that the bill as drafted would basically wipe out the program in its entirety.

SEN. TOM TOWE, Senate District 46, Billings, said that he had a problem with eliminating the program completely. He wanted to keep the authorization on the books, but eliminate the required activity of the department. He presented amendments prepared by the department that would allow the program to remain on the books but eliminate various responsibilities of the department. EXHIBIT 11 The department will still be able to receive applications which would need to be reviewed by the legislature. He stated that there was still a remote possibility that funding for the MHD Corette plant would come through. SEN. TOWE suggested an amendment which would say that part 9 of Title 90, Chapter 4, MCA, and Chapter 515, Laws of 1993, are repealed as of December 31, 1998, thus putting a 5-year limit on the project.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

REP. ROYAL JOHNSON asked SEN. TOWE what the project was that he suggested be held open for five years. SEN. TOWE said the project was outlined in Chapter 515, Laws of 1993. The legislature pre-approved, under the clean coal technology section of the code that is now being amended, the MHD Corette project which allows for the conversation of the Corette steam generating plant to an MHD pilot project with adequate funding.

REP. ROYAL JOHNSON said the project SEN. TOWE referred to was not

the project that the legislature was asked to fund. The project he referred to was a retrofit of the Corette plant. The project the legislature was asked to fund was a free-standing generation plant. REP. JOHNSON said the issue under discussion was the building of a generation plant presumably by Montana Power Company. SEN. TOWE said it was not by Montana Power Co. but by a coalition of companies, including Montana Power Co.

REP. ROYAL JOHNSON said that the problem he saw was one of reserving monies for a potential project for a certain coalition. He felt that the money should be put back into the coal trust, letting the coalition come with whatever project they currently have, rather than reserving money for a particular project. He stated that the bill went through allowing the money to be taken by a simple majority vote. He was also concerned about the kind of loan put together, which netted a 3% interest rate, no payment for 17 years, etc.

SEN. TOWE said that if SB 4 was adopted, the money would be put back into the trust. He thought the law should be left on the books because when the coalition went for an authorization, they would have to show that they have the authority and have lined up necessary funds, in order to get the substantial federal funds that are involved (previously in the area of \$200,000,000). If authorization is taken away, the coalition will not be able to submit an application for federal funds.

REP. ROYAL JOHNSON said the problem with the project as it was set up was that a substantial amount of state monies could be spent before the federal government even considered funding the project. SEN. TOWE said he was not pleased with that situation, but it turned out that the state monies were not spent. He said he was far more concerned about the subsidy on the interest which did go through.

REP. ROYAL JOHNSON asked SEN. TOWE whether, if a vote were taken on the floor to issue the money, a 3/4 vote would be necessary. SEN. TOWE said the money had already been authorized and another vote would not be necessary. He said if someone came to the legislature for a loan, i.e. if the money had not been pre-approved, it would not require a 3/4 vote if the money had a reasonable prospect of being repaid. A grant would require a 3/4 vote.

REP. BARDANOUVE said he felt the bill was better before the amendments. He agreed with REP. ROYAL JOHNSON that the state shouldn't have been involved in the project at all.

REP. QUILICI said he had no problems with the amendments. He asked SEN. TOWE if there was still a chance of getting federal funds for the Corette plant. If so, he wanted to know if it would hurt to leave the language on the books. SEN. TOWE said he didn't think anything would be lost by leaving the language on the books. He said he didn't think there was a very good chance

of getting any federal funds, but he didn't think the state should give up. Having the law on the books shows that the state believes in the project.

REP. QUILICI asked if the \$35 million to go back into the trust could be diverted to some other purpose. SEN. TOWE replied that no one could get their hands on that money without a 3/4 vote unless a loan with a reasonable chance of repayment were authorized.

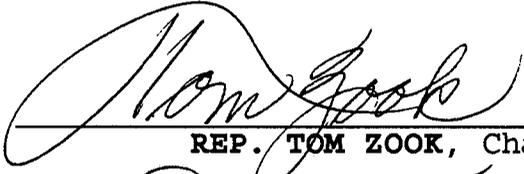
REP. BARDANOUVE stated his admiration for SEN. TOWE for protecting the coal trust, but felt that he had become less protective since he got involved in clean coal technology. SEN. TOWE said that was true.

Closing by Sponsor:

REP. DEBRUYCKER closed.

ADJOURNMENT

Adjournment: 6:25 p.m.



REP. TOM ZOOK, Chairman



Cathy Kelley, Secretary

TZ/cek

HOUSE OF REPRESENTATIVES
 APPROPRIATIONS COMMITTEE

ROLL CALL

DATE 12/09/93

NAME	PRESENT	ABSENT	EXCUSED
REP. ED GRADY, VICE CHAIRMAN	X		
REP. FRANCIS BARDANOUVE	X		
REP. ERNEST BERGSAGEL	X		
REP. JOHN COBB	X		
REP. ROGER DE BRUYCKER	X		
REP. MARJORIE FISHER			X
REP. JOHN JOHNSON	X		
REP. ROYAL JOHNSON	X		
REP. MIKE KADAS	X		
REP. BETTY LOU KASTEN	X		
REP. WM. "RED" MENAHAN	X		
REP. LINDA NELSON	X		
REP. RAY PECK	X		
REP. MARY LOU PETERSON	X		
REP. JOE QUILICI	X		
REP. DAVE WANZENRIED	X		
REP. BILL WISEMAN	X		
REP. TOM ZOOK, CHAIRMAN	X		

DATE 12/9/93

SB 4

Explanation of SB 4, Introduced Version

The purpose of SB 4 is fourfold:

- 1) It directs the state treasurer to transfer excess funds that have accumulated in the coal severance tax bond fund from January 1991 through June 30, 1993 to the permanent trust. The earning potential of amounts held in the bond fund are limited because it is an arbitrage fund. As a result, the Board of Investments (BOI) has had to invest the accumulated amounts in STIP. Transferring the funds to the permanent trust will allow BOI to reinvest the funds in long-term securities at a substantially higher yield.

The amounts have accumulated in the bond fund because Chapter 12, Laws of January 1992 Special Session deleted the phrase "and any remaining amount to the coal severance tax permanent fund" from 17-5-703, MCA, thereby preventing the flow through the clean coal demonstration fund to the permanent fund. Audit findings of OLA forced the DOR to reverse previous deposits to the trust and prevented future transfers to the permanent trust.

- 2) It prevents the movement of \$10 million of coal severance tax bond funds and \$25 million of permanent trust principle to the clean coal demonstration fund as required by Chapter 722, Laws of 1991. This mandatory allocation was later made optional by Chapter 515, Laws of 1993 but the Office of the Legislative Auditor insists these amendments do not override Chapter 722.

Investment authority of funds in the clean coal account is limited to specified clean coal projects. No authority exists for other investments, including general investments for the benefit of the general fund.

ROC's revenue estimates assume this \$35 million will remain in the permanent trust. If the amounts are moved to the clean coal account, the revenue estimate will need to be reduced.

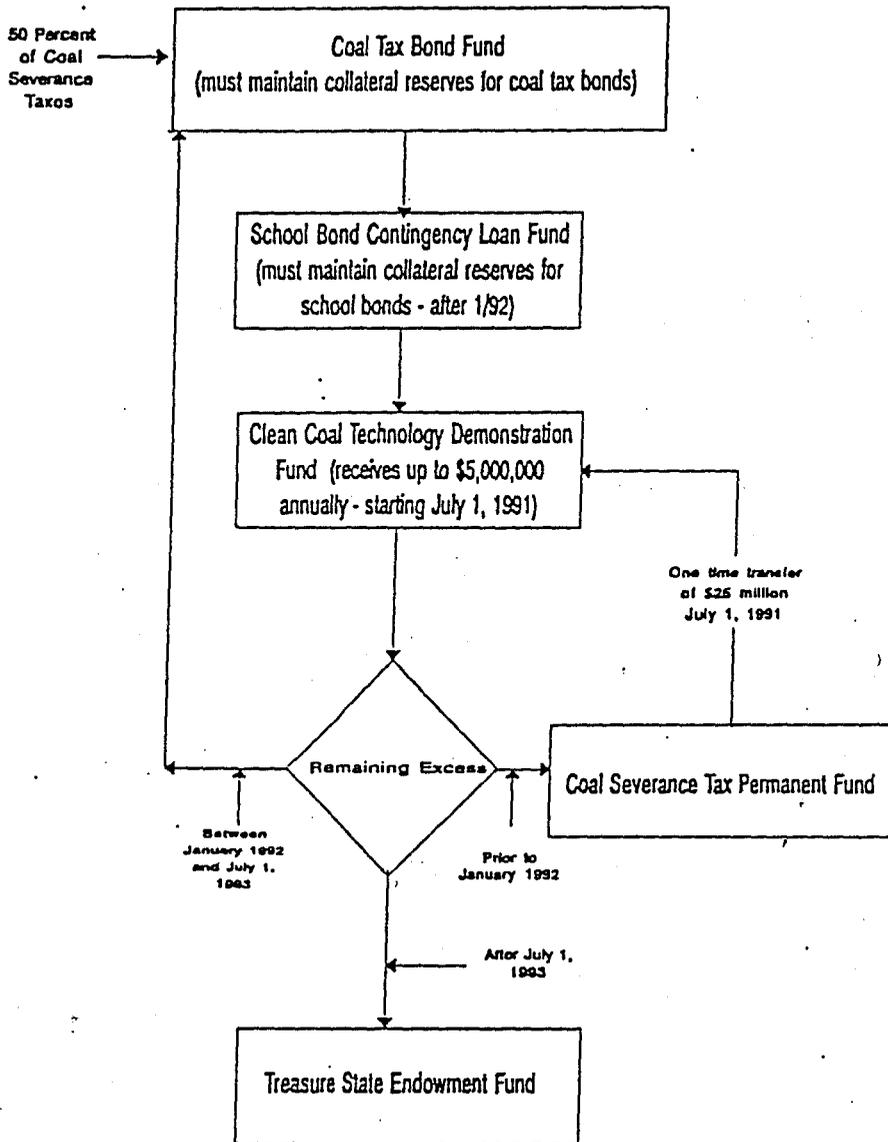
- 3) It changes the allocation of deposits between the treasure state endowment fund and the permanent trust. Representations and financial calculations assumed there would be a 50/50 split between the accounts as funds flow into the accounts, rather than the one year lag on the distribution to the permanent trust contained in law. This change increases in the investable balance of the permanent trust by approximately \$10 million in both years of the biennium.
- 4) It changes the movement of earnings from the treasure state endowment fund to the special revenue account. Under current law, the amounts are not to be distributed until the end of the fiscal year. As amended, the earnings will be distributed and available for use as they are earned.

Findings and Recommendations

This law was amended by Chapter 722, Laws of 1991, and by Chapters 3 and 12, Special Session Laws of January 1992. The figure below shows how the law has changed.

Figure 1

Coal Severance Tax Income Flow as of June 30, 1992



Source: Compiled by the Office of the Legislative Auditor from state law.

1993 Special Session, SB 2

Conservation districts fear that **postponing the reservation process may lead to doing away with Little and Lower Missouri reservations altogether**. There are several reasons why this should not be allowed to happen:

1. Montana should quantify its future water needs in as timely a manner as possible. **The assertion that the concerns of downstream states no longer exist is not valid**. Concern has seemed to be cyclical, but it will always be present in the form of possible interstate compacts and similar interstate water allocations as water becomes more valuable to more arid parts of the nation.
2. Federal concerns like those associated with the endangered species act will continue to arise. For example, in the case of the pallid sturgeon, **Montana would be much better able to express its views with its water use already quantified** than to try to determine it retroactively in hopes that Montana will have input in decision making.
3. Some believe that the data collected and work done so far on reservations can be used in applying for provisional water use permits at a later time if reservations are done away with. **This is not so**. Substantially different information is often required for permitting. Also of concern is the reality of a **later priority date** with permitting.
4. A very important reason for not postponing the process any longer is the **money that has been spent thus far**:

DNRC	\$299,800	
Sheridan County		
223 grants HB 897, HB 876	360,000	*These figures do not
Sheridan County	55,000	include expense for local
USGS (includes in-kind funds)	30,000	meetings, investigations,
Roosevelt County	22,000	postage, phone calls,
DFWP	139,675	public relations, other
<u>TOTAL</u>	<u>\$906,475</u>	<u>in-kind agency services,</u>
		etc.

What does postponing, with the possibility of eliminating, the reservations process say to Montanans after over \$900,000 has been expended? What about the costs associated with districts, counties, municipalities, and agencies having to "restart" the process at a later date, probably with information that must be updated as well? Who will be willing to ask for these appropriations, which will likely be much more than what is proposed being saved in SB 2?

It is important to remember that conservation districts did not ask for the reservations process, but were willing to take on the responsibility. They have taken their job seriously and have formed reservation councils that meet regularly. The time has come for completing a process that some conservation districts have been involved in for over ten years. Districts are ready and are still willing.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT 3
DATE 12/9/93
SB 2

December 9, 1993

Mr. Chairman, members of the committee, for the record, I am Lorna Frank, representing Montana Farm Bureau members in ~~31~~ ^{all} counties throughout the state.

While we understand the reason for this legislation, we are concerned about the effect this bill will have on the reservation process. There has been a big push in the state to set up water reservations to ensure that Montana water users have sufficient water and to insure that all of our water does not go down stream without us seeing some economic benefit. The water reservation process was suppose to help this situation. However if we slow down the reservation process, won't this send a signal to the states on the lower Missouri that, ^{SAYS} "Hey because of financial constraints, Montana is not in a position to complete our water reservation process, so have at it."

The states on the lower Missouri River are not going to wait forever for Montana to complete their water adjudication and reservation process. We may be saving the state money now, but it could cost us a lot more if we don't complete this process ^{as soon as possible.}

I urge you to consider the ramifications of this legislation in your deliberations and vote accordingly.


Lorna Frank

EXHIBIT 4
DATE 12/9/93
HB 63

AMENDMENT TO HOUSE BILL 63
As Introduced
Prepared by the Office of Budget and Program Planning

Page 38, following line 16.

INSERT: "NEW SECTION. Section 38. Contingency Appropriation. The Legislative Auditor is appropriated \$67,200 from the state General Fund in fiscal year 1994-95 to cover costs associated with the transfer of the program. These costs include, but are not limited to, state liability for accrued compensatory time, annual leave, sick leave, insurance coverage under a Reduction in Force, severance pay and any other costs of termination. Prior to the effective date, all costs associated with employee terminations will be the responsibility of the Department of Commerce."

Renumber subsequent sections.

STATE COMPARISON
POST AUDIT INVOLVEMENT WITH LOCAL GOVERNMENT AUDITS

EXHIBIT 5
DATE 12/9/93
HB 63

	AUDITS LOCAL GOVT'S	QUALITY CONTROL REVIEWS	OTHER INVOLVE- MENT	POST AUDIT INVOLVED
ALABAMA	Y			Y
ALASKA				
ARIZONA	Y			Y
ARKANSAS	Y			Y
CALIFORNIA	Y			Y
COLORADO		Y		Y
CONNECTICUT				
DELAWARE	Y			Y
FLORIDA	Y			Y
GEORGIA	Y			Y
HAWAII	Y			Y
IDAHO			Y	Y
ILLINOIS				
INDIANA	Y			Y
IOWA	Y			Y
KANSAS				
KENTUCKY	Y			Y
LOUISIANA	Y			Y
MAINE	Y			Y
MARYLAND		Y		Y
MASSACHUSETTS	Y			Y
MICHIGAN				
MINNESOTA				
MISSISSIPPI	Y			Y
MISSOURI	Y			Y
MONTANA				
NEBRASKA	Y			Y
NEVADA				
NEW HAMPSHIRE				
NEW JERSEY				
NEW MEXICO	Y			Y
NEW YORK	Y			Y
NORTH CAROLINA		Y		Y
NORTH DAKOTA	Y			Y
OHIO	Y			Y
OKLAHOMA	Y			Y
OREGON	Y			Y
PENNSYLVANIA	Y			Y
RHODE ISLAND		Y		Y
SOUTH CAROLINA				
SOUTH DAKOTA	Y			Y
TENNESSEE	Y			Y
TEXAS			Y	Y
UTAH	Y			Y
VERMONT	Y			Y
VIRGINIA	Y			Y
WASHINGTON	Y			Y
WEST VIRGINIA				
WISCONSIN	Y			Y
WYOMING	Y			Y
TOTALS	32	4	2	38

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0063, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act transferring local government audit and audit review functions from the Department of Commerce to the Legislative Auditor; modifying local governments records and reporting requirements; expanding allowable exceptions to the budget amendment requirements to include retirement credits and leave buy outs for personnel transferred to an agency pursuant to a legislatively authorized reorganization; amending and repealing certain MCA sections; and providing effective dates.

ASSUMPTIONS:

1. Transfer effective date is July 1, 1994.
2. From the existing 29.00 FTE in the Department of Commerce, 16.50 FTE will be transferred to the Legislative Auditor; 3.50 FTE will remain with the Department of Commerce to provide accounting system services to local governments; and 9.00 FTE will be eliminated. A reduction in the number of local government audits completed by the state allows for the reduction in audit FTE.
3. The \$146,068 general fund appropriation will remain with the Department of Commerce in FY95 to support the local accounting systems program and the unfunded liability (early retirement buyouts and employee unused benefits).
4. The Legislative Auditor's Office will increase the size of the review function and complete more reviews to ensure the quality of the audits completed by local auditors.
5. The database currently maintained in the Department of Commerce by the review function will not be transferred to the Legislative Auditor's Office software until FY96 to allow for appropriate conversion.
6. The 16.50 FTE transferred to the Legislative Auditor will not move from their current physical locations this biennium.
7. The audit and audit review functions will be accounted for in the Legislative Auditor's special revenue fund, not a proprietary account.

FISCAL IMPACT:

Department of Commerce Expenditures:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	29.00	29.00	0	29.00	3.50	(25.50)
Personal Services	946,831	946,831	0	963,411	163,381	(800,030)
3,381 Operating Expense	335,800	335,800	0	346,231	147,414	(198,817)
Equipment	9,321	9,321	0	9,420	0	(9,420)
Transfers	150,620	150,620	0	151,140	146,068	(5,072)
Total	1,442,572	1,442,572	0	1,470,202	456,863	(1,013,339)

(continued on next page)

Dave Lewis 12.8

<u>Funding:</u>							
General Fund	144,918	144,918	0	146,068	146,068	0	
Proprietary	1,297,654	1,297,654	0	1,324,134	310,795	(1,013,339)	
<u>Legislative Auditor</u>							
<u>Expenditures:</u>							
FTE	0	0	0	0	16.50	16.50	
Personal Services	0	0	0	0	570,272	570,272	
Operating Expenses	0	0	0	0	198,817	198,817	
Equipment	0	0	0	0	9,420	9,420	
Total	0	0	0	0	778,509	778,509	
<u>Revenues:</u>							
Audit Fees	0	0	0	0	545,000	545,000	
Audit Review Roster Fee	0	0	0	0	2,850	2,850	
Report Filing Fee	0	0	0	0	235,000	235,000	
Total	0	0	0	0	782,850	782,850	
<u>Net Impact:</u>							
FTE	0	0	0	29.00	20.00	(9.00)	
Expenditures	0	0	0	1,470,202	1,235,372	(234,830)	
General Fund	0	0	0	146,068	146,068	0	
State Special	0	0	0	0	778,509	778,509	
Proprietary	0	0	0	1,324,134	310,795	(1,013,339)	

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: The impact on county or other local expenditures should be minimal. However, some local government entities may experience an increase in audit costs if the state no longer bids on their audit.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The Legislative Auditor intends to phase out most of the audit function and consolidate the remaining audit staff in Helena. This will eliminate the option currently available to the local government entities of having the state complete their audit.

TECHNICAL NOTES: The proposed legislation requires the Legislative Auditor to account for the activities of the audit and audit review functions in its special revenue account. House Bill 2, as transmitted to the Senate, contains a contingency clause establishing appropriation authority in a proprietary account. This should be amended to reflect the language of this bill.

Benedict

EXHIBIT 7
DATE 12/7/93
HB 54

AMENDMENTS TO
HOUSE BILL 54
(Introduced Bill)

1. Page 11, line 4.
Following: line 3
Insert: "(1)"
2. Page 11, line 8.
Following: line 7
Strike: "conducting"
Follow: "operations"
Insert: "are conducted"
3. Page 11, line 9.
Following: "operator"
Strike: "conducting the work"
4. Page 12, line 18.
Following: line 17
Insert: "(2) Whenever the operator is not the owner and the department has made a written determination that it will not, using the remedies authorized in 76-13-412, obtain compliance with this section by the operator, the department shall notify the owner and the owner shall within a reasonable time comply with (1).

- End -

Benedict

8
DATE 12/9/94
HB 54

AMENDMENTS TO
HOUSE BILL 54
(Introduced Bill)

1. Page 3, line 10.
Following: "operator"
Insert: "or owner"
2. Page 12, lines 22 and 23.
Following "before" on line 22
Strike: remainder of line 22 through "purchase" on line 23
Insert: "receiving forest products"
3. Page 20, line 8.
Following: "form"
Strike: "specified"
Insert: "approved"

- End -



EXHIBIT 9
DATE 12/9/93
HB 54

MONTANA ENVIRONMENTAL INFORMATION CENTER

20 Years of Activism 1973-1993

December 9, 1993

House Appropriations Committee

Proposed amendments to HB 54 (Benedict)

Page 1, Title:

Line 6, following "entitled:" delete all words through the end of line 14 and insert "AN ACT TO INCREASE THE FEE FOR ENFORCEMENT AND ADMINISTRATION OF THE SLASH HAZARD REDUCTION PROGRAM; AMENDING SECTION 76-13-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Page 1, delete lines 16 through 25, and;

Page 2, delete lines 1 through 7.

Page 2, line 10: delete all changes in existing statutes through page 22, line 5.

Page 22, line 6: delete through page 23, line 18.

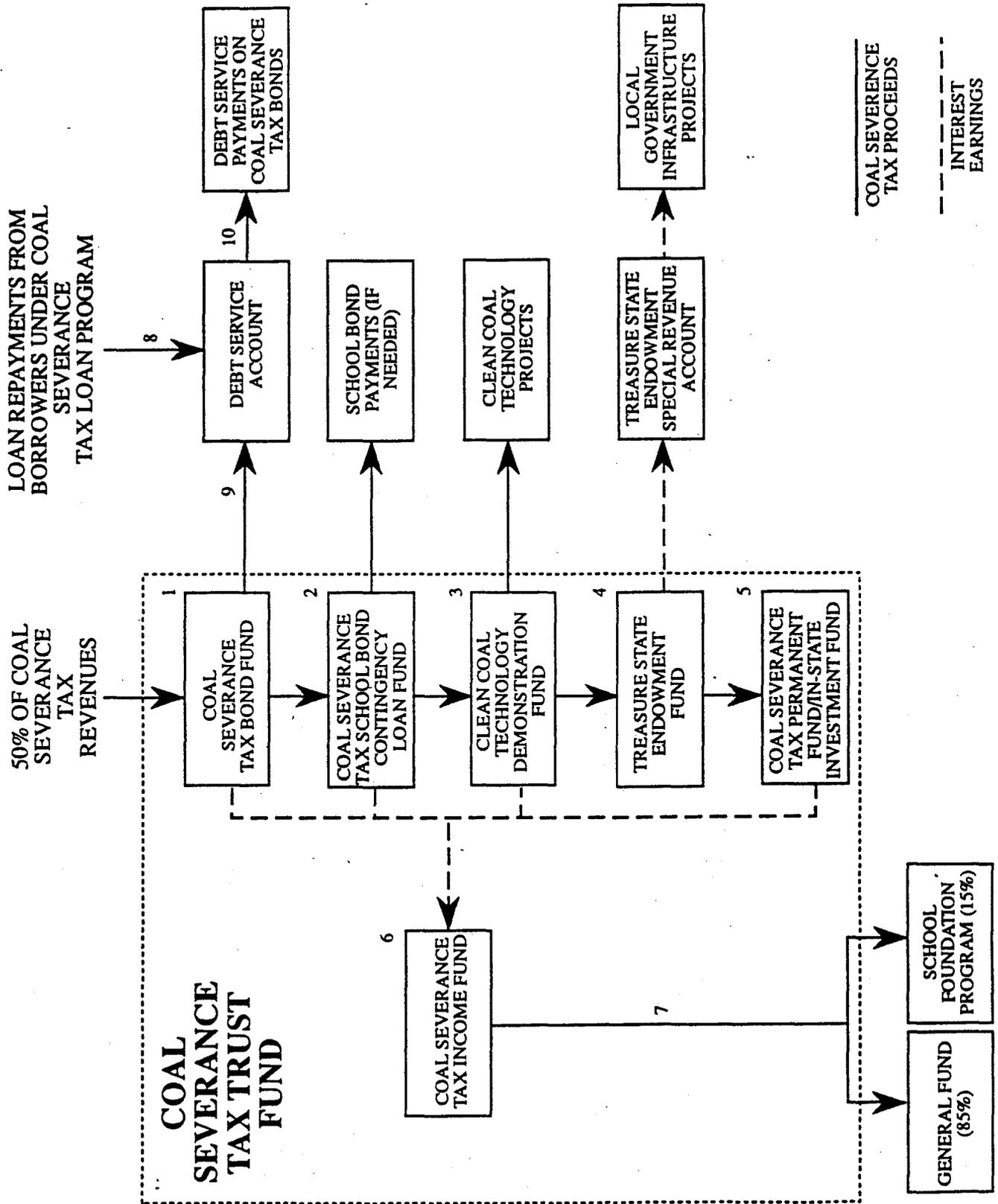
Page 18, line 22, delete: "60"; insert: "70".

Page 22, line 6: insert: New Section. Section 13. Sunset clause. This act terminates on September 30, 1995.

Page 22, line 8: insert: New Section. Section 14. Effective date. Effective on passage and approval.

COAL SEVERANCE TAX TRUST FUND FLOW OF FUNDS SUMMARY

EXHIBIT 10
DATE 12/9/93
HB 60



--- COAL SEVERANCE TAX PROCEEDS
 --- INTEREST EARNINGS

- (1) Within 30 days of the end of each calendar quarter, coal severance taxes are paid to the state, 50 percent of which are deposited in the **Coal Severance Tax Trust Fund (the Trust)**. Six accounts are established within the Trust: 1) the **Coal Severance Tax Bond Fund**, 2) the **School Bond Contingency Loan Fund**, the **Clean Coal Technology Demonstration Fund**, 4) the **Treasure State Endowment Fund**, 5) the **Coal Severance Tax Permanent Fund** (within which is established the **In-state Investment Fund**), and 6) the **Coal Severance Tax Income Fund**.

Coal tax revenues which flow in to the Trust are initially deposited in the **Bond Fund** and made available for payment of debt service on the Coal Severance Tax Bonds (see footnotes 8, 9, and 10). All amounts in excess of the amount needed to secure outstanding Coal Severance Tax Bonds for the next two ensuing semiannual payments shall be transferred to the **Coal Severance Tax School Bond Contingency Loan Fund**.

- (2) The January 1992 Special Legislative Session passed an Act creating the **Coal Severance Tax School Bond Contingency Loan Fund**. A total of \$25 million of School Bonds were authorized to be issued and secured by this fund. For as long as there are any outstanding school district bonds secured by the **Contingency Loan Fund**, an amount equal to the next 12 months of principal and interest payments due on any School Bonds will be retained in the **Contingency Loan Fund**. Any amounts in excess of the balance needed to secure outstanding School Bonds, shall be transferred to the **Clean Coal Technology Demonstration Fund**.
- (3) The 1991 Legislature passed an Act creating the **Clean Coal Technology Demonstration Fund**. On July 1, 1991, \$25 million was transferred into the **Demonstration Fund**. From July 1, 1991 through June 30, 1997, a maximum of \$5 million per year will be transferred into the **Demonstration Fund** from the **Contingency Loan Fund**. In total a maximum of \$55 million will be deposited in the **Demonstration Fund**. Any amounts in excess of the \$5 million retained in the **Demonstration Fund** will be transferred to the **Treasure State Endowment Fund**.
- (4) The **Treasure State Endowment Fund** was established when voters approved the measure on the June 2, 1992 ballot. All funds in excess of what is retained in the **Bond Fund**, the **Contingency Loan Fund**, and the **Demonstration Fund** will be deposited in the **Endowment Fund**. Annually, interest earnings required to meet the obligations of the state under this program are transferred to the **Treasure State Endowment Special Revenue Account**. Interest earnings not transferred to the **Revenue Account** are to be retained in the **Endowment Fund**. From time to time 50 percent of the principal transferred into the **Endowment Fund** will be transferred to the **Permanent Fund**.
- (5) Twenty-five percent of the receipts to the **Coal Severance Tax Permanent Fund** are segregated into the **In-state Investment Fund**. As the name indicates, the purpose of this sub-fund is making investments in Montana.

- (6) Investment income on the monies in the **Bond Fund**, the **Contingency Loan Fund**, the **Demonstration Fund**, and the **Permanent Fund** are periodically transferred to the **Income Fund**. The only exception to this is the **Endowment Fund** where any interest earnings are either transferred to the **Revenue Account** or retained in the **Endowment Fund**.
- (7) Eighty-Five percent of the balance in the **Income Fund** is transferred to the state's **General Fund**; the remaining 15 percent is transferred to the state's **School Foundation Program**.
- (8) Under the **Coal Severance Tax Loan Program**, the state sells coal severance tax bonds and loans the proceeds to local government entities for various water projects. The borrowers make semiannual loan payments, which upon receipt are credited to a **Debt Service Account**. The terms of the loans vary, but generally involve an interest rate subsidy for the first five years of the loan followed by a direct pass-through of interest rate on the Bonds for the remaining life of the loan.

The Act creating the **Endowment Fund** also expanded the loan authority from strictly water projects and now includes all local government infrastructure projects approved under this Act.

- (9) Debt service payments on the Bonds are due each June 1 and December 1. To the extent funds on hand in the **Debt Service Account** from loan repayments are insufficient to pay principal and interest on the Bonds when due, funds are transferred to the **Debt Service Account** from the **Bond Fund**.
- (10) On each June 1 and December 1, the state pays debt service on the Bonds from amounts on hand in the **Debt Service Account**.

Amendments to House Bill No. 60
First Reading Copy

Requested by Senator Towe
For the Committee on Appropriations

Prepared by Greg Petesch
December 7, 1993

1. Title, line 6.

Following: "THE"

Insert: "RESPONSIBILITIES OF THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION TO PRESCRIBE THE CONTENT OF AND REVIEW OF"

2. Title, line 7.

Strike: "FUND"

Insert: "LOAN APPLICATIONS"

Following: "ELIMINATING"

Insert: "FUND TRANSFERS TO"

3. Title, line 8.

Strike: "SECTION 17-5-703"

Insert: "SECTIONS 90-4-904 AND 90-4-905"

4. Title, lines 9 and 10.

Following: "REPEALING"

Strike: remainder of line 9 through "AND" on line 10

Insert: "SECTION"

5. Page 1, line 16 through page 4, line 1.

Strike: section 1 in its entirety

Insert: "Section 1. Section 90-4-904, MCA, is amended to read:

"90-4-904. Applications for clean coal technology demonstration loans. A person may apply for a clean coal technology demonstration loan for a clean coal technology project to be conducted in Montana. An application for a loan must be in a form prescribed by the department and contain or be accompanied by any information necessary to adequately describe the proposed project and necessary to evaluate the proposed project. An application for a project must be submitted to the department prior to the convening of a legislative session."

Section 2. Section 90-4-905, MCA, is amended to read:

"90-4-905. Eligibility for loan -- clean coal technology project designation. (1) In order for a project to be eligible for a clean coal technology demonstration loan, ~~the department shall designate the project as a clean coal technology project. The department shall ensure, based on the application and the department's investigation and evaluation of the proposal, that the project loan will~~ must be:

(a) used for a clean coal technology project in a commercial testing, pilot plant, or initial commercialization phase; and

(b) matched on at least a 4 to 1 basis from federal or

private sources.

(2) Loans may not be ~~recommended~~ made for early stage planning or basic research activities."

Renumber: subsequent sections

6. Page 4, lines 2 through 4.

Following: "Repealer." on line 2

Strike: remainder of line 2 through "and" on line 4

Insert: "Section"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Appropriations COMMITTEE BILL NO. SB 2
 DATE 12-9-93 SPONSOR(S) Gage

PLEASE PRINT PLEASE PRINT PLEASE PRINT

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<i>Dr. Purvis Friend</i>	<i>MT. Assoc. Cons. Dist</i>		<input checked="" type="checkbox"/>	
<i>Donna A. Whitmer</i>	<i>McLure Co Cons Dist</i>		<input checked="" type="checkbox"/>	
<i>Don Jensen</i>	<i>RIGHT-ONE CONS DIST</i>		<input checked="" type="checkbox"/>	
<i>Lorna Frank</i>	<i>MT. Farm Bureau</i>		<input checked="" type="checkbox"/>	
<i>Mike Volesky</i>	<i>MT Assoc. Cons. Dist</i>		<input checked="" type="checkbox"/>	
<i>Betty Pruski-Mann</i>	<i>Sen. Dist 12</i>		<input checked="" type="checkbox"/>	
<i>Senator Larry Triest</i>	<i>SD 11 Fairview</i>		<input checked="" type="checkbox"/>	
<i>MARK Simonich</i>	<i>DNRC</i>	<i>SB2</i>		<input checked="" type="checkbox"/>
<i>Gary Fritz</i>	<i>DNRC</i>			<input checked="" type="checkbox"/>
<i>Jim Jensen</i>	<i>MERC</i>	<i>SB2</i>	<input checked="" type="checkbox"/>	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Appropriations COMMITTEE BILL NO. HB 54
 DATE 12-9-93 SPONSOR(S) Steve Benedict

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jeff Jahnke	DSL	HB54		✓
Jim Jensen	MEIC	HB54	X	
Anne Hedger	MEIC	HB54	X	
Don Allen	MT. Wood Products Assn.	HB54		✓
Janet Ellis	MT Audubon	HB54	X	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Appropriations COMMITTEE BILL NO. HB 63
 DATE 12-9-93 SPONSOR(S) Francis Gardanoue

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Carl Harrington	Mont County Treasurer-Asst	HB 63	X	
Newell Anderson	Dept of Commerce			
Scott Soracat	Legislative Auditor	HB 63		
Gordon Morris	MA Co	HB 63	X	
Tom Hannon	Nat. Soc of CPA's			X
Ken Idun	MLCT		X	

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