

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 17, 2001 at 3:10 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandenbosch, Legislative Branch

Also Present: Michael Kakuk, Attorney At Law
John North, Chief Legal Counsel, Legal Unit,
Montana Department of Environmental Quality
Anne Hedges, Montana Environmental Information
Office
Cary Hegreberg, Montana Wood Products Association
Bud Clinch, Director, Montana Department of
Natural Resources and Conservation

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: Executive Action posted on
February 13, 2001

Executive Action: SB 377, SB 376, SB 408, SB 322, SB 364,
SB 354, SB 83, and SB 375

EXECUTIVE ACTION ON SB 377

SB 377 was a bill for an act revising the Montana Environmental Policy Act; providing time limits for conducting environmental reviews; providing definitions; requiring that administrative or legal challenges to actions under the Montana Environmental Policy Act be brought within 30 days of a decision; and amended Section 75-1-201 of the Montana codes.

SEN. LORENTS GROSFIELD moved the amendments to **SB 377** for discussion. **Michael Kakuk**, who helped with the drafting of **SB 377**, offered explanation of the amendments requested by the sponsor of the bill. These amendments were proposed in response to the fiscal note concerning the Montana Department of Environmental Quality, the Montana Department of Natural Resources and Conservation, and the Montana Department of Transportation. **Mr. Kakuk** stated that the amendments addressed the technical concerns, inconsistencies, conflicts, but did not address the underlying policy issues that were raised by the department's testimony at the hearing. He went on to explain the changes proposed and provided a copy of those amendments, **EXHIBIT (nas40a01)**, (**SB037701.amv**). He also provided **EXHIBIT (nas40a02)**, the "unauthorized grey bill of **SB 377** with proposed sponsor's amendments". **Mr. Kakuk** stated the first three changes involved the title. Amendment number four had an insertion which led to amendment number five which was the "meat" of the amendment. **Mr. Kakuk** said this exemption was needed in case there was a conflict between the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA). There was concern that certain agencies prepared many joint national and Montana act environmental reviews and it often led to two separate documents, two different review processes and to, possibly, two different alternative reviews. The provisions of **SB 377** would preclude compliance with the national average. The language in the amendment was prepared by **John North, Chief Legal Counsel, Legal Unit, DEQ**, and removed that conflict. This exemption simply said that if there was anything in the National Environmental Policy Act (NEPA) that would preclude compliance with the Montana Environmental Policy Act (MEPA), then MEPA would win. **Mr. Kakuk** also pointed out that in current law, the definition of the term "cumulative impact" never spoke of future actions. **SB 377** would clearly define that term to include past, present, and future actions which would be under concurrent review. It also better defined the beneficiaries of school trust lands and addressed the time issues with the public scoping process. **Mr. Kakuk** stated that this bill would amend some of the time limits and make them clearer by better defining them.

{Tape : 1; Side : A; Approx. Time Counter : 6.2 - 22.2}

Mary Vandenbosch, legislative staffer, had one area to confirm on amendment number 12 referencing the correct chapter number. Under direction of the chairman, **Ms. Vandenbosch** will confirm that chapter number and, if needed, correct that in the amendment. There were no added questions regarding the amendments. Final combined amendment received on February 19, 2001, as **EXHIBIT(nas40a03), (SB037702.amv)**.
{Tape : 1; Side : A; Approx. Time Counter : 22.2 - 24}

Motion/Voice Vote: SEN. GROSFIELD moved that **AMENDMENTS TO SB 377 BE ADOPTED. Motion carried unanimously. Vote 11-0. Proxy vote by VICE-CHAIR DALE MAHLUM was included.**

Motion: SEN. TASH moved that **SB 377 DO PASS AS AMENDED.**

Discussion: SEN. LORENTS GROSFIELD questioned language in the bill on page two, line 30, where it stated an agency "may" and thought it should be changed to "shall". **Mr. Kakuk** advised he felt that language revision would not make any difference from a legal standpoint.

Motion/Voice Vote: SEN. GROSFIELD moved that **SB 377 BE AMENDED** by changing the language on the bill on page two, line 30, where it stated an agency "may" to an agency "shall" . **Motion carried unanimously. Vote was 10-0. VICE-CHAIR DALE MAHLUM** was excused.

Additional Discussion: SEN. KEN TOOLE opposed the bill as he thought the current statutes relating to MEPA were working fine. **SEN. BILL TASH** related an experience in his district concerning the issues being addressed by **SB 377** and said he felt it was a well deserved change. **SEN. VICKI COCCHIARELLA** stated she felt the frustration of the people of Montana when it came to economic development, especially relating to her part of the state concerning impacts on timber sales on state lands and other issues. She did not feel that MEPA was the problem but that the issues went back to inefficiency, ineffective leadership, and lack of resources to make the Department of Environmental Quality (EQC) the agency it should be. She also stated that by passing this kind of legislation, we were not going to accomplish what it had intended to accomplish because we were still not staffing and funding at levels that we needed to in order to retain good people in the DEQ who could perform their job in a timely fashion.**{Tape : 1; Side : A; Approx. Time Counter : 24 - 32.9}**
{Tape : 1; Side : B; Approx. Time Counter : 0 - 1.2} **SEN. BEA MCCARTHY** stated she could only echo what **SEN. COCCHIARELLA** stated as she believed the DEQ was understaffed and did not have the personnel staying there. She also stated that most of the material in this bill was not brought up at any time during the

study and was all new material brought in as a public bill.

SEN. MCCARTHY stated she was opposed to this particular piece of legislation. *{Tape: 1; Side: B; Approx. Time Counter : 1.2 - 1.8}*

SEN. GLENN ROUSH said that though he never served on the Environmental Quality Council and was pretty new to that area, he did come from a background of natural resource development. He stated he had sympathy for some of the concerns that had been mentioned in the hearing of this bill on both sides of the issue and he spent the last couple of days talking to people around the Conrad area. He added that the Great Falls Tribune, this last week, had addressed news that a serious proposal was coming to Conrad. **SEN. ROUSH** said there were over 200 people at the public hearing the other evening that came out in very bad weather, to hear about a very large, hog operation coming in to that area. In talking to at least four or five concerned people, they all told him they did not object to the project as of yet. They wanted an open discussion, open planning, and participation from the public on a lot of these decisions. The company proposing the operation stated the same and did not want to hide anything from the public. He said that the people of his district had to live with whatever developed as they needed economic development.

SEN. ROUSH thought there was time to continue to review this issue. There was a study that had been proposed, to be acted on in this committee, to include some of the MEPA problems. As **SEN. MCCARTHY** had stated that this material had not come up for study beforehand, **SEN. ROUSH** thought the issue could be addressed with the proposed study. *{Tape: 1; Side: B; Approx. Time Counter: 1.8 - 4.3}* **CHAIRMAN CRISMORE** commented that timber sales had been worked on in various areas, especially in the Swan Valley. The state had hired the best people they could find outside of the department. He knew there were people that were considered "expert" in the field, from mine skidding, and different foresters, that were contracted by the state to come in. It appeared there were still problems.

CHAIRMAN CRISMORE brought back to the table the motion made by **SEN. TASH** earlier.

Discussion: **SEN. GROSFIELD** said there was a lot of testimony provided at the hearing of **SB 377** and referred to his four pages of notes of specific problems brought up by many proponents. He stated the EQC spent a lot of time on this bill and it was a recommendation that continued with study that would probably go on regardless of what was done here. MEPA was something that the EQC always spent a lot of time on. He stated that it seemed to him that there was just a terrific amount of frustration out there over our processes; not only on the part of how the MEPA process affected actual applicants but some of the frustration that was perceived outside of the state. Companies did not even

want to try Montana because of what they heard was going on with MEPA. **SEN. GROSFIELD** said that this issue needed to be addressed. He stated he heard one of the proponents talking about being ashamed of the fact that Montana was a natural resource state. **SEN. GROSFIELD** proclaimed that Montana was a natural resource state and that was Montana's strength. He added that, somehow, Montana was almost ashamed of that fact and there was not reason for that. We should be proud of that fact and be proud of these kinds of projects and a state that has strong environmental laws. Some people wanted to shut it all down in Montana and let it be done elsewhere. The bottom line was that it was being done elsewhere where there were not good environmental laws. **SEN. GROSFIELD** thought that we should do this kind of thing where we did have good environmental laws and we ought to be encouraging it. He felt that **SB 377** and some of the other bills sent an encouraging signal without substantively affecting our environmental laws and standards in a negative way. **SEN. GROSFIELD** supported **SB 377**.

{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 8.9}

ROLL CALL VOTE: Motion that **SB 377 DO PASS AS AMENDED** carried 7-4 with Roush, Cocchiarella, Toole, and McCarthy voting no. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

{Tape : 1; Side : B; Approx. Time Counter : 8 - 10.5}

EXECUTIVE ACTION ON SB 376

SEN. MIKE TAYLOR moved **SB 376** for discussion.

Discussion: **CHAIRMAN CRISMORE** advised there were two sets of amendments, and they would be looked at separately.

Motion: **SEN. TAYLOR** moved that **AMENDMENTS TO SB 376 EXHIBIT (nas40a04) (SB037601.amv) BE ADOPTED**.

Discussion: **SEN. TAYLOR** explained the amendment (**SB037601.amv**) in that following "relation to" on page 1, line 24 of the bill, "and in compliance with" would be inserted. He stated that local government would be or could be involved with these decisions and recalled testimony from the DNRC director that indicated that the DNRC always worked with the local government when they worked on this issue. This amendment merely clarified that.

Voice Vote: Motion that **AMENDMENTS (SB037601.amv) TO SB 376 BE ADOPTED** carried unanimously. Vote was 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

Motion: SEN. TOOLE moved that **AMENDMENTS TO SB 376, EXHIBIT (nas40a05) (SB037602.amv) BE ADOPTED.**

Discussion: SEN. TOOLE requested that his proposed amendment be explained by **Anne Hedges, MEIC.** **Anne Hedges** stated that this amendment (**SB037602.amv**) to **SB 376** would strike "or" on page 1, line 15 of the bill and following stricken "lands" on page 1, line 16 of the bill, "or other authorization for use of state lands" would be inserted. There were two reasons for amendments with the first reason being to fix the main issue in the Kalispell situation which was addressed by the passage of amendment **SB037601.amv** that just occurred. She stated that this bill was really in response to the Kalispell situation and the testimony supported that conclusion. By changing the language in part three, by re-inserting "or other authorization for use of state lands", it really got to the heart of that problem. **Ms. Hedges** thought that was a very good and important amendment to pass. She also stated that by leaving this language stricken, two things were done. The language's effects were much broader than just in relation to the Kalispell case. This language got to the heart of all planning on state lands. **Ms. Hedges** stated that state lands do not have rules and regulations that they follow, per se. What they often have done with the state forest land management plan and with development was to develop these programmatic EIS plans that would tell how they were going to go about their business. These plans were what the public participated in and relied upon to know how the agency was going to carry out its tasks. Without this language re-inserted, an agency could go in and change a programmatic EIS after it had gone through the whole public comment period without ever notifying the public or letting the public know what the impact of that change would be. Because programmatic EIS's in the DNRC were so important and the public relied on them, by striking that language the public was basically being told they could no longer rely on these programmatic EIS's and that the EIS's did not mean much because the DNRC could change them at will without ever notifying the public. This issue caused great concern and was much broader than just development as it had to do with all activities on state lands. The other reason for this amendment was to address an internal contradiction and inconsistency in this bill from the amendment that was just passed. Without re-inserting the language, she was not quite sure how this section of the law would be interpreted. It would state that the DNRC was exempt from MEPA for land use planning activities and yet with the amendment just passed, the DNRC would have to do one of two things when developing state lands; either comply with MEPA or with local regulations. This was the contradiction in the bill that truly needed to be addressed. **{Tape : 1; Side : B; Approx. Time Counter : 8.9 - 18.3}** SEN. TAYLOR questioned

Director Clinch about the concern expressed by **Ms. Hedges** regarding the inconsistency in the bill causing conflict and potentially resulting in court actions. **Mr. Clinch** responded by stating he disagreed whole-heartedly with **Ms. Hedge's** take on the bill. He stated that the DNRC had been involved in planning activities for over a decade. They initiated the planning process for the state forest land management plan in the early 1990's. What he found kind of ironic was that the entire language that was referred to now was totally new language that had emerged from the last legislative session. Any reference that this language was suddenly going to control whether the DNRC did planning or not was just not true. The DNRC crafted that language last year, and it was a controversial bill before this committee known as **HB 142**, in response to previous issues. The fact of the matter was that the portion that was being proposed to be stricken out and that this amendment was trying to put back in was in direct response to the lawsuit associated with section 36 near Kalispell where the court interpreted the phrase "for other authorization of state lands" as giving the court the authority to make the conclusion that entering into those activities with local governments was an authorization of state lands. The DNRC appealed to the committee that those activities with local zoning, while they might be commitments or restrictions on the use of state lands, were not authorizations. Local county government had not authorized anything on state land. They had provided some restrictions, particularly with the case law from the Kalispell section 36 case where District Judge Sherlock specifically referenced that particular phrase as the authority for authorization of state lands. **Mr. Clinch** said that in order to prevent that interpretation occurring elsewhere around the state, the DNRC believed it was necessary to strike it. **{Tape : 1; Side : B; Approx. Time Counter : 18.3 - 22.3}**

SEN. KEN TOOLE commented that he did not feel that the court's decision was entirely off the page and he did not want an unreasonable interpretation to see restrictions of usage of state lands. He felt that this amendment re-inserting this language was valuable in that it made it clear that the use of these lands was inclusive of all activities. **SEN. LORENTS GROSFIELD** asked for clarification regarding if the DNRC did a programmatic EIS, which they were doing now, and then came back later and changed that, could that plan be changed without public input. **Mr. Clinch** responded that the rules relative to how the DNRC would implement a programmatic or any other EIS did not or would not change, regardless of this language referenced here. **Ms. Hedges** stated that the DNRC did a programmatic EIS on the state forest management plan and, in a lot of people's minds, it redefined what constituted old growth. It was a dramatic difference from what the state forest management plan said. That substantial change never went out for public review or public comment.

Currently, there was a lawsuit pending on that issue. **Ms. Hedges** stated that what the MEIC was arguing was that when the DNRC made substantial changes to a document the public was relying on, the DNRC should at least do some type of supplemental environmental analysis to let people know what that change was and allow people to comment on it. She stated that it was hard to see that effect in the language, but it was absolutely there. **Ms. Hedges** stated that the court decision in the Kalispell section 36 case addressed this language, in particular, on page ten of the court decision. From that decision, this language was all about planning and she believed that was what the judge relied upon. **Ms. Hedges** felt this language would have a significant impact. **SEN. TAYLOR** stated he would resist this amendment only because he thought that, after hearing both sides and being sympathetic to the MEIC's position, if the DNRC did something wrong and did not follow through, there still were other options without this amendment. *{Tape: 1; Side B; Approx. Time Counter: 22.3 - 28.3}*

Roll Call Vote: Motion that **AMENDMENTS TO SB 376 (SB037602.amv)** BE ADOPTED failed 3-8 with Roush, Toole, and McCarthy voting aye. Proxy vote by VICE-CHAIR DALE MAHLUM was included.

Motion/Voice Vote: **SEN. TAYLOR** moved that **SB 376 DO PASS AS AMENDED (SB037601.amv)**. Motion carried 10-1 with Toole voting no. Proxy vote by VICE-CHAIR DALE MAHLUM was included. *{Tape : 1; Side : B; Approx. Time Counter : 28.3 - 30.7}*

EXECUTIVE ACTION ON SB 408

SEN. MCCARTHY moved **SB 408** for discussion.

Discussion: **CHAIRMAN CRISMORE** advised there was an amendment, **EXHIBIT (nas40a06) (SB040801.amv)**.

{Tape : 1; Side : B; Approx. Time Counter : 30.7 - 31.4}

Michael Kakuk offered an explanation of the amendments and stated that, as was expressed in the testimony, the purpose of **SB 408** was to insure that an agency employee who was making a significance determination, or a recommendation of significance would have to have that recommendation or determination approved by the agency director. This bill, which was pointed out by a number of interest groups, did not do that. It simply said that anyone making the determination had to sign off on it. The amendments **(SB040801.amv)**, numbers one through seven, clarified that an agency employee who made a recommendation of significance

must have the agency director also sign off on it. Amendment number eight addressed the insertion following "issue", page 3, line 25, "[The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in [section 1 of Senate Bill No. 377]]". **Mr. Kakuk** stated that with **SB 377** and this bill also, if an administrative review of the significance determination or recommendation was requested, the counting of the days may not be included for the purposes of determining compliance with the time limits established for environmental review.

SEN. COCCHIARELLA suggested she would like to segregate numbers one through seven and vote on those portions separately from the numbers eight and nine as these were separate issues.

Mary Vandebosch clarified that amendment number seven was an editorial change on page 3, line 24. It changed "to" to "by" in order to make sense in that the intention was to request a review "by" the board and not "to" the board. Also, amendment number two was a change to the title to reflect what was already in the bill and part of it changed regarding the recommendation relating through amendment number six. Amendment number nine addressed the coordination of the outcome of **SB 377**.

Motion/Voice Vote: **SEN. COCCHIARELLA** moved that **AMENDMENTS TO SB 408 (NUMBERS 1 THROUGH 7 ONLY OF SB040801.amv) BE ADOPTED. Motion carried unanimously. Vote 11-0. Proxy vote by VICE-CHAIR DALE MAHLUM was included.**

Motion: **SEN. COCCHIARELLA** moved that **AMENDMENTS TO SB 408 (NUMBERS 8 THROUGH 9 ONLY OF SB040801.amv) BE ADOPTED.**

Discussion: **Mary Vandebosch** explained the purpose of amendments numbered eight and nine. **SEN. BEA MCCARTHY** stated she was not comfortable with amendment number eight although she would accept it as she felt numbers eight and nine had to go together and could not be separated. **SEN. GROSFIELD** questioned the outcome if the committee did not adopt amendments numbered eight and nine and **SB 377** passed and became law, then would the clock not stop regarding the time period and cause the department to not have adequate time to do what they needed to do. He thought everybody voted unanimously on the amendments to **SB 377** regarding the issue of stopping the clock and felt the same applied here with the amendments. **SEN. TAYLOR** questioned why **SEN. COCCHIARELLA** wanted to separate out the portions of the amendments and she stated it was to clarify her understanding and separate the issues.

Voice Vote: Motion that **AMENDMENTS TO SB 408 (NUMBERS 8 THROUGH 9 ONLY OF SB040801.amv) BE ADOPTED** carried unanimously. Vote 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

Motion/Voice Vote: **SEN. MCCARTHY** moved that **SB 408 DO PASS AS AMENDED**. Motion carried unanimously. Vote 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 10.3}

EXECUTIVE ACTION ON SB 322

Motion: **SEN. COCCHIARELLA** moved that **SB 322 DO PASS**.

Discussion: **SEN. MCCARTHY** announced there were two separate amendments to **SB 322**. **SEN. COCCHIARELLA** asked that **SEN. DEBBIE SHEA'S** amendments be discussed first.

Substitute Motion/Voice Vote: **SEN. COCCHIARELLA** moved that **AMENDMENTS TO SB 322 as per EXHIBIT (nas40a07), (SB032201.aem) BE ADOPTED**. Motion carried unanimously. Vote 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

Motion: **SEN. COCCHIARELLA** moved that **AMENDMENT TO SB 322 EXHIBIT (nas40a08) (concept of amendment) BE ADOPTED**.

Discussion: **SEN. VICKI COCCHIARELLA** stated that the intention of this amendment was to make sure that a student who had received a scholarship that then terminated enrollment for any reason during an academic term, would have to make a refund to the Montana Department of Labor and Industry. The motion was based on voting on the concept of this amendment. **SEN. MIKE TAYLOR** stated that he concurred with that amendment and that **SEN. COCCHIARELLA** was right on with her explanation and the need for this amendment. **Mary Vandebosch** stated she would be willing to draft the amendment from this concept.

Voice Vote: Motion carried unanimously. Vote was 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

EXHIBIT (nas40a09), FINAL AMENDMENT (SB032202.amv) received February 19, 2001.

Motion: **SEN. COCCHIARELLA** moved that **SB 322 DO PASS AS AMENDED**.

Discussion: SEN. KEN MILLER stated he was sympathetic to the unemployed miners and wanted to get them back to employment but he did not think this was the way. SEN. MILLER said that speaking for SEN. JIM KEANE, HD 36, Butte, his big fight at the legislature was always "everybody robbing the RIT for things that were not intended for the RIT" and SEN. MILLER felt this was the same issue, and he could not support this bill. He certainly supported the efforts and would look at other ways to help, in fact, SB 499 which he was carrying this year would help the situation. In the name of SEN. KEANE, he would be voting against this bill. SEN. TAYLOR said that everybody goes after the money and that it was interesting as it depended on under who's auspices they were working and when they wanted it. He reasoned how he could not get any weed funding out of the RIT fund but for some bills, the funding was there. He was a little concerned about that though he would probably vote for it. SEN. BEA MCCARTHY reminded the committee of the focus of economic development. SEN. LORENTS GROSFIELD stated that when SEN. DEBBIE SHEA first spoke to him about this bill he was a little uncomfortable with the concept from a different perspective. It seemed to him that Montana was a natural resources state and this almost looked like we were running away from that with our tail between our legs. He did not want to leave that impression and he did not think that was what we were doing. When SEN. SHEA presented the bill, he thought that she talked about that, at least indirectly, that we were looking at education for people including the people in the mining industry to adapt to whatever you might call the "new economy" that we were in. He did not mean "new economy" in the sense of new technology but in the "different economy" that we were in because certainly mining had changed and it was much different than it was when a lot of those people were trained. He had always been one concerned with earmarking funds but he thought the RIT would be an appropriate source of money for this particular program because the tax was paid by industry. He was all for weed control too, but it was much harder to draw a connection between the RIT and weed control than it was between the RIT and more or less anything to do with mining, oil and gas exploration, whether it was implementation or something like this. He thought it was a good effort and he supported the bill.

Voice Vote: Motion that SB 322 DO PASS AS AMENDED carried 10-1 with Miller voting no. Proxy vote by VICE-CHAIR DALE MAHLUM was included.

EXECUTIVE ACTION ON SB 364

SEN. LORENTS GROSFIELD stated he had made the motion to bring this bill back and it was Sarah Carlson, Executive Director, Association of Conservation Districts, that left him a note saying that she had talked to several people in the conservation districts as well as in the DNRC and they felt that there was not a need to do what he had considered doing with this bill. He did not think the bill would work and would not be good for districts.

Motion: **SEN. GROSFIELD** moved **SB 364 BE INDEFINITELY POSTPONED.**

Discussion: **CHAIRMAN CRISMORE** commented that he had received a letter from his conservation district with real concerns about doing without permits. He called two others and there was really a concern in the districts that this would be opening the door to what they did not want to do so he would not vote for this bill.

SEN. KEN TOOLE asked if we indefinitely postpone this bill, could it not be considered in any form for the buy-in. **SEN. GROSFIELD** responded with a "no" and explained that the only difference between a postponed motion and a tabled motion was that an indefinitely postponed motion was debatable but the net effect of the motion was that it just sits on the table and it could still be blasted out of committee. **SEN. MACK COLE** stated that, with some of the conversations within the district that he represented, he would agree with it. There were some comments made regarding the projects not being visited anyway and he did not think that was any reason why this bill should be passed and he would be voting against it.

Voice Vote: Motion that **SB 364 BE INDEFINITELY POSTPONED** carried unanimously. Vote 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

{Tape : 1; Side : B; Approx. Time Counter : 10.3 - 23.3}

EXECUTIVE ACTION ON SB 354

Motion: **SEN. MCCARTHY** moved that **AMENDMENTS TO SB 354 BE ADOPTED, EXHIBIT (nas40a10), (SB035401.amv).**

Discussion: **Mary Vandebosch** explained the amendments in that number one addressed the title of the bill, line 6, striking out "OR TO ANY" and "TRUST" and inserting "FOREST" so it would read on line 6 "TREATING, OR DISPOSING OF ANY INTEREST IN STATE FOREST LANDS FOR...". Also on page one, line 28 it would strike "state trust" and insert "these" and would strike "in cash". Also on

page two, lines 7 through 10, it would strike subsections (5) and (6). It says that the board and the department were prohibited from temporarily or permanently designating...any interest in state forest lands for the following purposes unless the full market value was obtained and so the purposes were now limited. Finally, the codification for instruction had changed from title 77 dealing with state forests. **SEN. BEA MCCARTHY** wanted to know why "in cash", amendment number four, page 1, line 28 of the bill, was removed. **Cary Hegreberg, Montana Wood Products Association**, explained that amendment was a collaboration of several interests and many times the leases, conservation leases, various uses, were on an annual basis, not necessarily paid up front in cash. That may be an unrealistic expectation to require cash in advance instead of contract that would be payable on an annual basis. **SEN. MCCARTHY** questioned that wasn't the cash needed by the schools. **CHAIRMAN CRISMORE** explained that there were some concerns expressed from some groups that this bill was being widened so this was discussed. **John Bloomquist, Montana Stockgrowers Association**, stated that this portion was proposed to be stricken because full market value could be obtained in a variety of different ways as land trade-offs or land exchanges. **SEN. MCCARTHY** stated that was the whole argument of the schools that they wanted the money for scholarship funds and they did not want other lands but wanted cash. **Mr. Bloomquist** stated that determining full market value was up to the board and it was at their discretion how that was obtained. **SEN. MCCARTHY** stated she thought those two little words "in cash" really changed what most of the testimony concerned. **Mr. Clinch** responded that he thought that the language change regarding "in cash" did not change anything at all. It was followed by the word "funds" so he thought that instead of piling up green dollar bills, the funds might be provided in a different fashion such as in check format or others.

{Tape : 2; Side : A; Approx. Time Counter : 23.1 - 32.2}

SEN. MACK COLE wondered why we inserted "forest" striking "trust" in the title, line 6 of the bill, and inquired if we were speaking of the same lands or different lands altogether. This bill would address "state forest lands" rather than all "state trust lands". **SEN. KEN TOOLE** thought that the amendment was consistent with what the bill was doing and that this portion just made things clearer. **SEN. MIKE TAYLOR** stated that there were other groups, not only the Montana Stockgrowers, that this language would address, such as the Boy Scouts.

Voice Vote: Motion that **AMENDMENTS TO SB 354 BE ADOPTED** carried 9-2 with **McCarthy** and **Miller** voting no. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

Motion: SEN. COLE moved that SB 354 DO PASS AS AMENDED.

Discussion: SEN. TOOLE stated that the testimony on this bill was all about the timber industry and the dire straits the timber industry was in, the economic development and all the preservation issues being consistent with economic development. He pointed out that he thought the problems that the timber industry was facing were far more complicated than this bill was going to even come close to touching. He urged the committee to be very cautious about up-ending state law in an effort to make a little bit more timber supply available, particularly, when setting that priority involved the long-term and might hurt the values the same way. He thought this ought to be brought up to the State Land Board and elected officials as they were all capable individuals and capable staff and thought it should be left there and not try to foreclose these specific uses that were not politically in vogue. SEN. KEN MILLER referred to a conversation that occurred at another committee where an individual had stated that only 45 percent of timber sales went to schools. Later, SEN. MILLER spoke to that individual and learned their theory was that all of the money went into the general fund and only 45 percent of the general fund went to the K-12 school system so his theory was that the schools were only getting 45 percent of it. SEN. MILLER thought that was a far reach but wanted to share that person's perception. SEN. BILL TASH supported the bill and referenced his notes from the testimony regarding beneficiaries. SEN. MCCARTHY stated her recollection of the testimony addressed all state trust lands and now this amendment narrowed that to state forest lands and pointed out that this was no longer the same proposal. SEN. LORENTS GROSFIELD stated he sponsored a bill a few years ago that earmarked the school trust fund to the general fund and so somehow by taking \$900 million from the school trust and putting it in the general fund and giving the schools \$900 million from the general fund, he could not follow that logic either. He referenced the Enabling Act and stated that it talked about support for schools. He said that if a way could be found to make some kind of preservation for state land acreage to meet that goal, then that was probably fine. It was very easy to get mixed up between what state lands were and federal wilderness was. Federal wilderness lands were lands that we had decided as a nation were important to preserve for their value but that was not the same as the purpose of state lands. The Enabling Act stated that the purpose of state lands was to generate income. SEN. GROSFIELD referred to the Audubon Society's parcel around Kalispell and how the DNRC came in with the \$22,000 bill for flood plain land when the old lease was \$500 and now it was in negotiation to around \$600 for non-use, in the traditional sense of hay or timber harvest, and that compensated the trust

adequately. He hoped that could continue as there were a lot of people who had invested a lot in the way of psychological and social attachment. He thought this better defined the real duty of the State Land Board and of the legislature with respect to state lands getting full market value and he supported the bill. **SEN. TOOLE** stated that any time any state land was committed to any use, it could still have the same environment prior to obtaining full market value for non-uses. If you committed to logging a section or parcel of state land, there were foregone uses, for example, if it lost its value for recreational development. **SB 354** clearly goes after one specific kind of use which was preservation. It troubled him that there was not trust placed with the State Land Board to make those kinds of decisions. **CHAIRMAN CRISMORE** stated he thought we had addressed other usage of the timbered lands in the western part of the state and there had been times we had sold some other things besides just preservation. **CHAIRMAN CRISMORE** said that with every session he had been here at the legislature, he believed that the state should be utilizing the land, more than we were, to generate more revenue and **SB 354** was just one way to accomplish that. He questioned if the state was truly satisfied with the two percent return on the value of the lands. **CHAIRMAN CRISMORE** stated he had carried **HB 201** on the Senate side in a prior session regarding clear-cuts for kids and it was really amazing how many calls he received from schools all over the state because that was to help them have computers. These callers wanted to know why there were not more bills like this because it really helped them. **CHAIRMAN CRISMORE** did not believe that Montana would be deprived by taking a small isolated section or part of a section which was surrounded by hundreds of thousands of acres of forest land set aside for old growth, roadless and whatever, with the little amount of state timber that we had in the west. **CHAIRMAN CRISMORE** charged that we needed to get more money out of the state trust forest lands. **SEN. COCCHIARELLA** commented that **SB 354** made her nervous because she thought this might present all kinds of lawsuits regarding full market value or management or forest practices and that this bill would not help that situation. **SEN. GROSFIELD** responded that Article Ten, Section 11 of the Montana Constitution, Subsection Two, in referencing state lands, stated "no such land or any estate or interest, therein, shall ever be disposed of, except in pursuance of general laws providing for such disposition or until full market value of the interest is...". So the "full market value" language was not new with this bill and that language was in the constitution and he thought that was a concept that the State Land Board and the legislature had used and maybe struggled with, for a long time. All this bill was saying was that if the state was going to dedicate some of this land to non-use, then it was foreclosing the opportunity for full market value. **SEN.**

GROSFIELD stated he did not disagree with **SEN. TOOLE**. **SEN. GROSFIELD** added if the state harvested timber on a section, it might be precluding some recreational uses or some other kinds of uses for a period of time but certainly not forever. He explained that if a section of land being farmed was plowed, it would foreclose the opportunity for, probably, all recreational use for awhile but not forever. He thought that the land board looked at those opportunity costs and long-term, and that was partly how they dealt with some of the rates that they charged for various uses of land. If we were going to dedicate it to some sort of permanent non-use, then there was little in the way of opportunity costs that you could ascribe to it. Maybe one could talk in terms of some recreational use permit for a small amount of money and he thought that the State Land Board did look at it long-term when it made these kinds of decisions. **SEN. GROSFIELD** maintained he was still comfortable with the bill. **CHAIRMAN CRISMORE** stated that in his area, during November, logging increased recreation because that was where the deer liked to eat so that was where they went to hunt.

Roll Call Vote: Motion that **SB 354 DO PASS AS AMENDED** carried 9-2 with **McCarthy** and **Miller** voting no. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 22.4}

EXECUTIVE ACTION ON SB 83

Motion: **SEN. MCCARTHY** moved that **SB 83 DO PASS**.

Discussion: **SEN. MCCARTHY** said she totally agreed with what was said yesterday about the "this was not done right" consensus. She stated a number of parties were not happy with the way the department came through with this process. **CHAIRMAN CRISMORE** stated he had a problem with how this bill was handled since the very beginning, and he felt several of the committee members were kind of put on the spot. He thought that industry would really like the opportunity to sit down and work on this bill through the interim and did not think the department was giving them the opportunity. **SEN. TOOLE** stated he was sympathetic to that. Maybe the way to do this would be to put a sunset on it and next session, we could re-visit it. **SEN. GROSFIELD** stated there were several amendments on this bill, some conflicting and some leaving just section one and two. As he recalled, this was a bill draft he had received correspondence on quite some time back. In reference to the fiscal note showing zero, **SEN. GROSFIELD** did not believe that it was going to hurt the department to wait another couple of years. He thought most of

the amendments were offered by **Mr. John Arrigo, Administrator, Enforcement Division, Montana Department of Environmental Quality** and eliminated most of the bill. **Mr. Arrigo** had said the DEQ would work on this for two more years so **SEN. GROSFIELD** was not sure if it would hurt the department to look at this and come back next session with a complete proposal for a bill that would work. **SEN. MACK COLE** agreed that more time was needed to come up with something better.

Reference amendments **EXHIBIT(nas40a11)** (SB008301.ate), **EXHIBIT(nas40a12)** (SB008302.ate), and **EXHIBIT(nas40a13)** (SB008303.ate).

Substitute Motion/Voice Vote: **SEN. COLE** made a substitute motion that **SB 83 BE TABLED**. Substitute motion carried unanimously. Vote 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included. {Tape : 2; Side : B; Approx. Time Counter : 22.1 - 30.3}

EXECUTIVE ACTION ON SB 375

Motion: **SEN. MILLER** moved that **AMENDMENTS TO SB 375 BE ADOPTED**, **EXHIBIT(nas40a14)**, SB037501.amv.

Discussion: **Mary Vandebosch** explained the amendments. Please refer to exhibit (14). {Tape : 2; Side : B; Approx. Time Counter : 30.3 - 33}

Voice Vote: Motion that **AMENDMENTS TO SB 375 BE ADOPTED** carried unanimously. Vote 11-0. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included.

Motion/Voice Vote: **SEN. MILLER** moved that **SB 375 DO PASS AS AMENDED**. Motion carried 7-4 with Taylor, Cocchiarella, Toole and Grosfield voting no. Proxy vote by **VICE-CHAIR DALE MAHLUM** was included. {Tape : 3; Side : A; Approx. Time Counter : 0 - 5.1}

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas40aad)