

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

**JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND
COMMERCE**

Call to Order: By **CHAIRMAN JEFF PATTISON**, on February 4, 2003 at
8 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Jeff Pattison, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Rep. John Musgrove (D)
Sen. Linda Nelson (D)
Rep. Rick Ripley (R)

Members Excused: Sen. Edward Butcher (R)
Sen. Debbie Shea (D)

Members Absent: None.

Staff Present: Kelly Gorin, OBPP
Gary Hamel, Legislative Branch
Elaine Olsen, Committee Secretary
Doug Schmitz, OBPP

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp refers to material which follows.

Committee Business Summary:

Hearing & Date Posted: Department of Environmental Quality
Overview
Executive Action: Fish Wildlife and Parks Legislative
Contract Authority

All votes are voice votes unless otherwise indicated

{Tape: 1; Side: A; Approx. Time Counter: 1 - 6}

Dan Ellison, Chief of Administration and Finance, Fish Wildlife and Parks (FWP), asked the Committee to revisit the vote on the Department proprietary rates. An audit report had indicated that in FY97 and FY98 and years prior to that, the Department had charged proprietary rate fees in excess of costs. The Department lowered rates, but lowered the rates too much. Now the Department is normalizing the rates by requesting a six percent increase in FY04 and an additional three percent increase in FY05. The rates represent a maximum the Department can charge.

REP. RIPLEY asked why the rates had gotten so high that the auditor had to request that they be lowered. **Dan Ellison** said that the Department had not been as diligent as they should have been prior to the audit, but since then they have been careful to comply with the audit recommendations.

{Tape: 1; Side: A; Approx. Time Counter: 6 - 12}

CHAIRMAN PATTISON said he had spoken to the auditor and had been assured that the proprietary rates for FWP will not be a problem. FWP is working with the auditor to manage the fund correctly.

Gary Hamel presented a document addressing options before the Committee in addressing Legislative Contract Authority(LCA) for the Department. The Committee can accept all of the LCA decision packages(DP) as presented by the Department. As federal monies become available, the Department is able to expend the funds for the projects.

EXHIBIT (jnh24a01)

Gary Hamel said LCA projects that are ongoing could be reviewed in a DP format. This procedure would allow the Committee to review the goals, duration, number of FTE involved, and operations cost for each project funded through LCA. A DP could be done for each project, or the contracts could be addressed as one package.

Gary Hamel said addressing the LCA projects in this manner would allow the Committee to review each contract and determine if the goals of the projects are aligned with the Legislative goals. The ongoing LCA would then be included in the Department base. From that point forward, any federal funding would come through the budget amendment process.

CHAIRMAN PATTISON commented that reviewing each project and adopting the LCA as a DP would put the funding into the Department base.

{Tape: 1; Side: A; Approx. Time Counter: 12 - 17}

REP. MUSGROVE asked how the current LCA process originally developed. **Gary Hamel** said the Legislature typically does not have as much control over how LCA funding is spent. The proposed change would allow the Committee to see all the projects and make decisions on them now.

Doug Schmitz, OBPP, commented that ten or fifteen years ago, the budget amendment process was cumbersome. Grants would be lost before the approval was final. The idea was to advance the authority so that the Department would be able to proceed with the funding authority.

REP. MUSGROVE asked if the proposed change in procedure would impede the Department. **Gary Hamel** said the change in budgetary procedure would not impact the Department's ability to spend federal money. **Doug Schmitz** said that the change would save a lot of time. By putting the LCA in the budget base, less paper work would need to be done.

Director Hagener presented a handout which illustrated the legislative contract authority that has been requested and which shows the amount of budget amendments in 2001. He stated that from the Department's standpoint, putting the LCA in the base is an easier process. Once the LCA is in the base, provided the Department did not make any changes, the Committee would not have to review the funding again.

EXHIBIT (jnh24a02)

{Tape: 1; Side: A; Approx. Time Counter: 17 - 20}

SEN. BUTCHER asked for clarification on how the Committee would know what the total projects amounted to. **Gary Hamel** stated that as the projects expire and the federal authority is no longer needed, the LFD would review the budget. As new projects come up, the Legislature could review them. If the federal authority comes available when the Legislature is in session, it comes to the Committee in the form of a DP. **Doug Schmitz** said that HB4 contains all the budget amendments that are coming in during the session. All of those LCA are reviewed throughout the session.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 27}

SEN. BUTCHER asked if the process was moving toward zero-based budgeting, or if the Committee was moving toward a situation where these projects are just building on top of one another.

CHAIRMAN PATTISON commented that the change in procedure was not intended to stifle the Department. The projects are ongoing. This new procedure allows the Legislature to review the project before the fact. **Gary Hamel** stated that the Budget Book contains a chart that illustrates the total amount of LCA for the Department. The total of amount requested varies each biennium. If the Committee wants to see a project removed, they can do so. **Kelly Gorin** stated that the funding is 100 percent federal money.

SEN. BUTCHER commented that the states have a fiduciary responsibility to review some of the federal projects.

{Tape: 1; Side: A; Approx. Time Counter: 27 - 30}

Kelly Gorin said the executive supports the executive budget which does contain the LCA.

CHAIRMAN PATTISON called for a motion to accept all the LCA DPs as presented by the Department. No motion was brought forth.

CHAIRMAN PATTISON said that since there was no motion on the DPs, the Department would come back to the Committee with a package that describes each of the projects and the attendant funding so that the funding requests can be put into the base budget.

CHAIRMAN PATTISON said that the next issue for the Committee was the vehicle and print shop internal rates.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 5}

REP. MUSGROVE asked if the rates had been approved as presented. **Gary Hamel** said that the proprietary rates had been turned down. Later Committee action did approve the warehouse rates. The Vehicle and Duplicating Center rates are still at the last biennium level.

Motion/Vote: **SEN. NELSON** moved to APPROVE PROPRIETARY RATES FOR VEHICLES AND DUPLICATING CENTER AS PROPOSED BY THE DEPARTMENT. Motion carried unanimously.

{Tape: 1; Side: B; Approx. Time Counter: 5 - 10}

Gary Hamel presented a sheet with the proposed contingency language that is tied to the DPs addressed earlier.

EXHIBIT (jnh24a03)

NP150

If SB130 is not passed and approved, then Item One would be increased by \$16,513 of State Special Revenue money in FY04 and \$16,513 of State Special Revenue authority in FY05.

NP8213

Item Two is also contingent on SB130. If SB130 is not passed and approved, then Item Two is decreased by \$460,000 of State Special Revenue money in FY04 and \$460,000 of State Special Revenue authority in FY05. **SEN. TASH** said the SB130 was passed out of Committee with amendments, so a new fiscal note is being drafted. The rates on the Conservation License were adjusted from \$1.50 to \$2.

{Tape: 1; Side: B; Approx. Time Counter: 10 - 15}

NP302

The contingency language addresses the federal omnibus bill. If the funding is not approved for the building of the warm water fish hatchery at Fort Peck, Item Three is decreased by \$100,000 of State Special Revenue in FY04 and \$200,000 of State Special Revenue authority in FY05.

NP908

The contingency language addresses additional authority for boat decals. If SB287 is not passed and approved, Item Nine is decreased by \$71,169 of State Special Revenue money in FY04 and \$72,053 of State Special Revenue authority in FY05.

Sikes Act

The contingency language states that the Department is to report to the Committee on projects funded with the Federal Sikes Act money.

Department Proposed Language

The language states that if the Department receives additional federal special revenue for services comparable to those with General License revenue, State Special Revenue can be decreased by the amount of federal money received. The Department is authorized to spend the federal appropriation.

NP550

The special language states that if federal money becomes available for the Wildlife Chronic Wasting Disease Management

Plan, the State Special Revenue appropriation and federal appropriation can be adjusted.

Department proposed language

The special language states that if the Department is required to adjust personal services expenditures between State and federal accounts, the State Special Revenue and federal appropriation can be adjusted by like amounts.

Motion/Vote: SEN. NELSON moved to ACCEPT THE LANGUAGE ADJUSTMENTS ACKNOWLEDGING THAT THE LANGUAGE IS STILL SUBJECT TO REVIEW AND EDITING. Motion carried unanimously.

{Tape: 1; Side: B; Approx. Time Counter: 15 - 22}

Gary Hamel said all the remaining General Fund, \$277,491, has been removed from the Department budget. Of that amount \$31,745 was specified against the reduction in the Parks Division, and \$25,065 was specified in the Conservation Education Division for a total of specified reduction of \$34,310. That leaves an unspecified reduction of \$255,430 and \$256,437 for each of the fiscal years. The understanding was that funding would be replaced within the Department later in the process. Following Subcommittee action, the current level of General Fund in the FWP is at zero compared to the original budget of \$277,491.

CHAIRMAN PATTISON stated he had reviewed the FTE vacancies with an eye toward the General License account which is fee-driven through sportsmen's licenses. The actions taken so far have reduced FTE by 11. The **CHAIRMAN** stated it was his intention to reduce the number of FTE vacant for over 180 days that are funded by the General License account by a total of about 20 FTE. This would be in conjunction with the positions eliminated so far.

Gary Hamel said he would work with the Budget Office to obtain a list of those FTE vacant over 180 days and funded by the General License account.

{Tape: 1; Side: B; Approx. Time Counter: 22 - 28}

Kelly Gorin commented that the agency had reduced their budget to create a five percent vacancy savings in the last session, plus the recent hiring freeze has been imposed. That accounts for some of the vacancies. In addition, seasonal employees show up on the vacant list.

CHAIRMAN PATTISON said that about ten more FTE funded out of the General License account would need to be reduced to reach a total reduction of 20.

REP. MUSGROVE asked the Department to comment on the proposal. **Director Hagener** said with the required five percent vacancy savings, about 30 positions are vacant. The hiring freeze last fall resulted in several critical positions not being refilled. Some of the vacancies are seasonal positions. Several of the FTE are only partially funded by General License dollars.

Doug Schmitz said that he was unsure if the Department had enough vacant positions to meet the vacancy savings requirement if the FTE are reduced as proposed. Some positions are vacant due to retirement and will have to remain vacant so that the Department can recoup the buyout costs.

CHAIRMAN PATTISON said he had reviewed the lists and had noted about 65 vacancies. He stated that he was referring to 20 FTE funded by the General License that are vacant over 180 days. Some positions have been reduced through Committee action.

Motion: **REP. RIPLEY** moved **THAT THE COMMITTEE REDUCE FTE VACANT OVER 180 DAYS FUNDED BY GENERAL LICENSE ACCOUNT BY TEN FTE.**

{Tape: 2; Side: A; Approx. Time Counter: 1 - 4}

Discussion:

Gary Hamel asked **REP. RIPLEY** for clarification on his motion. If the FTE already eliminated by earlier Committee action are NOT part of those which meet the stated criteria, was it **REP. RIPLEY's** intent to eliminate a total of ten FTE, or did he intend to remove up to 20 FTE that are over 180 days and are funded by General License account?

REP. RIPLEY asked the **CHAIRMAN** if his goal was to reach up to 20.

CHAIRMAN PATTISON said 20.6 FTE meet the criteria of having been vacant for over 180 days and funded by the General License account. He said it was his intent that the FTE eliminated by earlier Committee action would apply toward the total of 20 targeted for reduction. **Gary Hamel** asked if the **CHAIRMAN** wanted to remove up to 20 FTE. **CHAIRMAN PATTISON** restated that any permanent positions that were removed from the budget through earlier Committee action were to be part of the total pool of 20 FTE.

SEN. NELSON asked if the Department was going to identify which FTE they could eliminate. Some of the positions were in the process of being filled when the hiring freeze was imposed.

Vote: Motion carried 4-3 with **REP. MUSGROVE, SEN. NELSON, and SEN. SHEA** voting no.

{Tape: 2; Side: A; Approx. Time Counter: 4 - 10}

Jan Sensibaugh, Director, Department of Environmental Quality (DEQ), said the Department's mission is to protect the State and to maintain a clean and healthful environment to benefit present and future generations. The Director's office provides all the support services for the divisions, including the Legal Unit which defends Department decisions and implements rules for those decisions. The Public Affairs Coordinator handles public notices, public hearings, and responds to public complaints and questions about agency activities. The Personnel Unit handles training. The Deputy Director is in charge of all financial services programs and information technology services. A recent reorganization located IT data management in the Director's office. The Enterprise-wide database requires a large amount of maintenance money.

The Board of Environmental Review is a quasi-judicial board that is statutorily attached to the Department. The Governor-appointed, seven-member board hears all the appeals to the agency decisions and does all the rule-making for the program.

The Petroleum Tank Release Compensation Board or Petro Board that works with the Underground Tank Program. The Petro Board makes eligibility determinations and decides what is to be paid for underground tank cleanup sites.

The Water Pollution Control Advisory Council and the Air Pollution Control Advisory Council are attached to the Department as mandated by law. The Boards meet about every other month in an advisory capacity only. The Department presents all the rules and statute changes to the Councils for feedback. The Councils can bring issues to the Department that they perceive as needing changes.

John Arrigo is the Administrator of the Enforcement Division which follows up on all complaints and addresses the management and enforcement issues related to viable complaints.

Steve Welch is Administrator of the Permitting and Compliance Division which does all the permitting in every medium including

water quality, air quality, solid waste, junk vehicle, public water supply, and hazardous waste. Thousands of permits and licenses are completed every year. Compliance activities include the onsite inspections and to record reviews.

Art Compton is the Administrator for the Planning Prevention and Assistance Division which handles the nonregulatory activities of the agency. The Pollution Prevention Bureau handles all the recycle, reuse, and source-water protection programs. The Technical Financial Assistance Bureau assists local governments through grants and loans and works with the local entities in developing projects such as water and waste-water treatment facility as well as for energy projects.

{Tape: 2; Side: A; Approx. Time Counter: 10 - 17}

Total maximum daily load(TMDL)program is the one of the major projects being handled by the Department. The District Court has ordered that the TMDL has to be determined for all the 91 watersheds in the State by 2007. The Legislature mandated the Department to utilize a voluntary program which is very controversial and stressful for the employees. Most of the load problems are nonpoint source, or they originate from land-use activities that people have engaged in for generations and are reluctant to change.

Sandi Olsen is Administrator for the Remediation Division. This Division is charged with the underground tank cleanup and the Superfund projects for both State and federal projects. Federal Superfund activity works closely with the EPA. The Underground Tank Program includes permitting, corrective action and cleanup plan. The Division handles the management of the fund which is derived from a tax on gasoline.

{Tape: 2; Side: A; Approx. Time Counter: 17 - 24}

Director Sensibaugh said the largest part of the agency funding is State Special Revenue derived from fees. Five percent of the budget is from General Fund, and the balance is federal funding with the bulk of that coming from the EPA and grants from the Department of Interior(DOI) and the Department of Energy(DOE). State-only programs are primarily funded by General Fund as is much of the activity in TMDL and pollution prevention efforts.

The Enforcement has a large percentage of General Fund because the handling of enforcement and complaints is done for the citizens of the State. The industry or fee-payers do not want to have their fees fund any enforcement action against them.

Central Management has some General Fund for the Board of Environmental Review.

Director Sensibaugh stated that the Environmental Impact Statement(EIS) grant writers are now situated in the Director's office. Environmental reviews are required for all the agency decisions. Environmental Assessments(EA) are funded internally out of the related program. EIS are funded by the project fees. The two employees who work to ensure that the environmental documents are complete, concise and correct are assigned to the Director's office. The two employees are funded by General Fund.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 30}

Director Sensibaugh said the agency receives funds from State Special Revenue through the Resource Indemnity Trust(RIT), bond forfeitures, or fees. Because of the bankruptcy of the Pegasus Gold Mine, the Department is involved with the investment and management of the bond forfeiture for the reclamation of the mine site. Long-term water management money is included in bond forfeiture and will remain in the budget for years.

Director Sensibaugh stated that fees are the second largest funding source for the Department. The RIT fund from the HazWaste CERCLA and the EQPF accounts provides ten percent of the agency funding, and the orphan share is 3.9 percent. The LFD has listed a concern about the funding level in those accounts for the biennium.

Director Sensibaugh reported that the bulk of DEQ federal funding comes from EPA because the Department runs delegated programs for them. The Department has match requirements which demand State money which is either fees or General Fund. The Planning Division receives 40 percent of the Federal Funds, Central Management receives a small amount, Permitting has 27 percent, Remediation has 28 percent, and Enforcement receives about one percent of those federal funds.

Director Sensibaugh continued, stating that because of high turnover and an inability to recruit and retain qualified personnel, DEQ went to an alternative pay plan in 2002. The Department of Administration completed a market survey of all the job classifications within the DEQ.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 9}

Director Sensibaugh said that each Division reviewed operating expenses, vacancy savings and turnover to determine how much

funding they had available for the alternative pay program. They assessed what the Division would save by having trained employees who could be retained. This information was used to determine the amount of funding available for raises. Each employee was paid at the entry-level salary from the market survey for their position. In some cases that gave employees a tremendous wage increase because they had been so far under the starting salary for like jobs. Any employee being paid at the market salary did not get a raise. Those employees who were between entry and market-level were moved up five percent.

Director Sensibaugh said that in some cases the money for alternative pay came out of operating expenses, in some cases it came out of vacancy savings, and in some cases it came out of commitments not to fill positions at all. The managers felt that if competent trained employees could be retained, the work could be completed with fewer employees. Positions were left vacant, and the savings were used to cover the alternative pay plan.

Director Sensibaugh stated that when the DEQ budget was put together, the agency subtracted the amount of money that will go to fund the alternative pay from the next biennium.

SEN. NELSON asked if any employees who were above market base at the time of the increase, had left DEQ. **Director Sensibaugh** said that no one left for that reason. Qualified applicants are applying for every job posting. The agency has seen a marked return on the investment in the alternative pay program.

Director Sensibaugh said that the base adjustments addressed through the DPs stem from the fact that the agency had so many vacancies during the last biennium. Some programs had 50 percent vacancy which means the personal services and operating expenses were not being expended. The base adjustments are related to those vacancies.

{Tape: 2; Side: B; Approx. Time Counter: 9 - 15}

Robin Trenbeth, Chief Information Office, DEQ, said the ongoing maintenance costs for Enterprise Database are a part of the improved information technology(IT) plan at DEQ. That plan has been approved by the Department of Administration Information Technology Services Division(ITSD). In 1995 the Department was a part of a consolidation of several State agencies and divisions. This necessitated the development new databases, new applications, and new ways of processing information to comply with statute.

Robin Trenbeth stated that the Enterprise Database is an application of how the Department does its day-to-day business. When DEQ was reorganized there were 160 different databases using different software. The current system is an effort to consolidate those into approximately 25 Oracle databases which can communicate with each other.

Robin Trenbeth said the system now offers customer-focused web access. With increasing public interest in DEQ activities, the agency is trying to reach out to their customers which include the regulated community, the public, and State and federal agencies including the EPA.

{Tape: 2; Side: B; Approx. Time Counter: 15 - 20}

In response to questions from CHAIRMAN PATTISON, **Robin Trenbeth** explained that the Department is trying to communicate with the EPA, and to provide scientific data for the engineers associated with the regulated industry, and the public. This is accomplished through scientifically oriented databases or through the website.

Robin Trenbeth said that when describing the Enterprise Database, an individual is talking about how the different Divisions and Bureaus are doing business; how they are processing information. The system uses core information and builds on it to help support a particular business process that might be ongoing across several Divisions. The database delivers more relevant information to the place it is needed at the right time. Cost savings result when the collected information is standardized, institutionalized, and shared.

Robin Trenbeth said the request for Enterprise Database maintenance is approximately \$383,000. The funding is for ongoing and one-time expenses. One-time maintenance is for events that trigger modification to the database such as EPA rules changes. Ongoing maintenance is for charges from ITSD for housing the information, trouble shooting, and hardware and software upgrades.

{Tape: 2; Side: B; Approx. Time Counter: 20 - 25}

Robin Trenbeth said the One-Stop Grant Reporting is a federal grant for \$500,000 and is addressed in DP88. The purpose of the grant money is to allow the public better access, to improve communication with the regulated community, and to improve the Department's business processes.

Robin Trenbeth reported that database consolidation is reducing the 160 different databases and is improving the quality and quantity of the information across the different programs.

{Tape: 2; Side: B; Approx. Time Counter: 25 - 30}

In response to questions from CHAIRMAN PATTISON, **Robin Trenbeth** said that hits to the website have increased 440 percent in the last two years. Interest is coming from the environmental groups, regulated industry and the public. They are primarily seeking information on EIS and new rules. The permit process can be completed online including the application process, clarification of facts, clarification of comments, and notice of appeals and hearings dates.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 5}

Robin Trenbeth said that it is extremely important for the Department to use all the information available to help support the decisions that the agency makes.

{Tape: 3; Side: A; Approx. Time Counter: 5 - 10}

SEN. TASH asked if part of the system would help accomplish the goal of "One-Stop Shop" permitting process. **Robin Trenbeth** said that the program was part of the One-Stop Reporting grant.

SEN. TASH asked how well the system is that working, and how long it has been in place. He asked, "What is the measure of how it is working?" **Robin Trenbeth** said the entire system is not in place yet, but the increase in the use of the website indicates that some of the improvements that data processing is implementing are very successful.

SEN. BUTCHER asked if the Department is tracking how much faster the decisions are being completed. **Director Sensibaugh** said that permit time frames are set by statute. Enforcement can respond to complaints more quickly. The greatest improvement has been in the ability to exchange information.

SEN. BUTCHER commented that DEQ must get "jerked around by the feds" a great deal. **Director Sensibaugh** said that because the Department has delegated programs from EPA and the Office of Surface Mining(OSM) for coal programs, the agency has must meet a lot of reporting requirements. Federal agencies now require all reporting through the database. The Department spends a lot of time and resources making sure that Department databases meet the federal requirements.

SEN. BUTCHER said, "With the change in the administration in DC, the government must be developing a little bit more reality in what the feds are mandating, rather than continuing to pile up more and more requirements, along with collecting piles and piles of data that may or may not be useful." **Director Sensibaugh** replied that the Department has not seen any relief in the database requirements. One of DEQ's frustrations is that the federal government mandated the Department to maintain the databases. The federal government did not provide any additional funds to allow the states to use the new databases that the federal government was using.

{Tape: 3; Side: A; Approx. Time Counter: 10 - 15}

SEN. TASH asked if the EPA would like to speak. **Julie Dalsoglio, Deputy Director, Environmental Protection Agency (EPA)**, said that Director Sensibaugh is correct in that the federal government is requesting more and more information. While the federal government is articulating that they are allowing more flexibility to the local governments, concurrently there is a demand for more accountability. The One-Stop Reporting Grant has been a response to the States' complaints that the database had become fragmented.

CHAIRMAN PATTISON stated that he found it disturbing that a large database exists in an effort to try to regulate, dictate or control what is done in the State of Montana. **Julie Dalsoglio** responded that she felt databases have become very fragmented as different organizations have designed different databases for the kinds of information they are collecting. The challenge is to create systems that talk to one another.

{Tape: 3; Side: A; Approx. Time Counter: 15 - 21}

SEN. TASH commented that the need is not only for the systems to talk to one another, but also to satisfy standards and objectives that are consistent. He said, "Region to region there is a difference in standards and compliance to those standards."

Director Sensibaugh commented that in August the Department reduced General Fund by an additional \$1.6 in response to the executive request. Those cuts will be represented in the DPs. The Director will present the additional cuts necessitated by the Legislative global action.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JEFF PATTISON, Chairman

ELAINE G. OLSEN, Secretary

JP/EGO

EXHIBIT (jnh24aad)