MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on February 18, 2005 at 9:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:
Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Rep. Rosalie (Rosie) Buzzas (D)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)

Members Excused: Rep. John L. Musgrove (D)

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Doug Schmitz, OBPP Representative
Barbara Smith, Legislative Branch

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

Committee Business Summary:
Hearing & Date Posted:
Executive Action: HB 2

Marvin Miller, Montana Bureau of Mines and Geology, addressed the Committee on the Groundwater Assessment Program which receives funding from the Resource Indemnity Trust (RIT) Account. He informed the Committee that they historically have had their budget approved by the Education Subcommittee. The Education Subcommittee approved their budget including $252,000 spending authority and $100,000 for groundwater assessment. He indicated that the Natural Resources and Commerce Subcommittee had appropriated all $250,000 in the RIT Account. He wanted to educate the Committee on the Bureau.

Tom Patton, Program Chair of the Groundwater Assessment Program, provided a brief overview of the Groundwater Assessment Program. Discussing who used the Program, what information they provide, the accessability, and where the Program was headed. He also provided the Committee with a handout depicting the funding history and a handout from the Education Subcommittee with the New Proposals from the Groundwater Assessment Program. On the last handout he clarified that NP 2 and NP 3 had been approved by the Education Subcommittee.

EXHIBIT(jnh40a01)
EXHIBIT(jnh40a02)
EXHIBIT(jnh40a03)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 18.7}

Barbara Smith clarified that by statute the overage in the groundwater assessment account should be returned to the corpus of the trust. Then the corpus of the trust, above $100 million, would be appropriateable. She provided a handout which showed the excess RIT corpus and the different options provided by the Department of Environmental Quality. She noted that the Gallatin Environmental Impact Statement (EIS) was present at $250,000 and was contingent on SB 376. She clarified that the Committee was limited to $252,000 of excess RIT corpus. She provided two options: 1) reduce the EIS amount or 2) wait until SB 376 went to the Senate floor and deal with the RIT funds in House Appropriations.

EXHIBIT(jnh40a04)

{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 22.7}

REP. BUZZAS assumed that the language was contingent on passage of SB 376. She also assumed that if the RIT funds were not fixed in the Committee, they would be addressed in House Appropriations.

Ms. Smith affirmed both of these assumptions. She also noted that SB 376 had backup funding to the General Fund. She conveyed that the Committee could wait and see where the funding source was going to come from or they could reduce the EIS amount. She clarified that EIS typically ran $350-400,000 in cost.

Richard Opper, Director of the Department of Environmental Quality, related that the Gallatin EIS was different in that it was a socioeconomic study, determining the impacts of maintaining a certain water quality on the river. Because it was different they felt that they would be able to do the EIS cheaper although $250,000 was still pushing the limits.

SEN. HAWKS inquired about the duration of the study.

Mr. Opper responded that they were hoping to get it done within a year, if they had full funding. He noted that the Department had no position on the designation of the river as an Outstanding Resource Water and wanted the EIS to determine the impacts of such a designation.

Doug Schmitz stated that the request for the EIS had been coming to the Governor's Office for three biennium, for $250,000 each time. He mentioned that SB 376 had no appropriations in it, only an order to the Board of Environmental Review to get the EIS done in one year.

Mr. Schmitz indicated that they had assumed SB 376 would have 100% General Fund since there was no appropriation designated.

REP. BUZZAS commented that the Committee still needed to allocate money to the bill. She felt that either they had to reduce the amount to $150,000 and find the remaining amount somewhere else or get rid of the EIS. Her preference was to change their action in the Committee so there wouldn't be confusion with amendments.

CHAIRMAN RIPLEY indicated that there was also a problem with the Coal Tax Shared Account which they had allowed to proceed to full Appropriations.

REP. BUZZAS felt that the problem was that two subcommittees had appropriated money from the same account.

Ms. Smith related that the Gallatin EIS DP was contingent on the passage of SB 376. However, she explained that $153,556 was what the Committee needed to reduce in order to make the account balanced.

SEN. HAWKS inferred the assumption was that the appropriation for the EIS was underfunded and that the Education Subcommittee would get its full appropriation amount which was requested.

REP. BUZZAS clarified that they would have to appropriate approximately $97,000 from the General Fund to make the study funding complete. She noted that the Agency traditionally came through the Education Subcommittee and that its source of funding has been the RIT Account.

Mr. Opper suggested there was money from the Junk Vehicle Fees that would be a source of funding to balance out the EIS funding.

{Tape: 1; Side: A; Approx. Time Counter: 22.7 - 45.8}

CHAIRMAN RIPLEY clarified that Mr. Opper was suggesting to take the $97,444 out of the Junk Vehicle Fees.

Mr. Opper affirmed this statement.

SEN. HAWKS wanted to know why it was necessary to make the DP contingent on SB 376 if the Committee decided that it should be funded and provided a source of funding.

Ms. Smith agreed that it did not have to be contingent. She inquired if the use of Junk Vehicle Fees would increase the grants to counties.

Mr. Opper denied that it would change the grants.

{Tape: 1; Side: A; Approx. Time Counter: 45.8 - 48.7}

SEN. HANSEN thought that the money from the Junk Vehicle Fees was allocated to permits on the feedlots.

Mr. Opper responded that not all of the money was intended for feedlots but there was $300,000 earmarked for reduction of the permitting prices of feedlots.

SEN. BARKUS wondered why the study had not been funded if it had been requested for the last six years.

Mr. Opper suspected that there was pressure to fund the EIS and there was more attention drawn to it for the simple fact that there was a bill addressing the issue.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.9}

SEN. BARKUS was curious as to how the pay plan would be supported.

Mr. Patton explained that if the pay plan part of proposal was not approved, there would be an equivalent amount of money for travel increases that could be used. However, this would require cutting the travel of employees. He discussed the travel situation currently and what would happen if it received decreased funding.

Mr. Schmitz added that one of the difficulties faced by the Bureau is that their FTEs were not included in the base of their budget. He mentioned that they have never had a pay plan increase.

Ms. Smith informed the Committee that if they wished to set aside money for the pay plan and leave it in the excess corpus, it would leave $131,281 that would need to be funded to bring up the balance to $250,000 for the EIS.

{Tape: 1; Side: B; Approx. Time Counter: 3.9 - 9.3}

REP. MCNUTT felt that it was time the Bureau had money for their pay plan.

Allen Puera, Associate Fiscal Analyst for the Education Subcommittee, explained why the Education Subcommittee had not approved New Proposal 1, related to personal services.

{Tape: 1; Side: B; Approx. Time Counter: 9.3 - 12.4}

REP. BUZZAS asked what the other small agencies were that did not have the adjustments to the pay plan accepted.

Mr. Puera replied that the Agriculture Experiment Station, the Extension Services, the Forest Conservation Program and the Fire Services Training School were the other four agencies.

REP. BUZZAS asked which was the smallest of the agencies.

Mr. Puera claimed that the Fire Service Training School was the smallest and the Forest Conservation Program received the least amount of state funding.

SEN. BARKUS wondered if the other agencies had personal services included in the base.

Mr. Puera related that some were included but some were not. For example, the Agriculture Experiment Station and the Extension Services had approximately 70% and 76% of present law adjustments covered.

{Tape: 1; Side: B; Approx. Time Counter: 12.4 - 15.6}

CHAIRMAN RIPLEY inquired if the other agencies had mechanisms in place to address raises.

Mr. Puera surmised that the State funds a percentage of the funding for some of the agencies.

CHAIRMAN RIPLEY reiterated that the Bureau has no other way of addressing a pay increase.

Mr. Puera reaffirmed that the Education Subcommittee had heard that information and still made the decision to not fund the Bureaus base adjustments.

{Tape: 1; Side: B; Approx. Time Counter: 15.6 - 18}

Motion: REP. BUZZAS moved to reconsider DP 1012 -- Gallatin River EIS.

Discussion:

REP. BUZZAS informed the Committee that her intentions with this motion would be to take $153,560 from the RIT Account and $96,444 from the Junk Vehicle Fees with coordinating language with the Junk Vehicle Bill. She further suggested an amendment dealing with the pay plan so when the House hears HB 2, the Education Subcommittee would also have input.

Mr. Opper felt that if the Committee was going to pass REP. BUZZAS' motion, there would need to be coordinating language with the bill which assigns appropriations from the Junk Vehicle Fee.

SEN. BARKUS cited that Mr. Opper had indicated the Department would be able to do the study for $150,000.

Mr. Opper clarified that he had meant they would be able to do this particular EIS for less than the normal $350-400,000. He asserted that they would not be able to do the study for less that $250,000.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 24.4}

SEN. BARKUS requested clarification. He wanted to know if the motion ignored the $135,000 pay plan for the Bureau.

Ms. Smith stated that the Committee was not able to address that issue but there would not be enough money in the Account to cover the pay plan. She clarified that the split would be $118,970 of RIT funds and $131,281 from the Junk Vehicle Account if REP. BUZZAS' motion were to leave money for the Groundwater Assessment Program's pay plan.

SEN. HAWKS indicated that REP. BUZZAS' intention was to obligate the funds and then assort it out with the Education Subcommittee as to how this might be done.

Vote: Motion carried unanimously by voice vote with REP. MUSGROVE voting by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 24.4 - 29.5}

Motion: REP. BUZZAS moved to FUND DP 1012 -- GALLATIN EIS WITH $118,719 FROM THE EXCESS RIT CORPUS AND $131,281 FROM THE JUNK VEHICLE FEE. REMOVING CONTINGENCY LANGUAGE WITH SB 376.

Discussion:

SEN. HAWKS thought that the intent had been to pass on discussion of funding the $98,000 for the Groundwater Assessment Program's pay plan to the full Appropriations Committee.

REP. BUZZAS agreed that it had been her intent but SEN. BARKUS had shown that the Committee's actions would impact the money available to fund the EIS and the pay plan.

{Tape: 1; Side: B; Approx. Time Counter: 29.5 - 32.6}

SEN. HAWKS wondered if the excess funds were equally available to the two programs or were there obligations placed on the funds.

Ms. Smith explained that once the money was transferred to the corpus there were no obligations and any committee could use it for any reason.

REP. BUZZAS remarked that the one thing the Committee could control is that the EIS would be funded with the RIT fund in combination with the Junk Vehicle Fees.

Vote: Motion carried 6-1 by voice vote with SEN. BARKUS voting no and REP. MUSGROVE voting by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 32.6 - 37.4}

Motion: REP. BUZZAS moved that DP 1012 -- Gallatin EIS BE AMENDED to include the necessary contingency language with the Junk Vehicle Bill.

Discussion:

Gary Hamel, Budget Manager for DEQ, insisted that there would need to be contingency language because the Junk Revenue Account was a State Special Revenue account and had certain restrictions on how the money could be spent.

Vote: Motion carried unanimously by voice vote with REP. MUSGROVE voting by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 37.4 - 43.2}

Ms. Smith referenced Exhibit 4 which outlined DEQ's options for temporarily fixing the RIT account. She covered all three of the options provided by DEQ and added her own option, 'Option E.'

{Tape: 1; Side: B; Approx. Time Counter: 43.2 - 48.5}

CHAIRMAN RIPLEY inquired if the $600,000 would have to be paid back in all the options.

Ms. Smith affirmed this statement and elucidated that the statute, in regards to the transfer of funds to other accounts, would require payment back to those accounts. She noted that it would perpetuate the problems with the RIT Account.

{Tape: 1; Side: B; Approx. Time Counter: 48.5 - 50.1}

SEN. HAWKS asked Ms. Smith to elaborate on Option E.

Ms. Smith clarified that it would include the Orphan Share transfer, assuming SB 143 would pass, they would then move the money into the two accounts. Then, rather than going into the Rhodia funds, the Committee would request that the Department take $219,814 worth of programmatic reductions, preserving the Rhodia funds.

Mr. Schmitz wondered if SB 143 would have to be amended to allow for the split funding.

Mr. Hamel commented that SB 143 would allow a transfer of up to $600,000 from Orphan Share into either Hazardous Waste Comprehensive Environmental Response and Liability Act (CERCLA) Account or the Environmental Quality Protection Fund (EQPF).

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.1}

SEN. BARKUS wanted to know what would happen to Option E if SB 143 failed.

Ms. Smith attested that it would no longer be viable.

CHAIRMAN RIPLEY mentioned that Option B could be contingent on SB 143.

REP. BUZZAS wanted to know what the Department's feelings were on Option E.

Mr. Opper preferred to avoid program cuts. He felt that Options A and B were viable and that it would be less onerous to spend the Rhodia Funds than it would be to have to make program cuts.

{Tape: 2; Side: A; Approx. Time Counter: 2.1 - 4.7}

CHAIRMAN RIPLEY was concerned with the fact that Options A and B would cause problems with the Orphan Share.

SEN. HAWKS felt that having Option A contingent on the passage of SB 143 and reverting to Option B if SB 143 failed was a viable option.

CHAIRMAN RIPLEY indicated that the reverse would also be viable.

Ms. Smith commented that Option B being contingent on the failure of SB 143 and reverting to Option A if SB 143 passed would be easier to track and in essence would do the same thing.

CHAIRMAN RIPLEY asserted that Option C would be the easiest option.

Motion: SEN. HAWKS moved that OPTION B, CONTINGENT ON FAILURE OF SB 143 AND REVERTING TO OPTION A IF SB 143 PASSED, BE ADOPTED.

Discussion:

SEN. HAWKS stated that the reason he made the movement for either Option A or B was because any of the other options resulted in loss of matching funds or programs.

SEN. BARKUS speculated that SB 143 could be amended.

Ms. Smith suggested that the Committee make a decision on how much private funds they wanted to use, how much programmatic cuts they would want to use and then add language, 'if SB 143 passes they could use the ability to transfer.'

SEN. HAWKS requested the Department comment on the suggestion.

Mr. Opper reiterated that the best option would be Option A reverting to Option B contingent on the failure of SB 143 or the reverse option.

{Tape: 2; Side: A; Approx. Time Counter: 4.7 - 12.1}

SEN. BARKUS asked two questions: 1) what the results would be of using Option C with any funds available from Orphan Share, used at the Department's discretion, and 2) what the original intent was for the Orphan Share Funds.

Mr. Hamel replied to the second question first. It was his understanding that the Orphan Share Funds were originally intended to be used when a mine was abandoned and there was no one available to fund the cleanup.

SEN. BARKUS insisted that the DP was not for a specific project but for operations of the Department.

Mr. Hamel responded that the purpose for the Orphan Share transfer, done last session, was to allow $600,000 to be transferred into other accounts that needed it. After the programs have been closed or finished, the money would be paid back to the Orphan Share.

He then addressed SEN. BARKUS' second question. He informed the Committee that from the Department's prospective, the option would be problematic. The reason for this is that if SB 143 were to fail, there would be a 44% cut in Hazardous CERCLA alone with that level of cut, filled positions would have to be terminated.

{Tape: 2; Side: A; Approx. Time Counter: 12.1 - 19.6}

SEN. BARKUS followed up by stating the definition of the Orphan Share Account.

Mr. Hamel answered that when the transfer was made, the purpose was remedial costs, according to statute. What happens is that funds used for these purposes would then become available for various other purposes. He insisted that the money was used for remedial action costs.

{Tape: 2; Side: A; Approx. Time Counter: 19.6 - 20.8}

CHAIRMAN RIPLEY requested Mr. Hamel address the negative results of Option B.

Mr. Hamel reported that Option B would cause positions which were already being held open to be held open through the biennium. This would result in some remediation work not being accomplished through this biennium.

Mr. Schmitz added that the RIT funding had been a problem for many years. He assured that if the Conservation Districts were attached to the DEQ they would not be in this position. He reaffirmed that the Department was going to have to cut programs which would be very difficult.

Mr. Hamel interjected that he had been studying the RIT Funds and was dedicated to find a way to improve the RIT Funds and find a central body to make the decisions and look at how the funds were being used.

{Tape: 2; Side: A; Approx. Time Counter: 20.8 - 26}

SEN. HAWKS required clarification on the contingency language needed if SB 143 were to change.

Ms. Smith indicated that if SB 143 failed, the Committee would base the intent of funding accordingly. If they amended the bill and the intent of legislative action changed, the decision of the Committee may have to be amended.

SEN. BARKUS wanted to know what would happen if SB 143 passed dramatically changed from its original form.

Ms. Smith indicated that the language added on this day would include the bill as it stands so if it changes dramatically an amendment would have to be made.

REP. BUZZAS suggested making it contingent on SB 143 in its current status.

Mr. Schmitz believed that the bill had been amended down to only the $600,000 and the $2 million had been separated out into a different bill.

CHAIRMAN RIPLEY reiterated that there was too much contingency language and there would still be the problem with the Orphan Share Account. He would support Option B but could not support Option A based on its use of the Orphan Share Account.

Mr. Schmitz informed the Committee that the current status of the Orphan Share Account was $6.1 million. With REP. WINDY BOY'S proposal to move $1.483 million from the Orphan Share, there would be $4 million in the Account.

{Tape: 2; Side: A; Approx. Time Counter: 26 - 33.5}

Vote: Motion carried 4-3 by voice vote with SEN. BARKUS, REP. MCNUTT, and REP. RIPLEY voting no and REP. MUSGROVE voting by proxy.

Ms. Smith provided a copy of a House Joint Resolution. She informed the Committee of the deadline for a Joint Resolution that would provide suggestions of dealing with the RIT Funds. She also informed the Committee what it would take to have a Joint Resolution.

EXHIBIT(jnh40a05)

Motion/Vote: REP. MCNUTT moved to make a JOINT RESOLUTION to deal with the RIT Account. Motion carried unanimously by voice vote with REP. MUSGROVE voting by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 33.5 - 40}

Mr. Opper questioned what would happen if SB 143 changed to $590,000. He wanted to know if that would change the status and keep the Department at Option B.

Ms. Smith suggested that she work to find appropriate language and address the issue in House Appropriations.

REP. BUZZAS felt that the intent was clear so she supported the follow up in House Appropriations.

SEN. HAWKS clarified that his intent was if SB 143 were to change, the decision would be reanalyzed.

SEN. BARKUS asked if it would be simpler to appropriate the amount that is approved in SB 143.

{Tape: 2; Side: A; Approx. Time Counter: 40 - 49.7}

Motion/Vote: SEN. HAWKS moved that OPTION B, CONTINGENT ON FAILURE OF SB 143 AND REVERTING TO OPTION A IF SB 143 PASSED, BE AMENDED TO INCLUDE ADDITIONAL LANGUAGE. Motion carried 6-1 by voice vote with REP. RIPLEY voting no and REP. MUSGROVE voting by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.8}

REP. BUZZAS left the meeting at 10:25 A.M.

Motion/Vote: REP. MCNUTT moved that CLOSE DEQ BE ADOPTED. Motion carried 5-0.

REP. BUZZAS returned at 10:35 A.M.

{Tape: 2; Side: B; Approx. Time Counter: 4.8 - 5.4}

Ms. Smith discussed the handout she provided, informing the Committee on the DP concerned with the Trust Land Management Division.

EXHIBIT(jnh40a06)

SEN. HAWKS wondered what the risk would be if the Department of Natural Resources and Conservation (DNRC) was not reopened.

Ms. Smith replied that DNRC would then have to ask for an amendment or find it in other authority.

{Tape: 2; Side: B; Approx. Time Counter: 5.4 - 8.6}

There was a memo provided which was not discussed during the meeting.

EXHIBIT(jnh40a07)

ADJOURNMENT

Adjournment: 10:45 A.M.

_____
REP. RICK RIPLEY, Chairman

_____
BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT(jnh40aad0.PDF)