



Select Committee on Efficiency in Government

62nd Montana Legislature

SENATE MEMBERS

JON SONJU--Chair
EDWARD BUTTREY
MARY CAFERRO
JIM KEANE
EDWARD WALKER
DAVID WANZENRIED

HOUSE MEMBERS

MARK BLASDEL
RON EHLI
GALEN HOLLENBAUGH
PAT NOONAN
SCOTT REICHNER
KATHLEEN WILLIAMS

COMMITTEE STAFF TEAM

DAVE BOHYER, Lead Staff
DAVID NISS, Staff Attorney
DAWN FIELD, Secretary
SUE O'CONNELL, LSD, Health Care
SONJA NOWAKOWSKI, LSD, Nat'l Res.
QUINN HOLZER, LFD, Health Care
TARYN PURDY, LFD, Budgeting Process
BARBARA SMITH, LFD, Technology
LOIS STEINBECK, LFD, Health Care

MINUTES

January 10, 2012

Room 102, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

Sen. Jon Sonju -- Chair
Sen. Edward Buttrey
Sen. Mary Caferro
Sen. Jim Keane
Sen. Edward Walker
Sen. David Wanzenried

Rep. Mark Blasdel
Rep. Ron Ehli
Rep. Galen Hollenbaugh
Rep. Pat Noonan
Rep. Scott Reichner
Rep. Kathleen Williams

STAFF PRESENT

Dave Bohyer, Lead Staff
Dawn Field, Secretary
Sue O'Connell, LSD, Health Care
Sonja Nowakowski, LSD, Natural Resources
Barbara Smith, LFD, Technology

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

Sen. Jon Sonju, Chair, Select Committee on Efficiency in Government, appointed REP. EHLLI, REP. HOLLENBAUGH, REP. WILLIAMS, SEN. BUTTERY, SEN. KEANE, and SEN. WALKER to the Subcommittee on Natural Resources, with SEN. KEANE serving as Subcommittee Chair.

CALL TO ORDER AND ROLL CALL

- 00:00:00 SEN. SONJU called the Select Committee on Efficiency in Government (SCEG) to order at 8:00 a.m. The Secretary noted the roll, all members were present (Attachment 3). SEN. SONJU reviewed the meeting agenda.
- 00:02:23 **Dr. Hank Gardner, Managing Partner, CEO, HCMS Group, Cheyenne, Wyoming,** discussed his Health as Human Capitol paradigm using a PowerPoint presentation (EXHIBIT 1). Dr. Gardner's presentation highlighted Wyoming's "Healthy Families Succeed" pilot program based on an integrated intervention approach and the Healthy Frontiers healthcare reform demonstration model developed for Wyoming.
- 00:49:28 REP. NOONAN asked how families actually enrolled in the project. Dr. Gardner said that enrollment was voluntary and that almost every family contacted about the program wanted to participate. REP. NOONAN asked how care is coordinated for a family with complex healthcare needs and if case managers are used to help families develop their treatment plans. Dr. Gardner said that the approach is much the same as the old health nurse who would visit families and follow up to keep them on the right track. He said that the program allows families take control of healthcare decisions and coordinates state agencies and services to serve the needs, as well as ensuring that the family has someone to talk to about their needs.
- 00:53:06 REP. EHLLI asked for more discussion on Wyoming's spending on Medicaid and the current status of Wyoming's program. Dr. Gardner said that because Wyoming has a new governor, the program is in transition. He said that regular meetings are being held with Governor Mead and agency heads and that he is hopeful that the program will be expanded beyond the current 1,000 participants. Dr. Gardner discussed expansion plans and projected cost savings. He also discussed the problem of "over labeling" people and use of resources within that group of individuals, which account for a large portion of Medicaid increases.
- 00:58:02 SEN. KEANE said that even though health care costs continue to increase and that all data indicates the need for this type of program, it would still be difficult to convince legislators that the cost would be worth it. He asked Dr. Gardner how a

convincing argument could be made. Dr. Gardner said that SEN. KEANE was correct in that efforts have to start with accurate data analytics but once it is available, sound policy and program decisions can be made. He noted that Wyoming pays \$240,000 for annual data analytics.

- 01:01:16 SEN. KEANE asked Dr. Gardiner to estimate what it would cost to build a similar program for Montana. Dr. Gardner estimated it would cost less than \$500,000. SEN. KEANE asked him to make a more detailed analysis and come up with specific number, both for data analysis and the annual cost of operating the program. Dr. Gardner said he would do that. He said he thought that Montana is "very ripe" for this type of program but would have to be willing to stop "nibbling at the edges" in order to get at the root of the problem, and that a bipartisan committee would provide an excellent vehicle through which to accomplish it.
- 01:04:07 REP. WILLIAMS asked Dr. Gardner to describe in more detail the individual family health accounts in the Wyoming pilot project. Dr. Gardner said that the Wyoming Legislature appropriated funds for a health care account for each family and that each family has control over how it is spent. He said that having control appears to be an important factor in the success of the program and noted that families can contribute to the account. Dr. Gardner said that he would be happy to provide copies of the Wyoming legislation. He also explained how the infrastructure of program was created and how the program is administered.
- 01:08:29 REP. WILLIAMS and Dr. Gardner discussed the importance of hard data for program assessment and outcome measurements. REP. WILLIAMS asked Dr. Gardner to discuss further his warning about the concept of "medical homes". Dr. Gardner explained that hospital "owned" primary care doctors are restricted to operating within that system, which can create a "feeder" system to that hospital and often results in unnecessary tests and treatment, and higher costs. He said he wants primary care providers who are free to make referrals to national experts, rather than limiting the care to Wyoming doctors and facilities.
- 01:12:14 REP. WILLIAMS referred to Dr. Gardner's previous comments regarding costs (*less than \$500,000 to build a program and about \$240,000 annually to maintain it*) and asked if other private partnerships have been considered as a way to help with expenses. Dr. Gardner said he would be amenable to that, under the right circumstances. He said that his long term strategy is to take the program to the private sector in order to decrease the cost of private insurance.

Public Comment

- 01:15:18 **Kristina Davis, Children's Defense Fund**, spoke in support of the Wyoming program, saying that research indicates that multi-dimensional programs that support families increases health and educational success for families.
- 01:16:48 **Jean Branscum, Executive Vice President, Montana Medical Association**, spoke in support of the concepts discussed by Dr. Gardner. She said it is this type of thinking that will help control costs and provide better quality service to patients in Montana.

01:17:24 The SCEG recessed for a 15-minute break, to reconvene at 9:45 a.m.

BREAK

01:41:06 SEN. SONJU called the meeting back to order at 9:50 a.m.

Committee Discussion of "Efficiency" in context of: Health Care, Technology, and Natural Resources

01:41:31 Mr. Bohyer said that the SCEG has not formally identified what it really means when it discusses "efficiencies" and how to identify and characterize them. He asked the members to discuss the term, in the context of health care, technology, and natural resources, and priority budgeting.

01:44:17 SEN. KEANE said he thought that legislator education is an efficiency because legislators make better decisions when operating with a broader knowledge base.

01:45:15 SEN. WANZENRIED said that he asked to have this discussion but had envisioned it taking place much earlier in the process. He discussed his view that the committee should identify what exactly "efficiency" can mean and how to identify and characterize it, and why doing it is important to the committee's work.

01:49:30 SEN. SONJU noted that the SCEG has already started a list of recommendations for consideration. He said that SEN. WANZENRIED made good points and said that the SCEG should discuss this issue at each and every meeting moving forward. He said that efficiency can mean different things to different people, which will have to be taken into consideration.

01:50:56 REP. EHLI said agreed with SEN. SONJU's comments that because the study topic is so broad-based, efficiencies may come in different forms.

01:51:43 REP. WILLIAMS recalled that at the first meeting that the SCEG discussed that efficiency isn't just about making cuts or decreases in services, spending, or programs; and said that she appreciates that.

Technology Subcommittee

01:52:47 REP. HOLLENBAUGH reported that the Technology Subcommittee had tentatively identified 25 recommendations and would finalize its recommendations at the February meeting. **Barbara Smith, Fiscal Analyst, Legislative Fiscal Division (LFD)**, reviewed the 25 recommendations made to date by the Subcommittee on Information Technology (EXHIBIT 2). She explained that she grouped them into four subject areas (*connectivity, consolidation, Montana Information Technology Act, and budget and funding issues*) and that the Subcommittee would use the groups as the basis for its recommendations.

01:55:10 Ms. Smith asked for input from the SCEG and reminded them that the State's strategic IT Plan would be presented to the Legislative Finance Committee (LFC) in March. She also noted that the Montana Information Technology Act (MITA) is being audited by the Legislative Audit Division (LAD) and suggested that the SCEG wait until the audit is completed before making final recommendations.

- 02:00:26 REP. HOLLENBAUGH reiterated that the list is not closed and he encouraged the members to keep suggestions coming.
- 02:01:16 SEN. BUTTREY suggested, in Item 25, that the term "paperless" be changed to "increase online access" or other similar wording. Ms. Smith suggested using "expand electronic opportunities" for online applications.
- 02:02:04 REP. REICHNER said, regarding migration of state agencies to the SMDC, that there is a reason why some departments have not migrated over and may not ever do so. He said that it may not be as easy as mandating that it be done. SEN. SONJU agreed, saying that this issue will be a policy discussion for many state agencies, including the legislative branch.
- 02:05:13 SEN. KEANE commented that no funding was allocated to agencies to cover migration costs to the SMDC so it is only fair that the legislature take some of the responsibility. He also commented on the potential for integration of information technology in natural resources issues, such as online permitting, reporting, and bonding; and said he would like to explore these possibilities further at the February meeting in Bozeman.
- SEN. SONJU commented that SEN. KEANE's point about lack of funding was a good one but that the slow transition to the SMDC could also be attributed to agencies timing their transition with equipment replacement and renewal.
- 02:08:42 SEN. CAFERRO asked if there is a deadline for the Technology Subcommittee to complete its work and what the process will be for addressing any recommendations. REP. HOLLENBAUGH said the Subcommittee will finalize its recommendations at the February meeting and that the recommendations will be presented to the full SCEG in March, which will make all final decisions.
- 02:11:45 SEN. CAFERRO discussed her concern that the Medicaid Subcommittee felt under pressure to complete its work and that the Technology Subcommittee seems to be getting more time than the Medicaid Subcommittee was given. SEN. SONJU, REP. HOLLENBAUGH, and REP. NOONAN responded to her concerns.
- 02:16:53 Mr. Bohyer said that at some point each issue has to be wrapped up in order to allow time for consideration by the full committee, public hearings and comment, and staff time for bill drafting. He said money isn't so much an issue as is committee and staff time and resources.

Health Care/Medicaid Subcommittee

- 02:22:50 REP. NOONAN updated the SCEG on the Health Care/Medicaid Subcommittee's work and said that it focused on trying to find efficiencies within the current system. He said that the Subcommittee received a great deal of public comment and that Subcommittee members are in the process of considering many recommendations. He said that the Subcommittee plans to hold a conference call prior to the February meeting to pare the list down to final recommendations for the full SCEG.
- 02:25:05 SEN. CAFERRO said that the stakeholder input was great and very well thought-out.

- 02:26:12 SEN. WALKER agreed that the work flowed well and that the stakeholders helped the Subcommittee formulate a great list to work with.
- 02:27:22 SEN. SONJU said the next meeting is scheduled for February 6 and 7 in Bozeman, and that REP. WILLIAMS will facilitate the planning. REP. WILLIAMS said that she has coordinated with SEN. KEANE on lining up the natural resources topics and speakers but would also like input from the full committee. She related other details of the tentative agenda, including scheduling, topics, panelists, and speakers.
- 02:33:38 SEN. SONJU made several suggestions, including that the Technology Subcommittee meet on Monday, February 6. He asked SEN. KEANE to work with REP. WILLIAMS and SEN. WALKER on natural resources topics. Mr. Bohyer said it would be very helpful if a Natural Resources Subcommittee was appointed so that he would know who to work with on the natural resources issues. He said that recommendations from the Health Care/Medicaid Subcommittee would be discussed also.
- 02:36:58 SEN. WANZENRIED said that he received an email from a viewer asking to add Medicaid provider rates as a topic for the Medicaid Subcommittee and asked if it was too late for that. SEN. SONJU said if any member has specific concerns to please bring it to him and that he would do his best to make certain the issue is addressed.
- 02:38:58 Mr. Bohyer noted that other interim committees are dealing with other issues that overlap with the SCEG and that there may or may not be value in duplicating efforts. He said that Medicaid provider rates will be addressed later in January by the Children and Families Interim Committee. SEN. WANZENRIED said he thought it would be appropriate for the SCEG to also discuss the topic. He said he would provide information to the chair. SEN. SONJU said the SCEG would review the topic in March after the Children and Families Interim Committee meeting.
- 02:41:06 REP. NOONAN said he thought that the Medicaid Subcommittee will have concluded its work by March so new discussion should go before the full SCEG.

Administrative Matters

- 02:42:07 Mr. Bohyer reviewed a SCEG budget update (EXHIBIT 3). He said that the balance anticipates that some will be spent on consulting services, should the committee choose to retain a consultant, and that there are ample funds to continue the committee's work.
- 02:44:32 Mr. Bohyer said that REP. WILLIAMS has made arrangements to meet on the Montana State University (MSU) campus and that LSD staff will work with MSU staff to ensure that the meeting will be audio and video-streamed. He asked that the Natural Resources Subcommittee be formally appointed and asked if the SCEG wanted to also discuss the WICHE/WAMI programs as another topic. SEN. SONJU asked that the WICHE/WAMI discussion be deferred to March. REP. WILLIAMS said that the language of the bill indicates that the topic is not required to be discussed, so SEN. SONJU could defer it if he wished. SEN. SONJU said that without objection, he would like to pass on that topic for now.

- 02:48:31 REP. WILLIAMS said that MSU President Waded Cruzado is scheduled to address the SCEG on Tuesday and that relevant member concerns could be addressed to her at that time.
- 02:49:07 SEN. SONJU appointed SEN. KEANE as Chair of the Natural Resources Subcommittee, and REP. WILLIAMS, REP. EHLI, and SEN. WALKER as members. He said that all SCEG members are welcome to attend and participate in the Subcommittee meetings.
- 02:49:49 SEN. SONJU discussed the afternoon portion of the meeting agenda and said that the meeting would reconvene after lunch at 12:30 instead of 1:00 p.m. He recessed the SCEG for lunch at 11:00 a.m.

LUNCH BREAK

Natural Resource Regulatory Overview Panel

- 04:32:09 SEN. KEANE reconvened the meeting at 12:40 p.m He referred to a December 19, 2011, memorandum to the SCEG from Sonja Nowakowski. Staff Researcher, LSD, outlining HB 642 requirements regarding natural resource issues and questions to consider (EXHIBIT 4). He suggested that the Natural Resource Subcommittee use the letter as a starting point to pare down the list of potential topics for considerations. SEN. KEANE stated that because of overlapping jurisdictions with the Environmental Quality Council (EQC), the Subcommittee would not address Montana Environmental Policy Act (MEPA) issues. He suggested that work begin with natural resource permitting issues and tax issues and said that there may be a brief Subcommittee meeting after adjournment to plan Subcommittee meetings and study topics.
- 04:37:42 SEN. KEANE said that REP. WILLIAMS requested that the SCEG receive a copy of the *Montana Index of Environmental Permits* prepared by the Montana Environmental Quality Council (EXHIBIT 5). REP. WILLIAMS noted that because of public notice requirements, the Subcommittee could meet later in the day but not take any formal action. SEN. KEANE said that the full committee would discuss the matters he referred to, rather than the Subcommittee, in order to fulfill public notice requirements.
- 04:39:03 **Sonja Nowakowski, Research Analyst, Legislative Environmental Policy Office**, introduced Jason Mohr as a new policy analyst for the Legislative Environmental Policy Office (LEPO) in LSD. She referred to her memo (EXHIBIT 4) and the Index of Environmental Permits handbook (EXHIBIT 5) in her introductory remarks and said that she and Mr. Mohr are at the SCEG's disposal in researching any natural resources issue of concern. Ms. Nowakowski then discussed the evolution of the permitting index book, adding that it is in the process of being updated for the eighteenth time. Ms. Nowakowski also explained how updates are made and noted that there was a significant number of bills approved in the 2011 legislative session that will be included in the update.
- 04:43:33 Ms. Nowakowski discussed how the permitting index is used and the importance of clearly defining the term "permit". She distributed a list of thirteen state executive branch agencies that approve permits or actions related to permits (EXHIBIT 6).

- 04:47:30 Ms. Nowakowski discussed five questions listed in her memo (EXHIBIT 4) and said that staff will need direction on how the SCEG wishes to focus its attention.
- 04:48:28 SEN. KEANE asked Ms. Nowakowski to explain what triggers a MEPA review and the difference between a MEPA review and a permit. Ms. Nowakowski said MEPA review is not a regulatory action and requires that agencies to consider the effects of pending decisions on the environment prior to the decision and that the public must be informed and be allowed to participate in the decision making process, thus ensuring that informed decisions are made.
- 04:50:40 SEN. SONJU also noted that Hope Stockwell, staff research analyst, is a MEPA specialist and available to answer questions.
- 04:51:50 **Richard Opper, Director, Montana Department of Environmental Quality (DEQ)**, applauded the SCEG for its focus on efficiencies in government and said the DEQ shares the vision to deliver government services in a better and more efficient manner. He said the SCEG has incentivized the DEQ to examine its permitting actions and processes. He discussed three specific DEQ permitting programs and the efficiencies gained in each: MPDES program (water discharge permits), open cut program permits, and oil and gas well registration. Director Opper said that DEQ has set efficiency as a priority and is serious about training for managers, and that the Legislature helped by authorizing additional staff and fees. He also said that the DEQ utilizes a "Kaizen process" to streamline processes where ever possible.
- 05:02:11 Director Opper discussed the Major Facility Siting Act (MFSA) and Bakken Oil Field development. He said a major concern right now is the labor camps springing up and the permitting needs there. He said the DEQ is conducting permitting workshops and is working with county sanitarians. Director Opper closed his remarks by asking that the SCEG, when considering proposals, to please consider whether the proposal will fix a problem, rather than create more.
- 05:07:24 **Mary Sexton, Director, Department of Natural Resources and Conservation(DNRC)**, highlighted DNRC's regulatory aspects, including leases and licenses a PowerPoint presentation (EXHIBIT 7). She discussed improvements made in forestry permitting (slash law for logging, streamside management, and best management practices); water resources permitting (beneficial use permit applications), including major changes in water rights laws that impacted permitting processes; and trust lands leases and licenses (grazing leases, commercial timber sales, firewood, decorative rock, oil and gas leases, and cabin lease sites). She said that cabin site leases are the most inefficient and problematic issue that the DNRC deals with and provided several examples. She said that any suggestions from the SCEG on how to reduce the administrative costs and make people happy would be appreciated.
- 05:20:13 Director Sexton discussed technological improvements, specifically the DNRC's digitized state-of-the-art data base that catalogued all of Montana's water rights. She said that even though significant improvements have been made, additional efforts are underway to further improve and streamline application processes and access to information.

- 05:21:49 SEN. SONJU asked about cabin site lease appraisal prices prior to 2009. Director Sexton said that it probably would have been about \$4 million, rather than the \$1.2 million. SEN. SONJU asked if the 28% administrative cost was mostly due to staff time. Director Sexton said yes, and that a good solution would be to sell the sites. *(Copies of the DNRC Compliance and Enforcement Report (EXHIBIT 8) was provided to SCEG members).*
- 05:23:33 **Tom Richmond, Administrator, Petroleum Engineer, Montana Board of Oil and Gas Conservation**, discussed oil and gas production in Montana using a PowerPoint presentation (EXHIBIT 9). His topics included production history, drilling permits, injection permits, and sundry notices, hearing applications (1990-2011), maps of Richland, Roosevelt, and Sheridan Counties, permitting efficiencies created through "super unit" well permitting, well schematics, the Bakken and Williston Basins, and several others. Mr. Richmond noted that drilling permits are issued by administrative staff, not the Board, so long as the permit follows the Board's rules. He reviewed the Board's rules process to be followed.

Committee Questions

- 05:43:55 SEN. WANZENRIED asked if DEQ permitting staff are specialists in a specific field or if they are cross-trained to work in different permitting areas. Director Opper said that most are relatively specialized but that more crosstraining is being done. SEN. WANZENRIED asked about the number of staff devoted to current and projected coal mining permit applications. Director Opper said that coal and open cut staff are in the same bureau. He asked Judy Hanson to provide additional information.
- 05:46:17 **Judy Hanson, Administrator, Permitting and Compliance Division, DEQ**, said that there are about twenty people in the coal permitting program. She discussed changes made over the last several years and the need to move staff from one area to another, depending on economic drivers and other factors.
- 05:47:26 SEN. WANZENRIED asked if the Permitting and Compliance Division is adequately staffed to deal with anticipated growth or if a backlog situation could happen again. Ms. Hanson explained how the DEQ moved staff internally from divisions with decreased permitting activity to divisions that were experiencing increases and backlogs.
- 05:48:28 SEN. WANZENRIED asked, regarding compliance and enforcement, how many staff are available for coal mining permits. Director Opper said compliance is taken seriously but that when times are tight, compliance assistance is often the first activity to go.
- 05:49:46 SEN. WANZENRIED asked about enforcement actions in relation to compliance assistance. Director Opper said that generally speaking, that the less permitting compliance assistance provided, the more enforcement is needed.
- 05:50:39 SEN. WANZENRIED asked, regarding the cabin lease sites issue, if the "no action" alternative took into account the amount of revenue that would be lost due to vacant cabin sites. Director Sexton said that the "no action" alternative did include anticipated vacancies. SEN. WANZENRIED asked how much revenue the "no

action" alternative would translate into. Director Sexton said that she didn't have the number available but would get it for him.

- 05:52:15 SEN. WANZENRIED asked Mr. Richmond about "official" rules for hydraulic fracturing. Mr. Richmond said the official rules are published on the Secretary of State's website.
- 05:52:57 SEN. KEANE asked Director Opper to provide the SCEG with the same information packet he provided to the EQC on enforcement and compliance requirements. Director Opper said he would do so. (*The packet was provided later in the meeting (EXHIBIT 10).*)
- 05:53:28 SEN. BUTTREY asked Director Opper to update his information to reflect how many actual permit applications were made, how many actual permits have been granted, and the backlog. Mr. Richmond said he would provide that information.
- 05:54:32 REP. WILLIAMS recalled hearing that the United States Geologic Survey (USGS) was planning re-evaluate the extent of the Bakken Field and asked if the re-evaluation was reflected in his maps. Mr. Richmond said no, because the re-evaluation process is just beginning and that his information is based on the 2005 evaluation. He said that the USGS believes that the number of "technically-recoverable" barrels of oil needs to be revised upwards substantially and that he agrees with that assessment. He said the ability to recover oil will include new technology that will allow more oil to be extracted.
- 05:56:18 REP. WILLIAMS asked about lateral drilling with brine water versus potable water. Mr. Richmond said potable water is only needed for hydraulic fracturing. REP. WILLIAMS asked about the criteria necessary for underground injection to fall under the authority of the Environmental Protection Agency (EPA) rather than State authority. Mr. Richmond explained the primacy delegation split between the different classes of wells and said that the state could apply for primacy for all well classes but that doing so would carry substantial impacts.
- 05:58:52 REP. WILLIAMS asked about reinjection of waste water from drilling and/or fracing and if that falls under Montana's authority or EPA authority. Mr. Richmond said that it depends on how the fluid is classified. He said that if the fluid contains wastes other than what are associated with Class 2 wells, it would fall under EPA authority.
- 06:00:08 REP. REICHNER said that the cabin site lease issue was particularly troublesome in the Flathead area. He referred to Director Sexton's slide (EXHIBIT 7) and discussed his concerns about how the numbers were calculated. Director Sexton said that she isn't certain what the new numbers will be. She said that no decision has been made and that a number of lease holders have expressed interest in buying their lease site, which she thinks should be explored. She discussed the issue further, including how Idaho has moved forward on this same issue.
- 06:03:48 REP. REICHNER discussed several concerns about valuation of the sites and asked if it would be possible to go back and re-evaluate them, now that more data is available. Director Sexton said that she would like to do that and discussed how it

could be done. She said that new data will be available each year and reassessments could be made but that if the issue goes to court, "it will be a whole new ball game".

06:06:08 REP. HOLLENBAUGH asked for an update on the Water Court and what efficiencies may be found there. Director Sexton said that the new water judge position will soon be advertised and the new judge is scheduled to begin in July. She said that hopefully that will help with the bottleneck in the Water Court.

06:07:18 SEN. KEANE asked, if cabin sites are sold, where the income would go. Director Sexton said that it will go into land banking. She discussed several different options on how it could be used.

Public Comment

06:08:42 No public comment was given.

Natural Resources Permitting Perspectives Panel

06:08:51 Ms. Nowakowski introduced the panelists and noted that Van Jamison of Gaelectric could not attend the meeting but that he provided written comment in the meeting packets (EXHIBIT 11). SEN. KEANE noted that Mike Rowland was invited but could not attend the meeting, but would address the SCEG at a later date, if desired.

06:10:18 **Bud Clinch, Executive Director, Montana Coal Council**, spoke on behalf of Montana's six operating coal mines. His comments were specific to the production of those mines and DEQ's regulatory program that oversees coal mining in Montana. Mr. Clinch's discussion points included state, national, and global demand for coal, particularly for low sulphur coal; development of coal resources; the assault on coal-fired facilities nationwide; air quality issues; export issues and the lack of terminals in the United States; and two proposed new coal ports in Washington.

06:14:28 Mr. Clinch discussed Montana's regulatory program as it relates to efficiencies for coal production and proposed rules. He said that the DEQ's requirements are more rigorous than those of the federal government and that would be beneficial to look at the differences between Montana's requirements and the overarching federal requirements to see if there are any that have outlived their usefulness. He suggested that a side-by-side comparison be made of the federal OSM requirements with DEQ requirements because updates are needed. Mr. Clinch said his association's intention is not to short cut or strip environmental safeguards but to find and eliminate unnecessary provisions in order to create efficiencies for both the coal companies and the DEQ.

06:19:44 Mr. Clinch explained the comprehensive and exhaustive nature of the coal permitting process and said it is becoming more and more difficult and drawn out. He discussed his concerns about permit review times and reporting requirements. He said that one of the most important efficiencies to be gained would be to fully staff the DEQ so that the permitting process could move along more quickly. He made several suggestions on how best to do that.

- 06:23:59 Mr. Clinch discussed the logistics of having multiple staff people dealing with hard copies of permitting and review documents, which are often very large documents. He said that the DEQ transitioned to electronic submittal of these documents and that while the industry initially resisted, the change did result in relieving a number of issues and substantially improving the process.
- 06:28:21 Mr. Clinch said, through the time spent working with the DEQ on the electronic filing issues, that both sides developed a greater appreciation and mutual respect for one another. He discussed how the more open and enhanced communications have helped work through issues more easily, which has created efficiencies for both entities.
- 06:30:06 Mr. Clinch said that despite the improvements made, a great number of problems remain. He listed a number of them, which included removing the uncertainty of certain reclamation review and approvals, to gain more flexibility in reclamation techniques, have a quicker turn around time on request and review processes, and repeal of unnecessary requirements in Montana law and rules that are not required by overarching federal standards or that don't provide specific benefits to Montana. He said that the industry plans to pursue all of these concerns, either through discussion with the DEQ or through proposed rule changes and/or legislative measures.
- 06:31:00 Mr. Clinch said that future coal development and expansion will be driven by demand, both nationally and globally; and that the ability to meet that demand will be affected by a number of issues, many of which will be out of the state's control. He discussed how challenges and efficiencies could be met at the state level.
- 06:31:55 SEN. KEANE said that the SCEG is looking for specifics and asked Mr. Clinch to submit his comments in written form with specific suggestions. Mr. Clinch said he would do that.
- 06:33:29 **Dave Galt, Executive Director, Montana Petroleum Association (MPA)**, said that the MPA has spent a great deal of time discussing HB 642 and his comments today are a result of those discussions. Mr. Galt read a statement into the record (EXHIBIT 12) which addressed the following discussion points:
- the availability and convenience of online production data and the use of the *FracFocus* system;
 - Montana's production tax, which included a production price graph for vertical versus horizontal wells (EXHIBIT 13);
 - property taxes and MPA members' significant classification and valuation issues with the Department of Revenue (SB 415 - EXHIBIT 14);
 - environmental issues, which included air quality issues and the DEQ's air registration program, and the need for water discharge permits in developing temporary workforce housing (EXHIBIT 15); and
 - the critical need for access to public lands (SJ 6 - EXHIBIT 16).
- 06:45:23 **Jeff Fox, Montana Policy Associate, Renewable Northwest Project (RNP)**, said the Project is a nonprofit advocacy group. He explained the structure of the group

and listed a small sampling of the RNP's membership, saying that a number of diverse views and positions are represented. Mr. Fox said:

- regarding permitting processes for in-state natural resources development projects, that all energy development projects have impacts and that it is the RNP's view that identifying, mitigating, and considering development projects in their entirety is critically important to making responsible energy development choices;
- that his industry believes that renewable energy products are environmentally superior to other forms of energy development and any action that would unduly cut short the environmental scoping in consideration of energy development projects in the state could artificially favor projects with known impacts over cleaner, less-impactful alternatives;
- that the RNP also recognizes that existing regulations often are overly burdensome and don't work as intended. He discussed, as an example, how the wind industry avoids school trust lands as means of avoiding certain regulations;
- the lack of regulatory oversight of wind energy and how that has affected wind energy projects in the State;
- that because Montana is so lacking in electrical transmission capability, it is not able to meet its full potential in wind energy;
- the dual-track permitting process of the MFSA and the MEPA often seems duplicative and burdensome to transmission developers. He noted that, however, the process does ensure good legal standing, should the transmission project head to litigation.

Mr. Fox discussed concerns regarding transmission projects in Montana, including legislative attempts to clarify existing law and allow more flexibility in the permitting process through HB 198, SB 206, and SB 320.

06:53:05 Mr. Fox said that members in his industry have concerns about the ability of the DEQ to stick to deadlines for processing deadlines in a timely manner. He suggested modeling a policy similar to that used by the Federal Energy Regulatory Commission (FERC). He explained FERC's policy and said that it help keep over-worked DEQ staff on track. He thanked the SCEG for the opportunity to comment and said that while the RNP is generally satisfied with permitting in Montana, there is always room for improvement.

Committee Questions

06:54:53 SEN. WANZENRIED asked Mr. Clinch if the Montana Coal Council has a specific list of outdated provisions of state law that the SCEG to consider. Mr. Clinch said that the Board has some documents prepared but that some concerns still need to be worked out, due to differences in federal and state regulatory language; and that the Board intends to continue work on this. He suggested that a good starting point would be for the DEQ to update a chart, created in the 1990s, that was a side-by-side comparison of federal and state requirements that apply to strip mining in Montana.

06:56:48 SEN. WANZENRIED asked if Mr. Clinch could provide a list of clearly outdated and unnecessary regulations. Mr. Clinch said he could, and discussed several examples.

SEN. WANZENRIED restated his request that Mr. Clinch provide a copy of the list to the SCEG. Mr. Clinch agreed to do so.

- 06:59:18 REP. HOLLENBAUGH referred to Mr. Galt's comments regarding tax protest and appeals, and asked Mr. Galt for examples or ideas on how to address those concerns. Mr. Galt said that there has been proposed legislation in 2009 and 2011 that dealt with the State Tax Appeal Board (STAB) and that his intention in mentioning this issue was to have it on record with the SCEG as an "impediment to development". He asked that the SCEG monitor the SJ 17 study resolution because it would provide specific examples of what is at stake.
- 07:00:39 REP. HOLLENBAUGH said, regarding comments heard from Mr. Clinch and Mr. Galt about state and federal regulations, that there seems to be a certain amount of conflict between the two industries, with the DEQ caught in the middle. He asked for suggestions on how to navigate between these regulations and directing the DEQ in their regulatory and administrative requirements on which federal rules should be emphasized over state rules.
- 07:02:08 Mr. Clinch said that there must be a clear distinction between the needs of the two different industries. He said that his comments were directed mainly to the federal requirements in the Surface Mine Control Reclamation Act, which covers all coal mining land ownerships. He said he is suggesting looking at Montana's laws and rules, compared to the federal rules, to see if there are rules and requirements that are above and beyond what is being required federally and that are not unnecessary and are not providing a benefit.
- 07:03:27 Mr. Galt said that the MPA recognizes that the EPA has primacy over all programs and that any program changes have to be approved by the EPA. He said that the examples he discussed regarding air and water quality programs where DEQ fought with the EPA over proposals approved by the state legislature was a good thing and that he would like to see more of that. Mr. Galt said that he has repeatedly stated that some of the regulations are detrimental to industrial uses but that they have to be "unwound" at the federal level because if not, the result could be two sets of regulations: one at the federal level and one at the state level. He said industry does not want that.
- 07:04:55 Mr. Galt said another issue is bureaucratic management decisions. He said that land control is a serious issue for oil and gas development in Montana and that SJ 6 in the 2011 session (EXHIBIT 16) was intended to begin to address these concerns. He discussed how North Dakota land ownership differs from Montana's and how that impacts oil and gas development, He said this is a serious issue that the oil and gas industry wants on record with the SCEG.
- 07:06:28 SEN. WANZENRIED asked if the industry would support exemptions for permitting programs. Mr. Clinch said he thought his member companies would support that in the context of the permitting programs they are involved in. He discussed that position further. Mr. Galt said that MPA has testified against vacancy savings for the DEQ because of this issue.

- 07:08:30 SEN. KEANE said, regarding permitting concerns, that he is hearing from Mr. Galt that overall, Montana's permitting process is working well. Mr. Galt said yes, that the permitting processes that go through the Board of Oil and Gas are working well and that the concerns about DEQ's permitting processes, were outlined in his testimony.
- 07:09:48 SEN. KEANE said that coal mining is under federal jurisdiction and asked about the differences between permitting processes in Montana and Wyoming. Mr. Clinch said that theoretically, the permitting processes should be identical but that there are slight differences. He said that it is fairly universally agreed that the regulatory department staff in Wyoming have a different mind set than do Montana's, and that he has been told by member companies who do business in both states that Montana's regulations are more difficult and cumbersome to comply with. Mr. Clinch clarified that leasing land for coal development is equally cumbersome in both states. He said that his comments were mainly directed toward mine operating plans that have to be reviewed and approved by the state.
- 07:14:03 SEN. KEANE asked Mr. Fox to discuss further his comments regarding wind industry's reluctance to come under the review of the DEQ by building energy projects on private land. He asked how the RNP Board deals with that. Mr. Fox said that 90% of all wind development nationwide occurs on private property. He said there are great wind resources to take advantage of, and given the choice, the strong preference has been to develop on private property because of less regulatory oversight and benefits at the local level.
- 07:16:31 SEN. KEANE suggested that it would be beneficial for wind energy people to meet with the DNRC in order to improve their relationship, which could facilitate more development of wind energy on school trust lands. Mr. Fox said that he is interested in doing that.
- 07:16:57 REP. WILLIAMS said that she has toured the Williston Basin area and agreed that worker safety should be a consideration. She asked Mr. Galt if he would agree that "fast is not always efficient". Mr. Galt said that he gave the SCEG an analysis of Montana and North Dakota requirements for development of a discharge permit for a temporary workforce facility (EXHIBIT 15), which was completed by an experienced professional engineer. He said that the SCEG needs to study the information consider what needs to be done. He said that the MPA supports having clean air and water but that there is a difficulty in getting inspectors to the sight.
- 07:19:37 REP. WILLIAMS asked if Director Opper could ask his staff to study Mr. Galt's comparison matrix and respond to her personally. Director Opper agreed to do so.

Public Comment on natural resources panel discussions

- 07:23:13 **Clayton Elliott, Northern Plains Resource Council (NPRC)**, provided a copy of the Legislative Audit Division's performance audit of the Board of Oil and Gas Conservation Regulatory Program (EXHIBIT 18). He said the audit has good recommendations that the SCEG may want to consider.
- 07:24:22 **Steve Wade, Montana Contractors' Association**, said the Association is very pleased with the efficiencies made in the open cut program permit process for gravel

pits. He reviewed a number of the improvements. Mr. Wade also discussed several issues still in need of improvements, including how to improve email communication capability in order to further minimize delays. He said that certain efficiencies could also be applied to other programs to eliminate duplicative analysis and review. He said he thought it would be worth the SCEG's time to determine when dual analyses are occurring and if the analyses are the functional equivalent of one another, create one straightforward process.

- 07:28:25 **Jackie Flikkema, Knife River Corporation**, commented on behalf of the open cut stakeholders group. She thanked the DEQ for organizing the group and discussed how the industry has benefitted from the group's work and the efficiencies gained as a result. She said the biggest complaint is still the electronic submission process but that work is underway to address that. She said the new process is working and that there is no need for the SCEG to deal with open cut permitting.
- 07:30:28 SEN. KEANE asked about contractors who don't want to follow the permitting process, yet complain about it. He asked how that should be dealt with. Ms. Flikkema said that the stakeholders group is working on how to deal with this but that there is no simple answer. She said that the DEQ is trying and that the stakeholders group supports imposing penalties on contractors who don't follow the permitting process.
- 07:32:13 Ms. Nowakowski noted that members had been provided with DRNC (EXHIBIT 8) and DEQ (EXHIBIT 10) compliance reports.

Committee discussion to narrow scope of study of Natural Resources efficiencies

- 07:34:04 SEN. SONJU thanked SEN. KEANE for arranging the good panels and discussion. SEN. KEANE said he would like REP. WILLIAMS to focus on the information technology (IT) aspect of natural resources at the Bozeman meeting. He said that the committee heard much discussion on the need for improving IT and said that it could be done either through discussion or through a bill draft.
- 07:35:41 REP. WILLIAMS said clarified that it isn't just IT but the ability of new technologies to advance the development of innovative natural resource industries in Montana. SEN. KEANE said that for now, he would like the focus on how to improve current information technology.
- 07:36:38 SEN. WANZENRIED said that he would like more specificity from stakeholders in order to help clarify and direct the Natural Resources Subcommittee's work. He suggested asking stakeholders to provide lists of specific ideas and topics for consideration. SEN. SONJU agreed that soliciting input from stakeholders was a good idea. SEN. KEANE said that he would like the DEQ and DNRC to be included. Director Opper was present and agreed. SEN. KEANE asked to make sure the DNRC was asked to do the same.
- 07:39:28 SEN. KEANE said that he would like to discuss mining and timber also, and suggested that they be addressed at the April meeting in Butte.

- 07:40:09 SEN. SONJU said that the infrastructure issues in eastern Montana are of concern to many. He asked for discussion.
- 07:42:03 REP. REICHNER reminded the SCEG that Rep. Rosendale is working on issues in eastern Montana. SEN. SONJU suggested that the DEQ update the SCEG on how things are progressing in eastern Montana. It was agreed.
- 07:43:13 Ms. Nowakowski said that the Education Local Government (ELG) Interim Committee is looking at this issue also. She said that she would keep the SCEG updated of the ELG's discussion and activities.
- 07:44:05 Ms. Nowakowski said she would like direction on how to proceed with February's meeting agenda. REP. HOLLENBAUGH suggested that the Natural Resources Subcommittee work to narrow the scope of study. Ms. Nowakowski said that REP. WILLIAMS previously listed ideas for the February meeting and asked if that is still the plan or if the SCEG wants to take another direction. SEN. SONJU said he would meet with REP. WILLIAMS to discuss how to proceed. SEN. KEANE said the focus of the Bozeman meeting should be how to improve efficiencies through entities working together on how to solve the areas of concern.
- 07:48:33 Ms. Nowakowski said she would prepare a summary of the information presented and discussion points from today's meeting and provide it to the Natural Resource Subcommittee members in advance of the February meeting. She said that she would work with REP. WILLIAMS on agenda topics. REP. WILLIAMS discussed potential agenda topics.
- 07:51:13 SEN. KEANE asked if the SCEG is interested in spending part of a day touring actual resource development going on in Butte. SEN. SONJU agreed.
- 07:52:01 Mr. Bohyer said that the approach used by the Subcommittees on Health Care/Medicaid and Information Technology worked well. He said that the Subcommittees asked stakeholders to identify specific rules or code sections that need to be fixed and to propose a solution. SEN. KEANE stated that in light of what the SCEG is trying to do, it is important that it look at federal rules because the perception is that it is state laws that are causing the problem. He said it would serve the state well to do more education on what the state can or can't do.
- 07:55:18 REP. WILLIAMS encouraged the committee members to look at the study plan. She said that the natural resources topic is huge and predicted that the Subcommittee would not have time to do everything. SEN. SONJU agreed and said that he would look into it. SEN. KEANE asked members to give their ideas to Ms. Nowakowski.

Public Comment

There was no public comment given.

- 07:56:45 Mr. Bohyer announced that SEN. SONJU also appointed SEN. BUTTREY and REP. HOLLENBAUGH to the Natural Resources Subcommittee. Mr. Bohyer reminded the members that the next meeting is scheduled for February 6 and 7, 2012, in

Bozeman. REP. HOLLENBAUGH asked that provisions for parking be made. SEN. CAFERRO thanked REP. WILLIAMS for her work on the Bozeman meeting.

ADJOURNMENT

07:58:08 SEN. SONJU adjourned the meeting of the Select Committee on Efficiency in Government at 4:10 p.m. The next meeting of the Select Committee on Efficiency in Government will be held on February 6 and 7, 2012, in Bozeman on the Montana State University campus.

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Bozeman