



Business, Labor, and Agriculture Interim Committee

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56th Montana Legislature

SENATE MEMBERS

JOHN R. HERTEL, CHAIR
DALE MAHLUM
GLENN A. ROUSH
DEBBIE SHEA

HOUSE MEMBERS

CARLEY TUSS, VICE CHAIR
ROD BITNEY
ROY BROWN
BRENNAN RYAN

COMMITTEE STAFF

GORDON HIGGINS
RESEARCH ANALYST
BART CAMPBELL, STAFF ATTORNEY
EDDYE McCLURE, STAFF ATTORNEY
LOIS O'CONNOR, SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Fourth Meeting of Interim
Room B-07, Federal Building
January 14, 2000

COMMITTEE MEMBERS PRESENT

Sen. John R. Hertel, Chair
Rep. Carley Tuss, Vice Chair
Sen. Dale Mahlum
Sen. Glenn A. Roush
Sen. Debbie Shea
Rep. Rod Bitney
Rep. Roy Brown
Rep. Brennan Ryan

STAFF PRESENT

Eddy McClure, Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)

COMMITTEE ACTION

- Approved the minutes from the November 12, 1999, meeting
- Approved that Committee staff draft a Committee bill to clarify and update the current statutes relating to co-operatives and that it provide enough umbrella of protection so that other co-operatives could function

- Approved that the Building Codes Division be advised that the Committee will postpone formal action on the \$5 renewal fee increase until the March meeting. In the meantime, the Committee would like to receive a letter from the Building Codes Division telling it of the Department's intentions regarding the fee increase
- Approved March 2 and 3, 2000, as the next meeting dates

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Sen. Hertel, Chair, at 9:10 a.m. Roll call was noted, all members were present. (ATTACHMENT #2)

Sen. Shea **moved** that the minutes from the November 12, 1999, meeting be approved. Motion carried unanimously.

SJR 15 WORKERS' COMPENSATION SUBCOMMITTEE UPDATE

Jeff Martin, Research Analyst, Legislative Services Division, said that Senate Joint Resolution No. 15 (SJR 15) is a study to review the benefits for a number of injuries that a worker may be entitled to under workers' compensation. The Subcommittee is reviewing what is happening with benefit payments as they pertain to injured workers, reviewing whether it is advisable to make any changes to the benefit levels, and to review areas that may reduce the frequency of claims, particularly in the area of permanent partial disabilities (PPD). The Subcommittee will also review nonfinancial areas, such as safety and fraud investigation, to see if there are any areas that will reduce costs to the system.

Mr. Martin said that in preparation for the SJR 15 study plan, he found that many states in recent years have had crisis situations with their workers' compensation programs and every states' systems are different. The Subcommittee will review what other states are doing in the workers' compensation arena but, whether any magic solutions can be found depends upon the results of the study. He also commented on the presentation by the Department of Labor and Industry's regarding benefit levels. He said that the presentation provided very good information by taking a typical worker at different wage levels to see what has happened to workers' compensation benefits over the last several years based on legislative changes.

Sen. Shea said that at the November meeting, comments were made about how convoluted and complicated the workers' compensation system was. She suggested that the Department of Labor and Industry's document (Overview of Workers' Compensation Benefit Structure) be provided to all legislators because it would be an informative document for them to have. **Eddy McClure, Staff Attorney, Legislative Services Division**, said that Committee staff has discussed its concerns that in the 2001 Session, legislative staff will have many new legislators who do not have the background in

workers' compensation that many of the Committee member have. She said that a combination of the Department's document and her legal paper Legislative History of Major Workers' Compensation Legislation Affecting Benefit Levels and Claim Frequency would provide legislators with a very good background on workers' compensation. (See Exhibits #1 and #2 from the January 13, 2000, Workers' Compensation Subcommittee meeting)

Sen. Mahlum added that because Montana is a high-risk employment state (agriculture and mining), its permanent partial disability (PPD) payments are higher. However, the payments that are paid to injured workers are tax-free money.

DEPARTMENT OF COMMERCE - AGENCY RULE REVIEW - MAR NOTICE NO. 8-70-17

At the November 12, 1999, meeting, The Committee asked that the Building Codes Division of the Department of Commerce justify a \$5 increase (from \$40 to \$45) in its permit renewal fees and whether the \$5 increase was commensurate with costs.

The following is the Department's response to the Committee's request as presented by **Eric Fehlig, Attorney, Building Codes Division, Department of Commerce:**

- The Department received 385 electrical permit renewal requests, at \$5 each, for an increased revenue of \$1,925.
- If the Committee continued to object to the \$5 increase in renewal fees, the Department would voluntarily drop the fee.
- The Building Code Division's operating income is generated by six primary programs, it receives no general fund money, and the Division attempts to make sure that each program supports itself.
- An alternative to renewal fees are requested inspection fees based on the Department's average cost of \$45 an hour.
- The Department requires a 48-working-hour notice for inspection and it allows the person holding the permit to continue the project if inspectors cannot make the requested-inspection time.
- Larger Montana cities that enforce their own electrical codes can enforce the 48-hour law. However, the Department cannot because of the amount of "windshield time" its inspectors must spend traveling.
- As a result, the Department established a circuit-inspection system.
- The Department asks to be notified of the impending inspection, but its inspectors may be unable to get to the request for two weeks or longer because of where the request is located within the circuit-system location.
- The longer that a permit is open, the more costly it becomes because more repeat trips to a location are required for closure.
- The Department is anticipating a budget deficit in the electrical inspection program in the years 2000 and 2001.

- Faced with a budget deficit, the Department felt that it did not make sense to reduce the requested-inspection fee, which is consistent within all of the programs, so it increased the permit renewal fee to match the \$45 requested inspection fee.
- The Department believes that the \$45 permit renewal is commensurate with the cost of additional inspections that take place when a permit is renewed.

Ms. McClure outlined the options that the Committee could apply if the Department's justification for the \$5 renewal fee increase remained unsatisfactory. The options are outlined in a memo prepared by Gordy Higgins, Research Analyst, Legislative Services Division. (EXHIBIT #1) She said that for many years, statute has allowed the Department of Commerce to adopt commensurate-with-cost fees and the issue under question is the \$5 increase in the electrical inspection renewal fee, not the renewal fee itself, and whether with the increase the fee is still commensurate with cost.

Mr. Fehlig said that if the Committee continues to find the \$5 increase unsatisfactory, the Division will voluntarily withdraw the fee increase. However, the Department feels that the fee increase has merit and value on a number of levels; and if there is no objection to the fee increase, the Department would prefer that the fee stand. Ms. McClure said that with Mr. Fehlig's offer of voluntarily withdrawing the fee increase, no action by the Committee would be needed. Mr. Fehlig requested an informal straw vote of the Committee prior to the Committee taking formal action. Ms. McClure asked if the Department were to repeal the rule, would the Department ask the 2001 Legislature to deal with the fees. Mr. Fehlig said no, that the fee system is working reasonably well and the Department is happy with the current system.

Sen. Shea asked where the negative response to the renewal fee increase originated and were there any responses that objected to the Division's job performance. Mr. Fehlig said that the Division received one letter of objection to the fee increase; and like any other entity, the Division has people who are unsatisfied with its performance. However, he felt that the Division did a good job and a recent legislative audit gave the Division good marks regarding its performance in the field and how inspections are handled. However, the issue is the one objection to the \$5 electrical inspection renewal fee increase. Ms. McClure added that at the November 12, 1999, meeting, the individual, who was most in opposition to the \$5 increase, was invited to speak to the Committee but did not appear. In the rules process, the Department must respond and address every comment before a notice is adopted.

Rep. Brown said that even though there was only one complaint about the \$5 increase, it did not mean that the remaining 384 people were not upset about the fee increase. He said that if he were a businessman, he would probably pay the \$5 increase because it would not be worth the hassle to object to it. He added that every time this happens, the general public gets a bad attitude about the continuing

increase in fees. If the \$5 increase is generating only \$1,925, it would not solve the Division's deficit problem and he would be against the fee increase.

Rep. Tuss asked the following questions:

- If 385 people with electrical permits absolutely receive a letter or might receive a letter alerting them of permit expiration?
- Does the Division's fee system include ways to ensure that everyone receives a notice of expiration?
- Does a person have one or two options if the expiration date for final inspection had passed?
- Can a person receive a final inspection without a current permit and, if so, why is a renewal fee needed?
- Would a consumer be better protected by having a renewed permit than if the consumer simply paid for a requested inspection?
- Does having the requested inspection fee and the renewal permit fees similar smooth out the relationship between the consumer and the Building Codes Division.

Mr. Fehlig responded that the Division's fee system is set up in such a way that the person should receive a letter of expiration, that the letters are sent out over the course of a year, and the 1-year expiration date is printed clearly on the permit itself. However, he could not give a 100% guarantee that everyone receives letters. He added that if the expiration date is passed, the person's only option would be to ask for a requested inspection because the original permit has expired and the requested inspection fee is \$45 per hour for each request. Mr. Fehlig said that the requested inspection fee is typically one inspection while a renewal fee will continue the inspection process for an additional year. If multiple inspections are needed, the renewal fee would be a better bargain for the money. The \$45-per-hour requested inspection fee is also an allocation of "windshield time" for the inspector. He added that the Department believed that by having the permit fees similar in price decreases the confusion for the consumer. The decrease in confusion to the consumer was the impetus behind the \$5 renewal fee increase.

Rep. Bitney asked the following:

- Is it accurate that a person is charged for an original permit fee that is good for 12 months and if the person exceeds the 12 months, they are charged a renewal fee in addition to the final inspection fee?
- How are the permits initiated (i.e., via telephone or letter sent with a check)?
- What can an individual person do versus what is required by a licenced electrician?
- How does the permit fee relate to the area where a structure is being built?
- What is the typical range of hours involved in a final inspection in a rural district?

Mr. Fehlig said that there is no charge for a final inspection if the final inspection is conducted within the life of the original or extended permits; and permits are issued to the permittee, either homeowner or electrician, when a check is received by the Division. He said that under the licencing statutes, individuals

can wire their personal residence as long as they have an electrical permit. If individuals hire a person to wire their personal residence, the person must be a licenced contractor. An individual can also wire any building that is associated with the residential structure. However, if it is a commercial building, the permit must be issued to and the wiring must be done by a licenced electrician. If a residential structure is located in the city's jurisdiction, the city can require building permits for a single-family residential structure. If the residential structure is located in the state's jurisdiction, by statute, a building permit is not required for a residential structure but electrical and plumbing permits are required. Mr. Fehlig said that the average billable hour in rural areas for final inspections is approximately \$46.50 an hour to keep inspectors in the field and depending on the travel time.

Ms. McClure said that it appeared that the Department would like some unofficial indication of what direction the Committee is leaning regarding the fee increase and has requested an informal straw vote before it takes formal action. The Department has also requested that if the rule (MAR Notice No. 8-70-17) should be voluntarily withdrawn that it be allowed to withdraw the rule along with other rule business that will take place in August or September so that separate mailings and notices would not be needed.

Rep. Bitney commented that any fee is another form of tax and that there has been an appreciable increase in permits and fees over the last 12 years. One letter of objection could represent 1,000 people.

Sen. Roush said that because of the increase in construction and permits, there has probably been many more inspections made. If the \$5 fee is not supported today, it will return in the future because the Division cannot go for long without some type of an increase because it operates on the fee system not general fund money.

Rep. Brown said that first, a fee is paid to the Building Codes Division to conduct an electrical inspection that includes a rough-in inspection and a final inspection. If a year has passed and all that was done is a rough-in inspection, the Division never conducted the final inspection so he questioned why there should be a renewal fee at all.

A informal straw roll call vote was taken on whether Committee members supported or opposed the \$5 renewal fee increase. The Committee vote was split 4 to 4 with Senators Roush and Shea and Representatives Ryan and Tuss in support of the \$5 renewal fee increase and Senators Hertel and Mahlum and Representatives Bitney and Brown in opposition to the \$5 increase. (EXHIBIT #2)

Mr. Fehlig said that he would talk to Department administration about the vote, keep the Committee informed about what it wants to do, and write Committee staff of its decision.

COAL TAX BRIEFING PAPER

Reaction to the Supreme Court decision on House Bill No. 260 was postponed until the decision was handed down. However, **Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division**, provided an overview of Impact of Court Decision on HB 260. (EXHIBIT #3)

Sen. Mahlum asked if HB 260, including the coal producers' license tax, simply shifted revenue around. Mr. Johnson said that HB 260 establishes the coal producers' license tax which is 9.17% of the contract sales price (CSP) for coal. The state is anticipating \$20.4 million in collections from the coal producers' license tax in fiscal year 2000. However, HB 260 also allows 101.5% of the \$20.4 million to be claimed as a credit against the current coal severance tax. As a result, it reduces the amount of severance taxes that coal producers pay. Sen. Mahlum asked if the coal industry would be hurt by the tax. Mr. Johnson said that the coal industry pays approximately \$600,000 less in taxes because the credit is 101.5%.

Rep. Tuss asked if the \$4.6 million in the Treasure State Endowment Program would go into the general fund to be used anywhere after the 2001 biennium. Mr. Johnson said that under HB 260, there is a direct \$2.3 million allocation per year in the 2001 biennium. In the 2003 beinnium, the \$2.3 million decreases to \$1.2 million and becomes a permanent allocation to the Treasure State Endowment Grant Program for subsequent bienniums. Rep. Tuss asked if the allocation could be changed by a simple majority vote of the Legislature. Mr. Johnson said yes.

DISCUSSION OF UPDATING THE LAWS GOVERNING EMPLOYEE CO-OPERATIVES

Ellen Saputo, Big Timberwovrks, Gallatin Gateway, provided written comments regarding the outdated statutes as they relate to co-operatives and a copy of an article from the Bozeman Daily Chronicle entitled Big Timberworks forms first workers co-op in Montana. (EXHIBITS #4 and #5 respectively) Ms. Saputo provided an overview of how the Big Timberworks Co-op was established and requested that the Committee present legislation to the 2001 Legislature that would clarify the present statutes so that Big Timberworks would become a justifiable business under the co-operative statutes. She added that the co-operative statutes have not been updated since the 1920s.

Rep. Tuss said that legislators do not always know that the statutes are outdated and she appreciated the fact that Big Timberworks has proceeded despite the fact that the statutes are clumsy. Because Big Timberworks would feel more at ease when they approach others to buy into the co-op if it had the

Committee's assurance, she **moved** that Committee staff draft a Committee bill to clarify and update the current statutes relating to co-operatives and that it provide enough umbrella of protection so that other co-operatives could function. Motion passed unanimously.

Ms. McClure said that she had asked Dan Whyte, Attorney, Secretary of State's Office how it enforces the current co-operative statutes. According to Mr. Whyte, co-operatives, under current statutes, do not have the power to remain in business after 40 year. When co-operatives come close to the 40-year period, the Secretary of State's Office sends the co-operative a letter. It also interprets the statute to mean that in order to become incorporated, a business must have three to seven people.

DEPARTMENT OF LIVESTOCK - AGENCY PRESENTATION

Marc Bridges Executive Officer, Department of Livestock, provided a chronological sequence of events regarding the chronic wasting disease (CWD) surveillance and depopulation of the Kesler Alternative Livestock Farm in Philipsburg, MT, and a series of correspondence regarding the disposal of the CWD-infected elk. (EXHIBIT #6 and #7)

Dr. Arnold Gertonson, State Veterinarian, said that when the CWD was discovered, the Department was responsible for the elk disposal. Incineration and burial were both discussed and the Department approved the incineration method because a satisfactory burial site could not be located. The incinerators are approved for the destruction and the inactivation of abnormal prion proteins associated with CWD.

Rep. Bitney asked what is CWD and why was a more expensive method of disposal chosen. Dr. Gertonson said that CWD is a transmissible spongiform encephalopathy which is associated with mad cow disease. The prion proteins found in CWD can be deactivated by using 10% bleach solutions or incineration. The reason that burial was not chosen was because of the misconception that the prion protein will live forever. Cost to incinerate the elk was \$500 per head.

Rep. Tuss thanked the Department for its response to her community's concerns regarding the burial of the elk carcasses in the Great Falls landfill. She said that although prion proteins could be deactivated by either incineration or burial, she asked what the Department's reason was for choosing incineration. Dr. Gertonson that the Department chose incineration over burial because of the concerns of the citizens of Great Falls and Philipsburg and because of the possibility of ground and groundwater contamination from burial. Rep. Tuss asked if the Department had chosen the burial method, particularly the on-site burial at the Kesler Alternative Game Farm, would Mr. Kesler be able to repopulate his business with healthy animals. Mr. Bridges said that if there is any disease in agriculture that directly affects a producer, it is

devastating. Some producers are able to return to the business, some go out of business, and he did not know if Mr. Kesler would return to repopulation. Dr. Gertonson added that the Kesler Alternative Game Farm would remain under quarantine until July 1, 2001 and that next spring, Department staff will begin topsoil removal and burning to attempt to remove and prevent any element of the disease that may be left. It will also spray the fences with bleach solution. Whether animals can be brought back to the Game Farm remains to be seen.

Sen. Mahlum asked if the \$50 indemnity fee was an adequate amount to repay Mr. Kesler for his investment. Mr. Bridges said that the \$50 is the salvage price per animal, the amount is set by statute, and the salvage price would be paid for slaughter animals only. However, in this case and with this type of disease, there is no salvage price and the statute would not apply. He added that in fairness to the alternative game farm industry, the statute should be reviewed. However, the Department of Fish, Wildlife, and Parks, the Montana Alternative Livestock Producers, and the National Breeders Association offered indemnity money per head to Mr. Kesler. Sen. Mahlum asked if a person who consumed an animal with CWD could die or become ill. **Dr. Larry Stackhouse, Department of Livestock, Bozeman**, said that to date, there is no indication that CWD could be transferred from animals to humans. However, some researchers believe that the potential exists. Mr. Bridges added that the travesty of this situation is that there is no live-animal test for CWD. An animal must be euthanized to determine whether it has CWD.

Sen. Roush asked if a game animal dies on a game farm, would the owner have to notify the Department under the current alternative livestock statutes. Mr. Bridges said that under current statutes, owners must within 24-hours or 1-business day notify the Department of an animal death.

Sen. Hertel asked if the Granite County Attorney was considering filing charges against Mr. Kesler and is he responsible for paying the \$50,000 disposal cost. Mr. Bridges said that failure to report an animal death is a misdemeanor under the alternative livestock statutes. Allegations have been made that Mr. Kesler failed to report the death of one head of elk. As a result, the Department is investigating the matter, the results will be taken to the Granite County Attorney, and it will be his decision to prosecute. He added that the disposal cost was taken from the Governor's environmental contingency fund and Mr. Kesler did not have to pay any of the cost.

Rep. Tuss encouraged the Department to consider writing a professional journal on the events surrounding the Kesler Alternative Game Farm that includes the positive relationships that have been developed with the Department relating to the situation, such as the Department's response to the concerned communities

and the science involved. She felt that giving the Department's experience to as many people as it can would be invaluable.

GENERAL PERSPECTIVES ON SOLID WASTE ISSUES

Jani McCall, Lobbyist, City of Billings, provided written comments in response to the Committee's survey on HB 515. (EXHIBIT #8)

Barb Butler, Environmental Compliance Coordinator, Billings, said the following:

- Mandated privatization of solid waste services would eliminate what little competition that currently exists in the state.
- The elimination of competition would not be beneficial to the Montana taxpayer or ratepayer.
- Private hauling and private landfill services provide an invaluable service for those communities who choose to go in that direction, but private services and the election to go that direction is a local decision and should be made by locally elected officials and based completely on local circumstance.
- Twenty five years ago, there were over 250 landfills in Montana, currently, there are 30, and there are 2,500 landfills to take all garbage nationwide.
- The reason for the dramatic decrease in landfills in the last 20 years is federal environmental Subtitle D regulations for solid waste management which are the most restrictive and most costly environmental regulations currently existing.
- As a result, owners and operators of landfills had two choices--comply with the regulations or close.
- Most operators had to close which gave communities two options--either build a new landfill to meet the Subtitle D regulations or haul their garbage to the closest landfill that complied with the regulations and who were willing to accept their garbage.
- The hauling and disposal of garbage became extremely lucrative and profitable businesses because demand outweighed supply.
- It is also because of the Subtitle D regulations that there is an acute interest by the private sector to become involved in the business of hauling garbage which was, historically, an environmental infrastructure service provided by communities.
- In the past 4 to 5 years, there has been an explosion in the number of acquisitions, mergers, consolidations, and takeovers of private sector solid waste companies fighting for bigger turfs and for higher profits.
- Last year, for example, Allied Waste Industries (AWI), in a \$9.4 billion acquisition, bought Browning Ferris Industries (BFI) in Missoula. The acquisition made AWI the second largest solid waste corporation in North American.
- In Montana, BFI has garbage hauling authority in approximately one-half of the counties.
- The City of Billings owns and operates the largest landfill in Montana and accepts garbage from a 6-county area. BFI hauls for five of those counties.
- The big-fish-eating-the-little-fish scenario is now happening in Montana.
- Observations indicate that the goal of fair competition is not what the scenario is about. The scenario is about the elimination of any competition or what little competition that exists.

- Public landfills and public hauling services provide the middle ground that is absent in the private sector.
- In addition to buying the competition, there have been efforts on the part of BFI and waste management to eliminate competition through the legislative process. Ms. Butler briefly described SB 253 (to create a separate category for construction and demolition debris landfills) and HB 483 (a revision to the state revolving loan fund for waste water treatment to exclude solid waste management systems from loan eligibility) which were introduced and enacted in the 1997 Session. HB 483 was amended to include solid waste management systems but the funds could only be used in landfills that were already closed for post-closure care and in landfills that received less than 20,000 tons of waste a year.
- There is a philosophical difference between the way public and private landfills are operated. Public landfills try to keep open for as long as possible, divert the waste that they can so that another landfill does not have to be built, and so residents have a place to bring their garbage for as long as possible. Private landfills are for-profit business ventures and they fill up their landfills as quickly as possible so they can build another.
- Mandating privatization of solid waste services in Montana would be the end of competition.
- The City of Billings has chosen to own and operate a landfill and has chosen to provide residential collections services from its community at a very reasonable price. Its rates are the lowest in the region (\$79 a year for city residents and \$180 a year for county residents). Although it has been asked to receive solid waste from communities all over the state, it has also chosen to keep its landfill open to the six counties that it serves.
- Local governments must be able to manage the services that it provides without interference from legislation.
- Mandating privatization because it would be fair competition with no regard for local circumstances makes no sense.

Rep. Bitney asked about the logic of private companies wanting to fill their landfills up as soon as possible. Ms. Butler said that private landfills are owned by large solid waste corporations whose goal is to fill up their landfills as quickly as possible and to get more waste into the landfill so that they can build a new landfill. The more waste in the landfill means more money and that is how private solid waste companies make their money.

GENERAL PUBLIC COMMENT

Phonacelle Shapel, Lake County Citizen, encouraged the Committee to consider legislation that proposes that if a proposal comes from private companies, whether from solid waste or others, that clearly shows that a private company can provide a service on a long term basis for less than an governmental entity, it should be mandated that the governmental entity move forward with privatization.

Will Selzer, Solid Waste Services Manager, Lewis and Clark County, said that if a private solid waste company has a fixed operating cost and if it could take in twice as much waste in a given year, the companies profits will be higher. Because they have investors to satisfy, the private sector takes in more

waste. He said that the nation has a short-sided view of private enterprise and competency. There are investors who, if they have one quarter of bad profits, generally look to replace the CEO and everyone else and they do not take a long-term view of industries and investments. As a result, industries such as solid waste have the same type of pressure (i.e., they must perform on a quarterly basis and they must show as large a profit as possible). The only way that profits can be shown is to keep the same number of compactors and operators but take in twice as much waste.

Mr. Selzer said that public sector industries do not have the same pressure to take in the maximum number of tons of waste a year and the Lewis and Clark County landfill makes a profit. The Lewis and Clark County elected officials prefer to not go through the process of reciting a landfill because it took them nine years to get a permit for its new landfill. The pressure on the public sector is to try to make the landfill site last as long as possible. He said that the issue boils down to who can provide the best service for the least price. He requested that in its deliberations about competition, particularly in the publically operated landfill facilities arena, the Committee review all of the services that they provide and that garbage haulers in the state enjoy the PSC's Class D hauling monopoly which restricts competition in the hauling business. In conclusion, he said that the whole issue is not about the provision of service but about the availability of profit.

Alec Hanson, Montana League of Cities and Towns, said that the government has been in the solid waste disposal business for many years. If the Committee were to review the surveys and price comparisons, it will find that the cost of solid waste disposal, as provided by the government, is cheaper and the focus of the Committee should be on the cost to the ratepayer for a specific level of service. He said that the 1995 Legislature enacted legislation that restricted mandates on local governments. The idea was to allow local people to make local decision. If a services can be provided cheaper and adequately from either the private sector or public sector, local governments will choose the one that is right for them. It should remain a local decision.

Rep. Brown said that if he were a private business owner of a landfill and it would cost millions of dollars to build another landfill, what incentive would he have to fill up the landfill right away. Mr. Selzer said that typically speaking, the pressure on the private sector is to show a large profit today not next year. If a large profit is not shown, private sector business will be the subject of hostile takeovers. If a private sector solid waste business takes in \$1 million worth of garbage in a year and it has \$300,000 worth of fixed costs, the business makes a \$700,000 profit. If the business takes in \$1.5 million worth of garbage and still maintains the same fixed cost amount, the business's profit sheet will show a much greater profit per ton. In addition, private sectors solid waste landfill owners are much more prepared to fight the battle to site a

new landfill or expand the one it has sooner than the public sector. Mr. Selzer said that he was unsure whether that was good or bad but that is just the way that it is. Rep. Brown said that as a private business owner, he could raise his profits by raising his rates. Mr. Selzer said that Rep. Brown could also cut his costs for doing business by bringing in more waste thereby not having to raise his rates.

Rep. Bitney commented that if there is a certain amount of refuse, it has to go somewhere. Mr. Selzer said that one of the reasons why publically operated landfill facilities try to restrict the amount of waste that it takes is because it is trying to divert as much of the waste as it can into recycling, tires for example. Even though the waste has to go somewhere, the public operators do not want to bury waste if it does not have too because it costs more money. The incentive for the private sector landfills is to not divert waste and take as much as they can get because their revenue decreases.

Sen. Mahlum asked for Ms. Shapel's observations of the testimony. Ms. Shapel said that Lake County is faced with a landfill that was to last originally for 10 years. One year ago, Lake County was informed that it would only last 5 years. Many options were reviewed and estimates and presentations were given by BFI regarding privatization. It was found that BFI could provide the service for approximately one-half of the cost of what the county program could provide. Lake County garbage costs are also attached to property tax bills. If people do not pay their property taxes, the solid waste fee becomes a lien and a tax judgment against their property. In addition, Lake County is within the boundaries of an Indian reservation and many tribal entities do not receive tax bills. Therefore, they do not pay for solid waste disposal even though they have the use of the landfill. Ms. Shapel said that if a service can be provided by a private business at a cheaper cost, it should be done by private business. However, once the government has started something, it is always reluctant to let go of it and people in the community have no major control over the cost.

INSTRUCTIONS TO STAFF AND ADJOURNMENT

Because the Committee felt that it did not give the Department of Commerce a decisive direction in its straw vote regarding the \$5 renewal fee increase, Rep. Tuss **moved** that the Building Codes Division be advised that the Committee will postpone formal action on the \$5 renewal fee increase until the March meeting. In the meantime, the Committee would like to receive a letter from the Building Codes Division telling it of the Department's intentions regarding fee increase.

Sen. Mahlum asked if the Committee could receive more information about the issue and vote at the following meeting. Rep. Tuss said that how and when the Committee votes could be determined at the March meeting but that she wanted a letter from the Building Codes Division by the March meeting that

states the Department's intentions regarding the \$5 renewal increase. The Committee could then take appropriate action.

Rep. Bitney clarified that Mr. Fehlig stated in his testimony that if there was not support for the fee increase, the Department would drop the fee and that it would not pursue the fee increase legislatively. His impression was that the \$5 fee increase was not an important issue. If it is not an important issue to the Department, he has reservations about supporting it.

Rep. Tuss' motion passed unanimously and the \$5 fee increase will be included as an agenda item for the March meeting.

Ms. McClure provided an update on the survey questionnaire. (EXHIBIT #9) She said that the survey has been mailed out in two rounds--the first round to state agencies and private sector industry and the second round to the cities and towns and county commissioners. Fifteen of 18 state agencies have responded to the survey.

The Committee approved March 2 and 3, 2000, as the next meeting date. There being no further business, the meeting adjourned at 3:15 p.m.

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