

HOUSE BILL NO. 891

INTRODUCED BY STICKNEY, TOWE, REAM, HARPER, WEEDING,  
REA, YELLOWTAIL, BROOKE

IN THE HOUSE

FEBRUARY 15, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
                                  ON NATURAL RESOURCES.

FEBRUARY 16, 1991           FIRST READING.

FEBRUARY 23, 1991           COMMITTEE RECOMMEND BILL  
                                  DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991           PRINTING REPORT.

FEBRUARY 26, 1991           SECOND READING, DO PASS.

                                  ENGROSSING REPORT.

FEBRUARY 27, 1991           THIRD READING, PASSED.  
                                  AYES, 90; NOES, 9.

                                  TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
                                  ON NATURAL RESOURCES.

                                  FIRST READING.

APRIL 2, 1991           COMMITTEE RECOMMEND BILL BE  
                                  CONCURRED IN AS AMENDED. REPORT  
                                  ADOPTED.

APRIL 4, 1991           SECOND READING, CONCURRED IN.

APRIL 5, 1991           THIRD READING, CONCURRED IN.  
                                  AYES, 36; NOES, 14.

                                  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991           RECEIVED FROM SENATE.

                                  SECOND READING, AMENDMENTS  
                                  CONCURRED IN.

APRIL 11, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *891*  
 2 INTRODUCED BY *William Dan Ream*  
 3 *Clint King*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING FINANCIAL  
 5 ASSURANCE AS A CONDITION OF A LICENSE TO OPERATE A  
 6 MEGALANDFILL; PROVIDING FOR THE RELEASE OF AN OPERATOR FROM  
 7 FINANCIAL ASSURANCE; PROVIDING THE BOARD OF HEALTH AND  
 8 ENVIRONMENTAL SCIENCES WITH THE AUTHORITY TO RECLAIM,  
 9 RESTORE, OR REPLACE DAMAGED OR IMPAIRED NATURAL RESOURCES;  
 10 ESTABLISHING A MEGALANDFILL RECLAMATION ACCOUNT; AND  
 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill in order  
14 to provide guidance to the board of health and environmental  
15 sciences and to the department of health and environmental  
16 sciences for the adoption of rules.

17 In adopting rules to set forth the specific terms and  
18 conditions of bonding as a financial assurance mechanism  
19 authorized under [section 2], the department shall consult  
20 and, to the greatest extent practicable, rely upon concepts  
21 and requirements contained in Rules 16.44.801 through  
22 16.44.823, Administrative Rules of Montana, that establish  
23 financial assurance requirements for hazardous waste  
24 management facilities during the closure and postclosure  
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1 phases of operations of such facilities.

2 The board shall adopt rules related to bond forfeiture  
3 and the reclamation, restoration, and replacement of damaged  
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5 developing these rules, the board shall consider the  
6 experience of the department of state lands and others  
7 involved with mine reclamation. The board shall also consult  
8 with the regulated community, local governments, and others  
9 involved in solid waste management.

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1. Definitions.** As used in  
13 [sections 1 through 5], the following definitions apply:

14 (1) "Applicant" means an individual, firm, partnership,  
15 company, association, corporation, city, town, local  
16 governmental entity, or any other governmental or private  
17 entity that applies for a license to operate a megalandfill  
18 pursuant to 75-10-221.

19 (2) "Board" means the board of health and environmental  
20 sciences provided for in 2-15-2104.

21 (3) "Department" means the department of health and  
22 environmental sciences provided for in Title 2, chapter 15,  
23 part 21.

24 (4) "Megalandfill" means any new or existing solid  
25 waste management system licensed under 75-10-221 that



1 accepts more than 200,000 tons of solid waste a year or an  
2 ash monofill that accepts more than 50,000 tons of ash a  
3 year.

4 (5) "Natural resource" means ground water, surface  
5 water, soil, wildlife, and other physical and biological  
6 resources as determined by the department by rule.

7 NEW SECTION. Section 2. Megalandfill financial  
8 assurance -- release. (1) As a condition of a license to  
9 operate a megalandfill under 75-10-221, an applicant shall  
10 provide financial assurance sufficient to ensure the  
11 restoration or replacement of any natural resource damaged  
12 or impaired as a result of the construction, operation, or  
13 closure of the megalandfill. The department shall determine  
14 the amount of financial assurance that must be provided  
15 based on an assessment of the license application and the  
16 applicant's estimated cost of reclaiming, restoring, or  
17 replacing natural resources that may be damaged or impaired  
18 by the applicant's proposed operations.

19 (2) The department shall adopt rules to specify the  
20 terms and conditions of financial assurance.

21 (3) To satisfy the financial assurance requirement, the  
22 applicant shall file with the department a bond that is  
23 payable to the state of Montana with a surety satisfactory  
24 to the department, conditioned upon the faithful performance  
25 of the requirements of this section and the rules of the

1 department.

2 (4) The bond approved by the department may not be less  
3 than the estimated cost to the state to reclaim, restore, or  
4 replace damaged or impaired natural resources.

5 (5) Every 2 years the department shall evaluate the  
6 amount of the bond provided for a licensed megalandfill. If  
7 the department determines that the amount of the bond does  
8 not represent the present cost of reclaiming, restoring, or  
9 replacing natural resources that may be damaged or impaired  
10 by the operation, the department may modify the terms and  
11 conditions of the bond.

12 (6) The department may not release an operator from the  
13 financial assurance requirement and may not release the  
14 bond:

15 (a) for a minimum of 30 years after the megalandfill  
16 has closed;

17 (b) until the department determines that the natural  
18 resources associated with the megalandfill have been  
19 permanently reclaimed, restored, or replaced to the quantity  
20 and quality that prevailed prior to the commencement of the  
21 licensed operations and that the megalandfill presents no  
22 significant future threat to those natural resources; and

23 (c) until a public hearing has been held. The  
24 department shall make all information that is relevant to  
25 the decision on whether to release an operator from the

1 financial assurance requirement readily available to  
2 interested persons, and no less than 45 days prior to the  
3 public hearing the department shall:

4 (i) publish notice of the hearing in newspapers of  
5 general statewide circulation and circulation in the county  
6 where the megalandfill is located; and

7 (ii) take other appropriate measures to ensure broad  
8 distribution of the hearing notice.

9 (7) A person may submit to the department information  
10 relevant to the department's decision to release an operator  
11 from all or any part of the financial assurance requirement  
12 for a period of 30 days after the date of the public hearing  
13 required under subsection (6).

14 (8) A person may request the department to reconsider  
15 its decision to release an operator from all or any part of  
16 the financial assurance requirement based upon information  
17 the person submits to show that the licensee has not  
18 reclaimed, restored, or replaced the quantity or quality of  
19 natural resources that prevailed prior to the commencement  
20 of the licensed operations. The department's response to a  
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22 from all or any part of the financial assurance requirement  
23 is the final agency decision.

24 NEW SECTION. Section 3. Bond forfeiture. At the  
25 board's discretion, the failure of a licensee to reclaim,

1 restore, or replace damaged or impaired natural resources to  
2 the department's satisfaction, as required under [section  
3 2(6)] or any rule adopted under [section 2(6)], may result  
4 in bond forfeiture.

5 NEW SECTION. Section 4. Reclamation by board. (1)  
6 Pursuant to the provisions of [sections 1 through 5], the  
7 board may reclaim, restore, or replace any affected natural  
8 resources for which a bond has been forfeited.

9 (2) The board may have reclamation work done by  
10 department employees or by employees of other governmental  
11 agencies or soil conservation districts or through contracts  
12 with qualified persons.

13 (3) Any funds or any public works programs available to  
14 the board be used and expended to reclaim, restore, or  
15 replace natural resources that have been damaged or impaired  
16 as a result of the construction, operation, or closure of a  
17 megalandfill. The board shall cooperate with federal, state,  
18 and private agencies to engage in cooperative projects under  
19 this section.

20 (4) Agents, employees, or contractors of the department  
21 may enter upon any land for the purpose of conducting  
22 studies or exploratory work to determine whether a  
23 megalandfill has been reclaimed and rehabilitated in  
24 accordance with the requirements of [section 2(6)]. Upon  
25 request of the board, the attorney general shall bring an

1 injunctive action to restrain any interference with the  
2 exercise of the right to enter and inspect granted in this  
3 subsection.

4 NEW SECTION. Section 5. Megalandfill reclamation  
5 account. (1) There is a megalandfill reclamation account in  
6 the state special revenue fund provided for in 17-2-102.

7 (2) All fees, fines, penalties, forfeited bonds, and  
8 other money that have been or will be paid to the department  
9 under the provisions of [sections 1 through 5] must be  
10 deposited in the account.

11 (3) Money in the account is available to the department  
12 for the research, reclamation, restoration, and replacement  
13 of natural resources damaged or impaired by a megalandfill.  
14 Unencumbered and unexpended money remaining in the account  
15 at the end of a fiscal year may not lapse but must be  
16 carried forward for the purposes of this subsection until  
17 appropriated by subsequent legislative action.

18 NEW SECTION. Section 6. Codification instruction.  
19 [Sections 1 through 5] are intended to be codified as an  
20 integral part of Title 75, chapter 10, and the provisions of  
21 Title 75, chapter 10, apply to [sections 1 through 5].

22 NEW SECTION. Section 7. Effective date. [This act] is  
23 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0891, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill requiring financial assurance as a condition of a license to operate a megalandfill; providing for the release of an operator from financial assurance; providing the Board of Health and Environmental Sciences with the authority to reclaim, restore, or replace damaged or impaired natural resources; and establishing a megalandfill reclamation account.

ASSUMPTIONS:

1. HB0891 implicitly assumes legislation authorizing the permitting of megalandfills.
2. HB0377, as introduced, would authorize the permitting of megalandfills, including provisions for financial assurance. The fiscal note attached to HB0377 indicated a fiscal impact of 0.75 FTE and \$107,206 in state special revenue authority over the biennium.
3. The fiscal impact of HB0891 is assumed to be reflected in the fiscal impact of HB0377.

FISCAL IMPACT:

None in addition to the fiscal impact of HB0377 authorizing permitting of megalandfills.

  
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ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning                      2-21-91

  
\_\_\_\_\_  
JESSICA STICKNEY, PRIMARY SPONSOR                      DATE  
2/23/91

Fiscal Note for HB0891, as introduced.

**HB 891**

APPROVED BY COMM. ON  
NATURAL RESOURCES

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15 Unencumbered and unexpended money remaining in the account  
16 at the end of a fiscal year may not lapse but must be  
17 carried forward for the purposes of this subsection until  
18 appropriated by subsequent legislative action.

19 NEW SECTION. Section 6. Codification instruction.  
20 [Sections 1 through 5] are intended to be codified as an  
21 integral part of Title 75, chapter 10, and the provisions of  
22 Title 75, chapter 10, apply to [sections 1 through 5].

23 NEW SECTION. Section 7. Effective date. [This act] is  
24 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 891 (third reading copy -- blue), respectfully report that House Bill No. 891 be amended and as so amended be concurred in:

1. Page 7, line 13.  
Strike: "research,"

2. Page 7, line 14.  
Strike: "a"  
Insert: "the"

Signed: *Lawrence G. Stimatz*  
Lawrence G. Stimatz, Chairman

*JAL 4-2-91*  
Cmd. Coord.

*SB 4-2-91 8:10*  
Sec. of Senate

SENATE  
HB 891



## 1 HOUSE BILL NO. 891

2 INTRODUCED BY STICKNEY, TOWE, REAM, HARPER, WEEDING,

3 REA, YELLOWTAIL, BROOKE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING FINANCIAL  
6 ASSURANCE AS A CONDITION OF A LICENSE TO OPERATE A  
7 MEGALANDFILL; PROVIDING FOR THE RELEASE OF AN OPERATOR FROM  
8 FINANCIAL ASSURANCE; PROVIDING THE BOARD OF HEALTH AND  
9 ENVIRONMENTAL SCIENCES WITH THE AUTHORITY TO RECLAIM,  
10 RESTORE, OR REPLACE DAMAGED OR IMPAIRED NATURAL RESOURCES;  
11 ESTABLISHING A MEGALANDFILL RECLAMATION ACCOUNT; AND  
12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

## 13 STATEMENT OF INTENT

14  
15 A statement of intent is required for this bill in order  
16 to provide guidance to the board of health and environmental  
17 sciences and to the department of health and environmental  
18 sciences for the adoption of rules.

19 In adopting rules to set forth the specific terms and  
20 conditions of bonding as a financial assurance mechanism  
21 authorized under [section 2], the department shall consult  
22 and, to the greatest extent practicable, rely upon concepts  
23 and requirements contained in Rules 16.44.801 through  
24 16.44.823, Administrative Rules of Montana, that establish  
25 financial assurance requirements for hazardous waste

1 management facilities during the closure and postclosure  
2 phases of operations of such facilities.

3 The board shall adopt rules related to bond forfeiture  
4 and the reclamation, restoration, and replacement of damaged  
5 natural resources for which a bond has been forfeited. In  
6 developing these rules, the board shall consider the  
7 experience of the department of state lands and others  
8 involved with mine reclamation. The board shall also consult  
9 with the regulated community, local governments, and others  
10 involved in solid waste management.

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Definitions. As used in  
14 [sections 1 through 5], the following definitions apply:

15 (1) "Applicant" means an individual, firm, partnership,  
16 company, association, corporation, city, town, local  
17 governmental entity, or any other governmental or private  
18 entity that applies for a license to operate a megalandfill  
19 pursuant to 75-10-221.

20 (2) "Board" means the board of health and environmental  
21 sciences provided for in 2-15-2104.

22 (3) "Department" means the department of health and  
23 environmental sciences provided for in Title 2, chapter 15,  
24 part 21.

25 (4) "Megalandfill" means any new or existing solid

1 waste management system licensed under 75-10-221 that  
2 accepts more than 200,000 tons of solid waste a year or an  
3 ash monofill that accepts more than ~~50,000~~ 35,000 tons of  
4 ash a year.

5 (5) "Natural resource" means ground water, surface  
6 water, soil, wildlife, and other physical and biological  
7 resources as determined by the department by rule.

8 **NEW SECTION. Section 2. Megalandfill financial**  
9 **assurance -- release.** (1) As a condition of a license to  
10 operate a megalandfill under 75-10-221, an applicant shall  
11 provide financial assurance sufficient to ensure the  
12 restoration or replacement of any natural resource damaged  
13 or impaired as a result of the construction, operation, or  
14 closure of the megalandfill. The department shall determine  
15 the amount of financial assurance that must be provided  
16 based on an assessment of the license application and the  
17 applicant's estimated cost of reclaiming, restoring, or  
18 replacing natural resources that may be damaged or impaired  
19 by the applicant's proposed operations.

20 (2) The department shall adopt rules to specify the  
21 terms and conditions of financial assurance.

22 (3) To satisfy the financial assurance requirement, the  
23 applicant shall file with the department a bond that is  
24 payable to the state of Montana with a surety satisfactory  
25 to the department, conditioned upon the faithful performance

1 of the requirements of this section and the rules of the  
2 department.

3 (4) The bond approved by the department may not be less  
4 than the estimated cost to the state to reclaim, restore, or  
5 replace damaged or impaired natural resources.

6 (5) Every 2 years the department shall evaluate the  
7 amount of the bond provided for a licensed megalandfill. If  
8 the department determines that the amount of the bond does  
9 not represent the present cost of reclaiming, restoring, or  
10 replacing natural resources that may be damaged or impaired  
11 by the operation, the department may modify the terms and  
12 conditions of the bond.

13 (6) The department may not release an operator from the  
14 financial assurance requirement and may not release the  
15 bond:

16 (a) for a minimum of 30 years after the megalandfill  
17 has closed;

18 (b) until the department determines that the natural  
19 resources associated with the megalandfill have been  
20 permanently reclaimed, restored, or replaced to the quantity  
21 and quality that prevailed prior to the commencement of the  
22 licensed operations and that the megalandfill presents no  
23 significant future threat to those natural resources; and

24 (c) until a public hearing has been held. The  
25 department shall make all information that is relevant to

1 the decision on whether to release an operator from the  
2 financial assurance requirement readily available to  
3 interested persons, and no less than 45 days prior to the  
4 public hearing the department shall:

5 (i) publish notice of the hearing in newspapers of  
6 general statewide circulation and circulation in the county  
7 where the megalandfill is located; and

8 (ii) take other appropriate measures to ensure broad  
9 distribution of the hearing notice.

10 (7) A person may submit to the department information  
11 relevant to the department's decision to release an operator  
12 from all or any part of the financial assurance requirement  
13 for a period of 30 days after the date of the public hearing  
14 required under subsection (6).

15 (8) A person may request the department to reconsider  
16 its decision to release an operator from all or any part of  
17 the financial assurance requirement based upon information  
18 the person submits to show that the licensee has not  
19 reclaimed, restored, or replaced the quantity or quality of  
20 natural resources that prevailed prior to the commencement  
21 of the licensed operations. The department's response to a  
22 request to reconsider its decision to release an operator  
23 from all or any part of the financial assurance requirement  
24 is the final agency decision.

25 NEW SECTION. Section 3. Bond forfeiture. At the

1 board's discretion, the failure of a licensee to reclaim,  
2 restore, or replace damaged or impaired natural resources to  
3 the department's satisfaction, as required under [section  
4 2(6)] or any rule adopted under [section 2(6)], may result  
5 in bond forfeiture.

6 NEW SECTION. Section 4. Reclamation by board. (1)  
7 Pursuant to the provisions of [sections 1 through 5], the  
8 board may reclaim, restore, or replace any affected natural  
9 resources for which a bond has been forfeited.

10 (2) The board may have reclamation work done by  
11 department employees or by employees of other governmental  
12 agencies or soil conservation districts or through contracts  
13 with qualified persons.

14 (3) Any funds or any public works programs available to  
15 the board be used and expended to reclaim, restore, or  
16 replace natural resources that have been damaged or impaired  
17 as a result of the construction, operation, or closure of a  
18 megalandfill. The board shall cooperate with federal, state,  
19 and private agencies to engage in cooperative projects under  
20 this section.

21 (4) Agents, employees, or contractors of the department  
22 may enter upon any land for the purpose of conducting  
23 studies or exploratory work to determine whether a  
24 megalandfill has been reclaimed and rehabilitated in  
25 accordance with the requirements of [section 2(6)]. Upon

1 request of the board, the attorney general shall bring an  
2 injunctive action to restrain any interference with the  
3 exercise of the right to enter and inspect granted in this  
4 subsection.

5 NEW SECTION. Section 5. Megalandfill reclamation  
6 account. (1) There is a megalandfill reclamation account in  
7 the state special revenue fund provided for in 17-2-102.

8 (2) All fees, fines, penalties, forfeited bonds, and  
9 other money that have been or will be paid to the department  
10 under the provisions of [sections 1 through 5] must be  
11 deposited in the account.

12 (3) Money in the account is available to the department  
13 for the ~~research~~ reclamation, restoration, and replacement  
14 of natural resources damaged or impaired by a THE  
15 megalandfill. Unencumbered and unexpended money remaining in  
16 the account at the end of a fiscal year may not lapse but  
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