

March 30, 1977

The Natural Resources Subcommittee on Solid Wastes met on March 30, 1977, at 11:10 a.m. in room 437, with Chairman Bengtson presiding and Reps. Cooney and Curtiss present. Also present was Steve Turkiewicz and Glen Drake for the League of Counties and Towns; Terry Carmody for the Health Department and Senator Margaret Warden.

Chairman Bengtson opened the meeting to a discussion on SB 200.

Senator Warden presented the amendments prepared by the Health Dept. She said this was just clarifying language. Rep. Cooney moved that the first four amendments on this page (exhibit 1) be adopted. Motion carried unanimously.

Mr. Turkiewicz moved an amendment on page 10, line 2 after the word "applicant" to insert "the local health officer and any other interested person".

Mr. Carmody said if the Health Dept. was going to jerk a license the local health department would be well aware of it. He said to issue a license they issued a PER and if required to do likewise when pulling a license it would delay any enforcement action.

Sen. Warden said they would automatically be notified. Mr. Carmody questioned "any other interested person"--that could be quite a few people if the problem was the landfill dump at Great Falls. He said unless all are notified the appeal of the Health Dept. could be thrown out of court.

Sen. Warden felt the applicant would usually be the local health department. Upon being requested for an opinion Debbie Schmidt said this is not necessarily so--could be a private party.

Sen. Warden said the Health Dept. isn't going to send a letter saying a license is rejected and then start levying the fine. There is a right by law to make some determination of the violation.

Chairman Bengtson suggested striking "and any other person" in the amendment so it would just be to notify the local health officer. Rep. Cooney moved the amendment and it carried unanimously.

The next amendment discussed was changed back to a criminal penalty from a civil penalty.

Glen Drake said the League opposes the civil penalty which provides up to \$1000 a day penalty. He said the civil penalty would not fall on the person responsible but on the taxpayer. He said the criminal penalty is the better way to go as it would be borne by the guilty party--this would be a misdemeanor charge (minimum of \$50 to a maximum of \$500). He said the Health Dept. also has the right of injunction (stopping the operation) and he felt this would be the real strength of enforcement.

Steve Brown, Lawyer for the Health Dept., who had just come in said to get an injunction you have to prove irreparable harm and that is difficult to do.

Senator Warden expressed the feeling that to have the laws on the books and be unable to enforce them is pretty "raunchy." She said only 15 dumps out of 247 are in compliance. She felt the civil penalty with the fine would be effective in getting compliance. While the criminal, going through the county attorney who would be hesitant to bring action on his own electorate, is not.

Rep. Curtiss asked concerning the gross inequity in her county where the forest service can burn slash and individual citizens can't burn, and dumps can't burn. Mr. Brown said when open burning rules were being established the Health Department was told that interfering with slash burning would adversely effect the industry.

Mr. Drake suggested another remedy--mandamus--action to force a public official to do what he is supposed to do. Mr. Brown said this is a different ball game--county attorneys do the prosecuting and the prosecuting just doesn't happen.

Sen. Warden said they were not talking about abstract pie in the sky but about people's health. She mentioned the condition of summer garbage picked up once a week and if placed in open dumps could breed all kinds of disease. She said some teeth is needed in the law--and the civil penalties provide the teeth.

Mr. Brown mentioned a rule on the books forbidding open burning unless a permit is obtained. He said in one county the commissioners adopted a resolution authorizing open burning between March 12 and April 16 in open violation of the law. He said this isn't good, setting a poor example. He said they don't like to be in the position of suing the county commissioners. He said he wasn't going down fighting for civil penalties--although preferred. He says often they are painted black when all they are trying to do is their job.

Rep. Cooney moved the amendment be not adopted. Rep. Curtiss moved a substitute motion of be adopted. This motion carried with Rep. Cooney voting no.

Sen. Warden said of the next amendment (page 14, line 12, strike all language through and including line 17 or delete all section 10--League amendment) that lines 18 to 23 must stay as if affects hazardous wastes. Rep. Curtiss moved striking lines 12 to 17 on page 14. Motion carried with Rep. Cooney opposing.

The next amendment discussed was on page 11 and the last one on the exhibit sheet--suggested amendment of the Health Dept. Mr. Carmody said he needed this because of federal regulations--lines 11 to 14 on page 11 and the amendment clarifies and removes solid waste management from the record keeping of this section. He said 99% of the dumps' problems is because they do not keep records. This amendment was moved by Mrs. Curtiss and carried with Rep. Cooney opposing.

Rep. Curtiss moved SB 200 be not concurred in. Rep. Cooney moved a substitute motion of be concurred in and motion carried with Rep. Curtiss voting no.

Meeting adjourned at 12 p.m.