

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

MARCH 24, 1979

The meeting of the Local Government Committee was called to order by Chairman George McCallum on Saturday, March 24 at 12 noon in Room 405 of the State Capitol Building.

ROLL CALL: All members were present with the exceptions of Senators Lockrem, Conover, and Peterson.

Dennis Taylor, staff researcher, was also present.

DISPOSITION OF HOUSE BILL 494: This bill revises, and clarifies laws relating to public water supplies.

A motion was made by Senator Story that the Committee reconsider their actions on this bill. Motion carried.

A motion was made by Senator Story to amend House Bill 494 on page 9, strike lines 11 through 13 on page 10; and to amend the title as needed. Motion carried.

A motion was made by Senator Story that House Bill 494 BE CONCURRED IN, as amended. Motion carried.

DISPOSITION OF HOUSE BILL 81: This bill is in regards to providing review of sanitary requirements for subdivisions.

Senator Story reviewed the proposed amendments from the subcommittee to House Bill 81. He stated this bill as amended will give more local control. (Amendments are attached.)

A motion was made by Senator Story that the proposed amendments be adopted. Motion carried with all voting "yes" except Senator Rasmussen, who abstained.

Senator Thomas moved that the bill be amended on page 11, line 5, insert: "(2) the subdivisions described in 76-4-128 (1) are not subject to sanitary restrictions if the local governing body certifies that the subdivisions have met the requirements of this part." The Board of Health will receive the money when they do the job. Motion carried with everyone voting "yes" except Senator Rasmussen who voted "no".

Mr. Dan Mizner, of the League of Cities and Towns, stated that a qualified sanitarian is certified by the state.

LOCAL GOVERNMENT COMMITTEE
PAGE TWO

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A motion was made by Senator Story that House Bill 81 BE NOT CONCURRED IN, as amended.

A substitute motion was made by Senator Watt that House Bill 81 BE CONCURRED IN with no amendments. Motion failed.

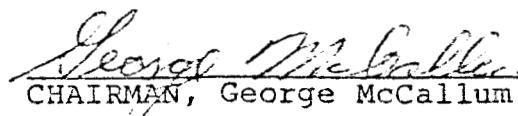
A vote was then taken on Senator Story's motion to BE NOT CONCURRED IN, as amended. Motion failed.

Senator Rasmussen stated that he feels some local control is good by not completely. He then made a motion that the Committee reconsider their actions on the Thomas amendments. Motion failed.

CONSIDERATION OF HOUSE JOINT RESOLUTION 54: Senator McCallum announced that the Committee had just received HJR 54. This bill is for an interim study of Montana's annexation laws. The sponsor of this bill Representative Bud Gould of District 98.

DISPOSITION OF HOUSE JOINT RESOLUTION 54: A motion was made by Senator Watt that House Joint Resolution 54 BE CONCURRED IN. Motion carried with all members voting "yes" except Senator Story who voted "no".

ADJOURN: With no further business the meeting was adjourned.


CHAIRMAN, George McCallum

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

Date March 23 House Bill No. 81 Time

NAME	YES	NO
GEORGE MCCALLUM, CHAIRMAN		✓
LLOYD LOCKREM, VICE CHAIRMAN	✓	
MAX CONOVER	✓	
JESSE A. O'HARA		✓
BOB PETERSON		✓
A. T. (TOM) RASMUSSEN	✓	
PETE STORY		✓
BILL THOMAS	✓	
ROBERT D. WATT	✓	

John J. Gosselin
Secretary

George M. Ballou
Chairman

Motion: A motion was made by Senator Watt that House Bill 81, E CONCURRED IN. Motion carried.

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date March 23 House Bill No. 494 Time

NAME	YES	NO
GEORGE MCCALLUM, CHAIRMAN	<i>selected</i>	
LLOYD LOCKREM, VICE CHAIRMAN	<i>L</i>	
MAX CONOVER	<i>L</i>	
JESSE A. O'HARA	<i>L</i>	
BOB PETERSON	<i>L</i>	
A. T. (TOM) RASMUSSEN	<i>L</i>	
PETE STORY	<i>L</i>	
BILL THOMAS	<i>L</i>	
ROBERT D. WATT	<i>L</i>	

Secretary

George McCallum
Chairman

Motion: A motion was made by Senator Watt that House Bill 494
BE CONCURRED IN. Motion failed.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

March 24

1972

MR. President:

We, your committee on Local Government.....

having had under consideration House Joint Resolution..... Bill No.54.....

Gould (Watt)

Respectfully report as follows: That House Joint Resolution..... Bill No.54.....

EXCERPTS BE CONCURRED IN

STANDING COMMITTEE REPORT

March 24 1979

MR. President:

We, your committee on Local Government,

having had under consideration House Bill No. 494,

Nathé (Story)

Respectfully report as follows: That House Bill No. 494,

third reading bill, be amended as follows:

1. Title, line 7.

Following: "75-6-107"

Strike: ","

Insert: "AND"

Following: "75-6-112"

Strike: "AND 75-6-113,"

2. Page 9, line 11.

Strike: lines 11 through 13 on page 10 in their entirety.

KERPAK And, as so amended, BE CONCURRED IN

46th Legislature

HOUSE BILL 494

March 8, 1970

Proposed amendments by the Department of Health & Environmental Sciences presented to the Senate Local Government Committee for its consideration.

1. page 8, line 20
following: "logging camp,"
insert: "PIPELINE,"

2. page 10, line 1
strike: "Enforcement remedies under this section"
insert: "THE CIVIL PENALTY PROVIDED FOR IN SUBSECTION (2) IS
IN LIEU OF THE CRIMINAL PENALTY PROVIDED FOR IN
SUBSECTION (1); ALL OTHER ENFORCEMENT REMEDIES"

PROPOSED AMENDMENTS TO HB 46

1. Title, lines 5 through 7.

Strike: "TO REVISE THE SUBDIVISION AND PLATTING ACT AND RELATED LAND USE STATUTES;"

Following: "EXEMPTING"

Strike: "CERTAIN"

Insert: "MINOR"

Following: "FROM"

Insert: "PUBLIC INTEREST"

Strike: "REDEFINING"

2. Title, lines 8 through 11.

Strike: line 8 through "CHANGES;"

Strike: line 9 through "76-3-605," on line 10

Following: "76-3-609"

Strike: ";" THROUGH 76-3-210"

3. Pages 1 through line 23 on page 15.

Strike: sections 1 through 12 in their entirety.

Renumber: subsequent sections

4. Page 15, line 25.

Following: "minor"

Insert: "minor"

5. Page 16, lines 1 and 2.

Strike: "certain"

Strike: "Except as provided in [section 12], summary"

Insert: "Summary"

Following: "procedures"

Insert: "for minor subdivisions"

6. Page 16, line 3.

Strike: this line in its entirety.

7. Page 16, line 12.

Strike: "(a) the"

Insert: "(1) The"

8. Page 16, line 22.

Strike: "(b) the"

Insert: "(2) The"

9. Page 17, line 2.

Strike: "(c) the"

Insert: "(3) The"

10. Page 17, line 7.

Strike: "(d) second"

Insert: "(4) Second"

11. Page 17, line 10 through page 19, line 2.

Strike: the remainder of the bill in its entirety.

46th Legislative Session

House Bill 494

An Act to Generally Revise Clarify, and Amend the Laws Relating to Public Water Supplies; Amending Sections 75-6-102 through 75-6-104, 75-6-106, 75-6-107, 75-6-112, and 75-6-113, MCA.

Comments of the Department of Health and Environmental Sciences in support of House Bill 494, prepared by Douglas Olson, staff attorney.

The Montana Public Water Supply Act was first enacted in 1907 by sections 1-14, chp. 177. Although it has been amended and recodified several times, its main goal has remained unchanged. It granted "general oversight and care" over all state waters used for domestic purposes to the Board of Health and required that all persons submit to the Board for its review and approval all proposed systems of water supply or drainage and sewage disposal which were to be built, installed, or enlarged. A one-thousand dollar fine, one-year imprisonment, or both was provided for violations.

In 1974 Congress passed the "Federal Safe Drinking Water Act" (hereinafter cited as FSDWA), 42 USC 300f, as an amendment to the U.S. Public Health Service Act. Its primary goal was to assure that the public was provided with safe drinking water. It required that inventories be taken of all public water supplies, ordered that a study be undertaken to establish the maximum permissible concentrations of contaminants that could exist and still have safe drinking water, and set up certain enforcement procedures. Public water supplies were not to exceed the maximum contaminant levels (mcl's) unless they had been granted a variance or an exemption. A variance might be granted if the supply was technologically infeasible at this time to treat whereas an exemption might be granted if the supply was primarily financially unable to presently comply with the mcl. Congress intended that the FSDWA be enforced at the state level if the respective states could adequately implement it.

The Montana Department of Health and Environmental Sciences was designated as the primary enforcement agency for administering the FSDWA in Montana by the U.S. EPA. The Montana Legislature in 1977 amended the Montana Public Water Supply Act then 69-4901 et seq. R.C.M. 1947, in order to make it also the means for enforcement of the FSDWA.

Almost two years have passed since then and it has been found that several housekeeping amendments to the Montana Public Water Supply Act are necessary for clarification.

The respective amendments being sought are explained below:

AMENDMENT NO.

1. 75-6-102 Definitions

(5) This adds a definition for the "Federal Safe Drinking Water Act", referencing where it and the federal regulations implementing it may be found.

(7) This proposes a new definition for "maximum contaminant level". This term is used several times in the existing act but is not defined at the present time. The proposed definition is taken from the federal act.

(9) This proposes that the definition of "person" be amended so that it more closely resembles the one found in the federal act.

(11) The definition of "public water supply" is proposed to be amended to correspond more closely with the federal act.

2. 75-6-103 Duties of the Board

Proposed amendments to subsections (a) and (c) are made with the intent to clarify ambiguous terminology; subsection (d) is proposed to be amended to require that the public be notified when an "exemption" as well as a variance is granted in order to comply with federal regulations. This assumes that the Board is authorized to promulgate rules governing the issuance of exemptions under the proposed amendment to subsection (h).

3. 75-6-104 Duties of Department

Proposed amendments to this section would substitute the word "quality" for purity, and "treating" for purifying. The present terminology is subject to differing interpretations.

4. 75-6-107 Variances and Exemptions

This section presently authorizes the department to grant variances to public water supply systems which exceed the maximum contaminant levels established by the board of health and environmental sciences. The proposed amendment would statutorily authorize the department to grant "exemptions" to those public water supply systems which satisfy

the federal requirements adopted by the board as rules.

5. 75-6-112 Prohibited acts.

The proposed amendment to this act is sought to replace terminology that is difficult to define. "Polluting matter of any kind" is replaced with the terms "sewage, drainage, industrial waste or other waste", all of which are defined in the act already. "Pollute the quality" is also replaced with the words "cause pollution".

A new proposed subsection (5) would statutorily prohibit the use of public water supply systems which exceed the maximum contaminant levels unless the system was granted a variance or exemption or had an application for one pending. This satisfies the intent of the FSDWA.

6. 75-6-113 Penalties

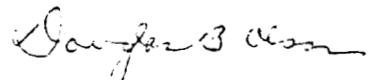
Section 75-6-111(2) presently authorizes the department to seek an injunction to enjoin violations of the Public water supply act or to seek a civil penalty as provided in section 75-6-113. Although the department is presently authorized to seek a civil penalty, 75-6-113, does not specify the amount of the penalty. The federal act authorizes the federal government to seek up to \$5000 per day of violation. The amount of the civil penalty proposed by amendment to this section would be the same as the amount presently authorized to be collected as a criminal penalty, \$50 to \$500 per day of violation. It's believed that this amount is reasonable and would serve as an effective deterrent to potential violators. A civil penalty is desirable in that it does not leave someone who has been found guilty with the stigma of a "criminal" conviction.

7. 75-6-110 Master Planning Areas

This is a proposed new section that would clarify the inter-relationship between the Montana Public Water Supply Act's requirements for review of water and sewer facilities and those found in the Sanitation in Subdivisions Act as they pertain to adopted master planning areas. It would specifically require that the lot fees and certification under the latter act be received by the department prior to any review and approval being undertaken pursuant to the public water supply act. At the present time the department has had some difficulty receiving the lot fees and certifications from some sources.

The amendments sought by House Bill 494 if approved by the legislature would lead to the more efficient administration and enforcement of the Montana Public Water Supply as explained above.

Respectfully submitted,



Douglas B. Olson, Attorney

Amendments to HB 81

1. Title, line 9.

Following: "76-4-102"

Strike: "THROUGH"

Insert: ", 76-4-104,"

2. Page 2, line 21.

Following: "parcels"

Insert: "containing less than 20 acres, exclusive of public roadways"

3. Page 3, line 3.

Strike: lines 3 through 8 in their entirety

Renumber: subsequent sections

4. Page 3, line 15.

Strike: "and subdivision certificates"

5. Page 3, line 16.

Strike: "of survey"

6. Page 4, line 10.

Following: "plat"

Strike: ", subdivision certificate of survey,"

Insert: "and"

7. Page 6, line 22.

Following: "(1)"

Insert: "If a written complaint alleging violation is made to the department or if the department has reason to believe that a person has violated this part or any rule thereunder and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act."

8. Page 7, line 3.

Strike: lines 3 through 15 in their entirety

9. Page 7, line 24.

Strike: lines 24 through line 3 on page 3 in their entirety.

Renumber: subsequent subsections

10. Page 8, line 5.

Following: line 4

Strike: "or (2) do"

Insert: "does"

11. Page 8, line 24.

Strike: "subdivision certificate of survey"

12. Page 9, line 9.

Strike: "or subdivision"

13. Page 9, line 10.

Strike: "certificate of survey"

14. Page 9, line 13.

Strike: "or subdivision certificate of survey"

15. Page 9, line 15.

Strike: "or subdivision"

16. Page 9, line 16.

Strike: "certificate of survey"

17. Page 9, line 20.

Strike: "or subdivision certificate of survey"

18. Page 11, line 5.

Following: line 4

Insert: "(2) The subdivisions described in 76-4-128(1) are not subject to sanitary restrictions if the local governing body certifies that the subdivisions have met the requirements of this part."

19. Page 13, line 22.

Following: "has"

Insert: "qualified"

Following: "personnel"

Strike: remainder of line 22

20. Page 13, line 23

Strike: "DEPARTMENT TO BE QUALIFIED"