

STATE ADMINISTRATION
MARCH 24, 1981
RM 436

The meeting of the House State Administration Committee was called to order at 8:00 a.m. on Tuesday, March 24, 1981, with Chairman Jerry Feda presiding. All members were present except Representatives Dussault and O'Connell who were excused.

SENATE BILL 258-SPONSOR, Senator Steve Brown, introduced this bill to the committee. Basically SB 258, as amended, incorporates the original provisions of SB 258 with the provisions of SB 430. The original provisions of SB 258 are contained in sections 1 through 18. This portion of the bill transfers certain functions between the Department of Natural Resources and Conservation and the Department of State Lands. Specifically, the forestry functions of the Department of Natural Resources and Conservation are transferred to the Department of State Lands while the mine siting and reclamation functions of the Department of State Lands and the Board of Land Commissioners are transferred to the Department of Natural Resources and Conservation. Sections 19 through 52 reflect the substance of SB 430. These provisions reduce the functions and authority of the Department and Board of Health and Environmental Sciences and transfer these responsibilities to the Department of Natural Resources and Conservation. Specifically, the rulemaking authority and contested case functions of the Department and Board of Health and Environmental Sciences relating to five environmental acts (Air Quality, Water Quality, Solid Waste Management, Subdivision, and Major Facility Siting) are transferred to the Department and Board of Natural Resources and Conservation. In addition, the administration, enforcement, and regulatory authority exercised by the Department of Health and Environmental Sciences is transferred to the Department of Natural Resources and Conservation. Another provision of the bill revises the composition of the Board of Natural Resources and Conservation. Senator Brown stated that since the amendments beginning in section 18 were added, there has been an effort on the part of the executive branch to address any potential statutory problems that might exist with the proposed transfer of the Health Department to the Department of Natural Resources and Conservation. He stated that Mona Jamison, governor's council, has been working with the Department of State Lands and the Department of Health in this effort. As a result of that effort, he stated, we are offering a series of amendments to SB 258. A copy of the proposed amendments is attached and is EXHIBIT 1 of the minutes.

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SB 258 (cont.)

Senator Brown said that his position relating to the reorganization of environmental regulatory agencies developed a long time ago. He said that he worked as legal council to the governor as well as being environmental affairs coordinator. In addition, he stated, he served as chief council for the Health Department for approximately two years. It was during that period, he stated, that he became aware of what he considered to be some problems that could only be overcome by trying to consolidate regulatory functions dealing with the same issues. He said that it makes sense from both public health and public welfare standpoint to have the Water Rights and the Water Quality bureaus working from the same department sharing information and being able to consult on a daily basis. This bill, he stated, addresses another problem and that is the problem of legislating allocations, enforcement and responsibilities in these areas, on a basis of personalities. This started, he stated, in 1973 during the session that the major facility siting act was enacted and the first stringent reclamation laws went into effect. This bill is an attempt to recognize that we can solve some permit lay problems and also improve the environmental coordination of state regulatory agencies.

One thing that Senator Brown said that he does not necessarily agree with is that the contested case hearings will be held by the department instead of the Board. This was the decision of the governor, and Senator Brown said that he is willing to go along with this change.

Senator Brown said that this bill does not change the emphasis of the public health aspects of the laws administered by the various departments. Also, he stated, it does not create a "one-stop permitting process". This bill does not change any of the substantive laws administered by the Health Department.

PROPOSERS

LARRY FASBENDER, Legislative Liaison for Governor Schwinden, testified in support of SB 258. A copy of his prepared testimony is attached and is EXHIBIT 2 of the minutes.

SB 258 (cont.)

GARETH MOON, Dept. of State Lands and past forestry commissioner, stated that the state forests are managed and protected by the state forester and they are all state owned, and they are under the jurisdiction of the State Land Board. The recommendations of the Board have to be passed by the director of D.N.R.C. and sometimes the director does not agree with the recommendations thus creating problems. He stated that this raises a problem of a state forester having two bosses. In the short time that he has been in the Department of State Lands, he stated, he can see all sorts of ways to save time and money and SB 258 is a step in the right direction.

STEVE ELLIOT, WESCO, Billings, stated that he worked closely with Senators Brown and Keating in effectuating the proposed amendments. We were approached as to whether or not we would support the changes proposed in the original SB 258. We said that we would do that as long as we could take the functions of the Air and Water bureaus of the Department of Health and put them into one piece of legislation which is what we have with the present SB 258. He stated that he would reserve comments on the proposed amendments because he had not seen them yet. Mr. Elliot passed out an organizational chart to the members of the committee. A copy is attached and is EXHIBIT 3 of the minutes.

ROBERT HELDING, Montana Wood Products Assoc., stated that he was appearing in support of the transfer of the forestry functions of the DNRC to the State Lands Dept. but takes no position on the other amendments.

JAMES MACHLER, Montana Coal Council, stated that this bill will speed up the permitting process and place those functions in a area where they can be overseen by the people who deal with them on a day to day basis.

PAT WILSON, Montco, stated that they are caught in that permitting process that everyone is talking about. It is no joy, she stated, to be working in the system right now. She cited an example of a permit application process within their company that has taken approximately 5 months and is still not approved. She said that they feel if they are put in the position where there is one agency and one director there would be a better opportunity to go to that person and find out what the problem or delay is if in fact there is one.

SB 258 (cont.)

Ms. Wilson also stated that she has a problem with the effective date. She said she does not see why this should take until October 1, 1982 to come into effect. Other than that, she stated, we support the bill.

PETER JACKSON, Western Environmental Trade Assoc., stated that in 1971 the legislature passed the reorganization act in state government. Finally, he stated, ten years later we are getting the job done. He said this bill makes common sense.

OPPONENTS

JOHN F. MCGREGOR, M.D., P.C., testified in opposition to SB 258. A copy of his prepared testimony is attached and is EXHIBIT 4 of the minutes.

JAMES H. CARLSON, Director of the Air Quality Unit of the Missoula City-County Health Department, testified and presented a copy of his prepared statement to the committee. A copy is attached and is EXHIBIT 5 of the minutes.

DAVID B. LACKMAN, Montana Public Health Assoc., lobbyist, stated that he has visited several other state departments of health where they were set up separately. Illinois was a prime example, he stated, where the detriment occurred. The EPS became "the tail that wags the dog". He said he can add very little to the letter that Dr. Drynan wrote in opposition to this bill which was submitted to the Senate Natural Resources Committee.

CLAIBORNE BRINCK, representing himself, stated that streamlining has its advantages but in this case a team of experts in the field has proven to be in the best interest of the public. We do not want to consider legislation of this type just for the convenience of the people that might be "carrying in plans, etc.". The health of the public is the most important thing to be considered.

GARY WATT, representing himself, stated that outside interests have spent millions of dollars evaluating Montana's mineral resources to determine how much it will cost to comply with the present environmental health laws. The easiest ways to reduce their costs is to reduce the ineffectiveness of our health laws.

SB 258 (cont.)

He said that if this legislation is enacted, the public health professionals will move on because they will no longer have legal direction or personal incentive to carry on.

WILLA HALL, League of Women Voters of Montana, testified and presented a copy of her written testimony for the record. A copy is attached and is EXHIBIT 6 of the minutes.

H. S. HANSON, Montana Technical Council, submitted a copy of his testimony and several documents pertaining to his testimony. A copy is attached and is EXHIBIT 7 of the minutes.

WILLIAM BURKE, Health Department, stated that they are opposed to the transfer of the public water supply to the DNRC. He said they are concerned about the amount of technical amendments in this bill that do not deal with public health and welfare of the citizens of Montana.

JERRY LOENDORF, Mt. Med. Assn, said that the present department directors have the background necessary to administer their appropriate departments but may not be qualified to administer in another area. He said that from the proponents testimony he can see no good reason for the transfer of these functions in the departments.

GAIL PETERSON, State Health Dept., Missoula, submitted a copy of her prepared testimony for the record. A copy is attached and is EXHIBIT 8 of the minutes.

JAMES SIEVERSON, ASARCO, Inc., stated that the system of checks and balances will be eliminated with the passage of this bill.

PAT OSBORNE, N.P.R.C., stated that they are concerned with the portion of the bill that transfers the health functions. The primary concern, he stated, is the transfer of the contested case authority from the Board of Health to the DNR&C. The only method of appeal under the director, would be through the courts whereas with the citizens board you have appeal authority through that Board. He concurred with other testimony presented. Mr. Osborne also suggested that an interim study should be made before any decisions are made concerning this transfer.

SB 258 (cont.)

JOAN MILES, representing the Montana Assoc. of Counties, stated that they did not oppose the original bill but oppose the merger of SB 258 with SB 430. Ms. Miles said that apparently there is no fiscal impact on this bill. It was brought out in the Senate hearing that the departments would remain where they are for some time and they would just have a different director. She said she does not see how this will lead to a greater efficiency. She said that 95% of the Health Department's duties are not related to permitting at all.

JAN FLAHARTY, representing himself, presented a copy of his written testimony to the committee. A copy is attached and is EXHIBIT 9 of the minutes.

RICHARD STEPPEL, representing himself, concurred with other testimony and said that this transfer of functions from the Board will impede citizens from participating in government decision making.

RITA SHEEHY, representing herself, concurred with other testimony.

QUESTIONS BY THE COMMITTEE

McBride: About how much time do the four branches spend permitting?

Dr. Drynan: About 8% of their time.

McBride: What impact do you see this having on other health programs?

Drynan: I think it will deteriorate the ability to serve their functions and there will be occupational health problems etc.

Representative Azzara questioned one person (director) hearing cases when he is of the body that made the decision in the first place. He said if one person is involved instead of five it changes the nature of the participation.

Winslow: What would be the governors feelings on amending out SB 430 and going back to the original bill?

Fasbender: The governor feels that the bill adequately protects the public concerns but rather than letting the bill go down he would prefer you salvage the forestry transfer.

Questions (cont.)

Pistoria: If this transfer takes place will you be ready?

L. Berry: If the effective date of the transfer would be July 1, 1982, no I would not be prepared but if the effective date is put off for a period of 19 months then I would do my best to iron out any administrative problems that there might be.

Kropp: I understand Larry Fasbender requested that this be studied during the interim. What was the reason?

L. Berry: The request was made for the study to resolve a lot of the problems that we thought might be there. The subcommittee looked at it and in discussing it with the people involved they felt that there were no problems that would prevent the change from taking place in a reasonable amount of time. That is why they set the date back to October of 82.

Sales: The indication was that with these transfers there isn't going to be any physical movement of anyone.

Fasbender: Reclamation will not move because I do not think there is any room. The DNR is seeking to have a new building built. There would probably be a move at a later date but how that will happen I do not know.

Berry: There is a natural resource building being analyzed with an option that if the transfer does take place that the room would be made available.

Senator Brown closed the hearing on SB 258. He said that as far as the problem of public health that the opponents stated, I do not think there would be any. The same people will perform the same duties. This is an engineering judgement, whether the permittee can meet the standards. This is not a public health determination for each individual permit. He also said that there would be no new bureaucracy only a transfer of people and functions. Senator Brown said that if he thought for one minute that the public health laws of this state would suffer he would never have advocated legislation of this type.

Meeting adjourned at 11:00 a.m.

Respectfully submitted,

G. C. "JERRY" FEDA,
C. Martin-Secretary

G.C. Feda

3124
Amendments to Senate Bill 258

1. Page 3, line 21.

Following: "commissioners"

Insert: "and department of state lands"

2. Page 3, line 23.

Following: "commissioners"

Insert: ", department of state lands,"

3. Page 11, line 12.

Following: "of"

Strike: "health and environmental sciences"

Insert: "natural resources and conservation"

4. Page 13, line 8.

Following: "of"

Insert: "the department of"

5. Page 16, line 10.

Following: line 9

Insert: "Section 13. Section 82-4-203, MCA, is amended to read:
(See attachment)"

Renumber: subsequent sections

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(6) "Board" means the board of land commissioners provided for in Article X, section 4 of the constitution of this state.~~

~~(7)~~ (6) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

~~(8) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(9)~~ (7) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(10)~~ (8) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

~~(11)~~ (9) "Department" means the department of state lands natural resources and conservation provided for in Title 2, chapter 15, part 32.

~~(12)~~ (10) "Failure to conserve coal" means the nonremoval or nonutilization of strippable and marketable

coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

††3†(11) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

††4†(12) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

††5†(13) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

††6†(14) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

††7†(15) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

††8†(16) "Mineral" means coal and uranium.

††9†(17) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

†20†(18) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

†21†(19) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

†22†(20) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

†23†(21) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and

erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

†24†(22) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

†25†(23) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

†26†(24) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

†27†(25) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

†28†(26) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

†29†(27) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

†30†(28) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

†31†(29) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

†32†(30) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

†33†(31) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a

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form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part."

6. Page 16, line 22.

Following: "of"

Insert: "the department of"

7. Page 22, line 16.

Following: line 15.

Insert: "Section 16. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(2) "Board" means the state board of ~~land-commissioners~~.

(2) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Final cut" means the last pit created in an opencut-mined area.

(5) "Highwall" means that side of the pit adjacent to unmined land.

(6) "Landowner" means the owner of land directly or indirectly affected by an opencut-mining operation.

(7) "Opencut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand, or gravel by removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality, or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel.

(8) "Operator" means a person engaged in and controlling an opencut mining operation.

(9) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel. "Spoil" is the overburden disturbed from its natural state in the process of opencut mining. (Continued on following page)

(10) "Person" means a natural person or firm, association, partnership, cooperative, or corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity whatever.

(11) "Progress report" means a report showing the land which the operator has affected by opencut mining during the year. The report shall show the number of acres of affected land and all reclamation accomplished.

(12) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice shall be given once a week for 3 successive weeks.

(13) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(14) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas, and an explanation of proposed reclamation of the land with appropriate maps.

(15) "Refuse" means all waste material directly connected with the opencut-mining operations.

(16) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.""

Renumber subsequent sections.

8. Page 23, line 12.
Following: "75-2-301,"
Insert: "75-2-302,"

9. Page 23, line 17.
Following: "75-5-307,"
Strike: "AND"
Following: "75-5-401"
Insert: ", and 75-5-514"

10. Page 23, line 23.
Following: line 22
Insert: "(d) those rulemaking functions specified in 75-6-105 relating to records required for wells drilled."

11. Page 23, line 25.
Following: line 24
Strike: "75-2-105,"
Insert: "75-2-204,"
Following: "75-5-106,"
Insert: "75-5-402,"
Following: "75-6-102,"
Insert: "75-6-104, 75-6-105,"

12. Page 24, line 1.
Following: line 25 on page 23
Strike: 75-6-107,"
Following: "75-6-113,"
Insert: "75-10-104,"
Following: "75-10-112,"
Strike: "AND"
Following: "75-10-501"
Insert: "75-20-211, and 75-15-212"

13. Page 24, line 15.
Following: "IN"
Strike: "75-5-514,"
Insert: "75-5-502"

14. Page 24, line 16.
Following: line 15
Strike: "75-5-614,"

15. Page 25, line 5.
Following: "SECTIONS"
Insert: "or chapters"

16. Page 26, line 4.

Following: "75-5-402,"

Insert: "75-5-503,"

Following: "75-5-513,"

Insert: "75-5-514,"

17. Page 26, line 5.

Following: "75-5-602,"

Insert: "75-5-603, 75-5-605,"

Following: "75-5-622,"

Insert: "75-5-631,"

18. Page 26, line 8.

Following: "MONITORING"

Strike: "AND"

Following: "TESTING"

Insert: "and inspecting"

19. Page 26, line 11.

Following: line 10

Strike: "75-6-107,"

20. Page 26, line 24.

Following: line 23

Insert: "(b) The licensing function specified in 75-15-212;"

Reletter: subsequent subsections

21. Page 27, line 6.

Following: line 5

Insert: "(i) the regulatory function specified in 80-8-110."

22. Page 27, line 7.

Following: "AND IN"

Insert: "7-13-215,"

23. Page 27, line 8.

Following: line 7

Strike: "75-2-105,"

Insert: "75-2-121, 75-2-122,"

Following: "75-5-401,"

Insert: "75-5-605,"

Following: "75-6-102,"

Insert: "75-6-105"

24. Page 27, line 9.

Following: "75-10-106,"

Strike: "75-10-113"

Insert: "75-10-112"

25. Page 28, lines 11 and 12.

Following: "pesticides control," on line 11

Strike: "environmental sanitation, solid waste disposal,"

Insert: "food and consumer safety,"

26. Page 34, line 14.

Following: "department"

Insert: "or board"

27. Page 35, line 3.

Following: line 2

Insert: "Section 27. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air contaminant sources which are furnished to or obtained by the ~~beard-er~~ department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any trade secrets not intended to be public when submitted to the ~~beard-er~~ department shall be submitted in writing and clearly marked as confidential. However, emission data shall never be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the ~~beard-er~~ department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section."

28. Page 42, line 6.

Following: "~~beard~~" on line 5

Strike: "department"

Insert: "board"

29. Page 43, line 6.

Following: "~~beard~~"

Strike: "department"

Insert: "board"

30. Page 47, line 7.

Following: "the" on line 6

Strike: "board" on line 7

Insert: "department"

31. Page 48, line 17.

Following: "~~beard~~"

Strike: "department"

Insert: "board"

32. Page 53, line 2.

Following: line 1

Insert: "Section 37. Section 75-5-105, MCA, is amended to read:

"75-5-105. Confidentiality of records. Any information concerning sources of pollution which is furnished to the ~~beard-er~~ department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish

the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any information not intended to be public when submitted to the ~~board~~ department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The ~~board~~ department may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section."

33. Page 54, line 18.

Following: "order of the"

Strike: "board"

Insert: "department"

34. Page 55, line 11.

Following: line 10

Insert: "Section 41. Section 75-5-514, MCA, is amended to read:

"75-5-514. When board to establish rates and department to collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the board may adopt a system of charges and rates as provided for in 75-5-511(1) and the department shall collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513."

Renumber: subsequent sections

35. Page 57, line 9.

Following: line 8

Insert: "Section 42. Section 75-5-614, MCA, is amended to read:

"75-5-614. Injunctions authorized. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation which would be subject to a compliance order under 75-5-613.

An action under this subsection may be commenced in the district court of the county in which the defendant is located or resides or is doing business or any county where a violation occurs or is threatened if the defendant cannot be located in Montana, and the court shall have jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the ~~board~~ department. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to

believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Renumber: subsequent sections.

36. Page 59, lines 22 through 25.

Following: "board" ~~on line 22~~

Strike: "(1) The" through "as a" on line 25.

37. Page 60, lines 1 and 2.

Following: line 25 on page 59

Strike: all of line 1 on page 60

Following: line 1 on page 60

Strike: "(2)" on line 2

38. Page 61, lines 1 and 2

Following: line 25 on page 60

Strike: the entire subsection (3) on lines 1 and 2 of page 61

39. Page 61, line 3.

Following: line 2

Insert: "Section 45. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. (1) The department shall:

~~(1)~~ (a) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

~~(2)~~ (b) have waters examined to determine their quality and the possibility that they may endanger public health;

~~(3)~~ (c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

~~(4)~~ (d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

~~(5)~~ (e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

~~(6)~~ (f) collect fees for services rendered in analyzing water and conducting inspections to cover costs of the service and deposit the fees collected in an earmarked revenue fund for use by the department;

~~(7)~~ (g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

~~(8)~~ (h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

~~(9)~~ (i) enforce and administer the provisions of this part;

~~(10)~~ (j) establish a plan for the provision of safe drinking water under emergency circumstances;

~~(11)~~ (k) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

1

{12} (1) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part.

(m) have general supervision responsibility over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The department may issue orders necessary to fully implement the provisions of this part."

Renumber: subsequent sections.

40. Page 61, line 20.

Following: line 19

Insert: "Section 46. Section 75-6-107, MCA, is amended to read:

"75-6-107. Variances and exemptions. The department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board. A variance or exemption granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision ~~of the department~~ to grant, deny, revoke, or modify a variance or exemption may appeal the ~~department's~~ decision to the board ~~department~~ as provided in the Montana Administrative Procedure Act.

"Section 47. Section 75-20-214, MCA, is amended to read:
(see attachment)

Renumber: subsequent sections

Section 1. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee -- accountability -- refund -- use. (1) (a) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

- (i) 2% of any estimated cost up to \$1 million; plus
- (ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus
- (iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus
- (iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus
- (v) .125% of any amount of estimated cost over \$300 million.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, ~~the--department--of--health,~~ the board, ~~the--board--of--health,~~ and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two

or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

41. Page 63, line 21.

Following: "~~Act.~~"

Insert: "The decision, opinion, order, certification, or permit of the department satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act."

42. Page 65, line 1.

Following: "state lands;"

Insert: "department of health and environmental sciences"

43. Page 70, line 25.

Following: line 24

Insert: "Section 50. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

+2+ (1) "Department" means department of health and environmental sciences natural resources and conservation.

+3+ (2) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

+4+ (3) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

+5+ (4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

+6+ (5) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

+7+ (6) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes."

Renumber: subsequent sections

44. Page 72, line 20.

Following: "THROUGH"

Strike: "17"

Insert: "19 and 62 through 65"

Following: "IS"

Strike: "October 1"

Insert: "July 1,"

45. Page 72, line 21

Following: "SECTIONS"

Strike: "18"

Insert: "20"

Following: "THROUGH"

Strike: "50"

Insert: "60, section 5 as it amends 75-10-103(1) and (2), section 6
as it amends 75-10-203(1) and (2), section 10 as it amends
80-8-110(2) and 66"

46. Page 72, line 23.

Following: "SECTION"

Strike: "51"

Insert: "61"

47. Page 72, line 25.

Following: "SECTION"

Strike: "75-5-202"

Insert: "75-5-502"

I am Larry Fasbender, Legislative Liaison for Governor Schwinden.

SB 258 was introduced at the request of the Governor to transfer the Reclamation Division in the Department of State Lands to the DNRC, and transfer the Forestry Division to the Department of State Lands. SB 258 still does that but, as you are aware, the original bill was significantly changed in the Senate by the addition of SB 430 to SB 258.

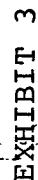
At the second hearing on SB 258 in the Senate Natural Resources Committee, the Governor asked me to express his concern about the transfer of certain programs at DHES to DNRC. I recommended that the proposed DHES transfer be studied during the interim. The Committee and the Senate rejected the interim study alternative.

Governor Schwinden then asked the primary departments involved to carefully review the amended legislation to minimize technical or practical problems arising from a transfer. DHES was also directed to express its specific concerns with members of the Legislature. Department counsel, working together with Mona Jamison, Legal Counsel for the Governor, jointly drafted amendments to address specific problems associated with the transfer.

The Governor wants to make it absolutely clear that SB 258 as amended is not "one-stop permitting", although the proposed reorganization should improve the coordination of the permitting process.

One other area has received substantial discussion ... the issue of contested case hearings involving a decision of the department. The Board of Natural Resources will adopt the rules which establish policy, be it for air or water quality, but the Department would hear all contested matters. The public's right to participate and appeal decisions is maintained, and no one's rights are diminished under this legislation.

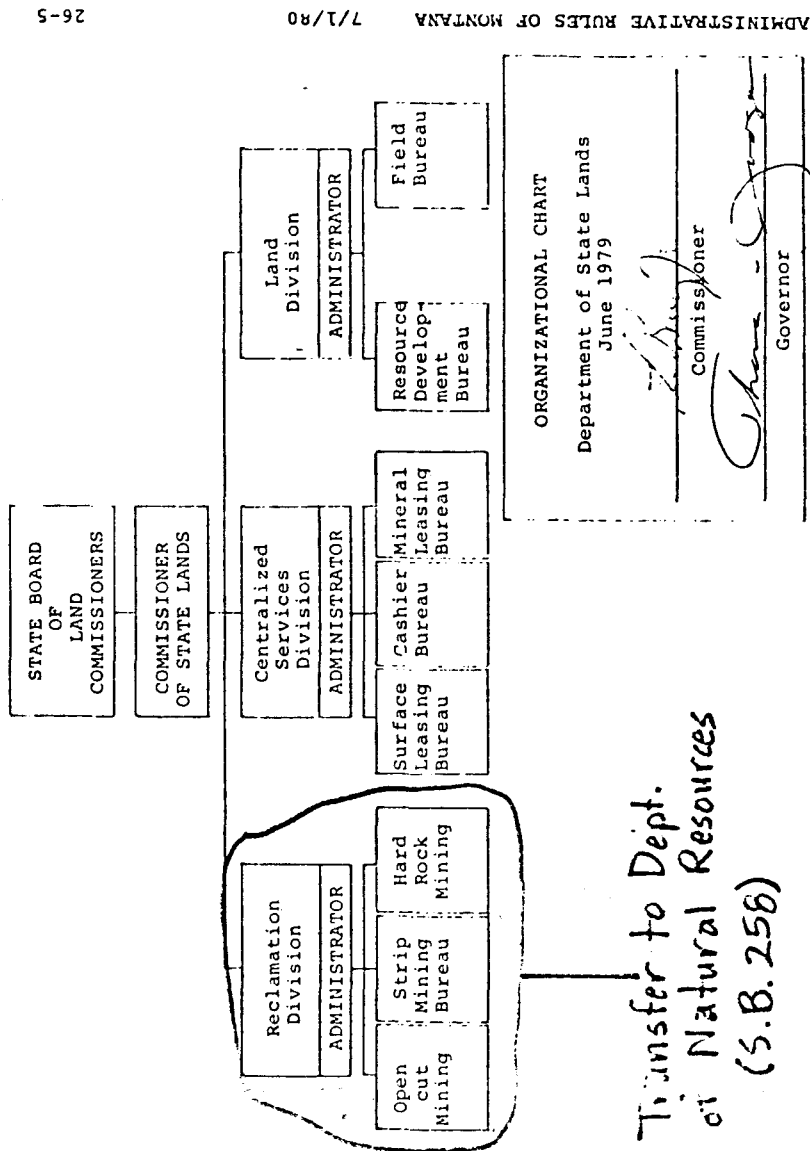
The Governor is now satisfied that public health and safety will be protected, and the management of state government potentially improved, and the public interest benefitted. He therefore supports Senate Bill 258 as amended.



State Lands

26.1.101

DEPARTMENT OF STATE LANDS



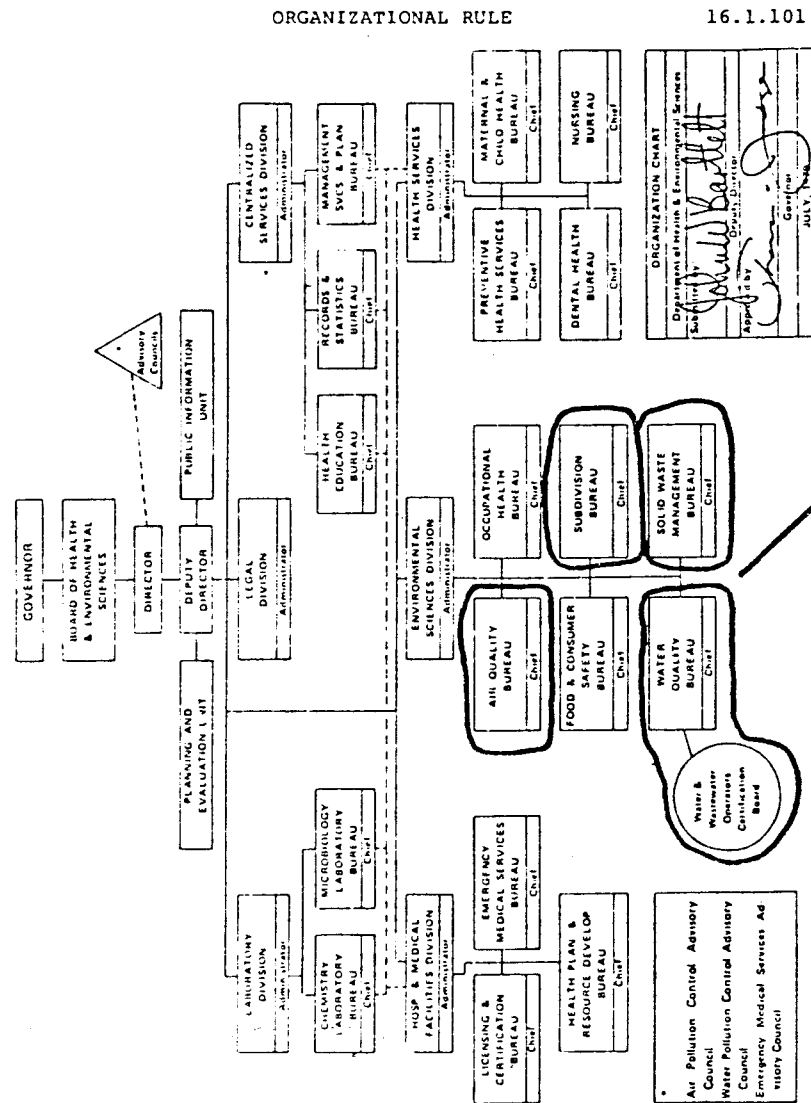
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7/1/80

ADMINISTRATIVE RULES OF MONTANA

3

Health and Environmental Sciences



JOHN F. McGREGOR, M.D., P.C.
Prospect Heights Medical Center
401 15th Avenue South
Great Falls, Montana 59405

I have served as a member of The Board of Health and Environmental Sciences of the State of Montana since Mid-1970 and I have been chairman of that Board since May of 1979. Because of the experience gained during my Board tenure, I believe that I have gained considerable knowledge in the practical operations of the air quality, water quality, public water supply, subdivisions and solid waste management programs of the Department of Health and Environmental Sciences. Because of this experience, I am most definitely opposed to those sections of Senate Bill 258 which transfer these functions from the Department and Board of Health and Environmental Sciences to the Department and Board of Natural Resources and Conservation.

I am opposed to these transfers for 3 reasons:

(1) These environmental programs -- Air Quality, Water Quality, Public Water Supply, Subdivisions and Solid Waste Management -- are premised on the policy of protecting Human Health -- and because of that policy it is imperative that these functions interrelate with public health programs as they do now under the administration of the Department of Health and Environmental Sciences.

(2) My second objection is that Senate Bill 258 not only transfers certain environmental functions, it also drastically changes the role of citizen boards in these areas. According to the provisions of this bill, the rulemaking functions of the Board of Health would transfer to the Board of Natural Resources but, and is a big but, The Quasi-judicial functions of the Board of Health would be transferred to the Department, Not to the Board of Natural Resources, Now instead of a representative citizen board hearing appeals of air quality permits, air quality variances, water quality variances, water quality permits, solid waste management permits, subdivision certifications, and variances of the public water supply act, these disputes would be decided by the director of the Department of Natural Resources and Conservation, This presents an interesting situation.

Under the provisions of Senate Bill 258, an air quality permit or a water quality permit will be issued by the Department of Natural Resources and Conservation. The application for such a permit would be made to that Department, would be reviewed by the staff of that Department, and ultimately under the approval of the director of that Department who designed the permit.

Therefore, the director would be determining whether or not his staff under his direction made a mistake. Some might argue, is this a fair hearing? Others may contend that you have substituted an entrenched bureaucrat for a multi-member citizen board.

I contend that a citizen board is a method of resolving disputes that you should not be destroying. The Board of Health membership had included geographical representation from all areas of Montana; has represented numerous professions -- lawyers, surgeons, pathologists, veterinarians, housewives, plumbers, pharmacists, secretaries, and more; and has included diverse viewpoints politically, economically, and socially. The result of this membership is Representative Decision-Making. During my membership on the Board, I have watched how seven individuals interact reflecting not only these geographical areas, professions and viewpoints but their expertise and experience to eventually make, in their estimation, the fairest decision based on the evidence and arguments presented to them. The Board of Health continually strives to be equitable in resolving disputes. I believe that in substituting one individual, the director of the Department of Natural Resources, for seven members of a representative citizen board, The system will ultimately lose.

(3) My last objection is that you have been presented with over 40 technical amendments that must be made to correct errors in Senate Bill 258. This Plethora of amendments raises in my mind a question of whether more corrections are necessary -- whether we have not proceeded too hastily in arranging this transfer. Executive reorganization calls for thorough analysis of all existing statutes that apply to the programs to be shuffled.

In conclusion, I urge this committee to delete all sections of Senate Bill 258 which deal with the Department of Health and Environmental Sciences. You have not been offered any valid argument that justifies the expenditure of taxpayers' monies for this reorganization. This bill will not accomplish a single thing that isn't currently being accomplished by these programs under the Department and Board of Health and Environmental Sciences. Moving these programs gains nothing but unnecessary waste of money.

Haste makes waste?

What's the rush?

It was the last working day before the Senate's mid-session recess, but that didn't mean bills had to get railroaded.

Couldn't the Senate have spent a little more time on some of those bills? Like, for instance, the one (SB430) that would change the state's environmental control apparatus.

The bill was originally designed to transfer forestry and mine reclamation from the departments of Natural Resources and State Lands, but Sen. Thomas Keating, R-Billings, amended it to include the transfer of environmental regulatory powers from the Board of Health to the Department of Natural Resources.

And it got passed ten days after it was introduced in that form.

Ten days.

Is that enough time for public discussion, enough time for constituents to send the Senate their thoughts on the bill, after it had been amended in committee? After all, the House will act on the bill within a month.

Maybe the Legislature should act with dispatch on some issues, but not on such a major one.

Since the House could choose to spend more time on it, maybe somebody could question that amendment, the one to transfer powers from the Board of Health to the Department of Natural Resources — powers to regulate air and water quality, solid waste, and subdivisions.

The mining companies got what they wanted on that one: one-stop permitting. According to the amendment, the mining companies can go to the Department of Natural Resources and skip the Board of Health. One office would weigh both the economic and environmental consequences.

Wouldn't the Board of Health be more qualified to protect the public against unhealthy levels of pollution the mining companies might create?

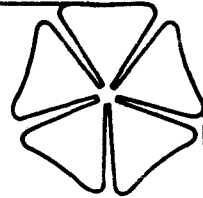
The Board of Health has done a fine job so far. Why give their job to somebody else?

Hopefully, the House will spend more than ten days pondering



MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 West Alder • Missoula, Montana 59801 • Ph. (406) 721-5700



TESTIMONY BEFORE THE HOUSE
STATE ADMINISTRATION COMMITTEE ON

S. B. 258

MEMBERS OF THE COMMITTEE:

MY NAME IS JAMES CARLSON. I AM THE DIRECTOR OF THE AIR QUALITY UNIT OF THE MISSOULA CITY-COUNTY HEALTH DEPARTMENT, AND I AM HERE TO TESTIFY ON BEHALF OF THE MISSOULA CITY-COUNTY HEALTH DEPARTMENT.

WE OPPOSE THIS BILL, WHICH WOULD CONCENTRATE THE DIVERSE POWERS AND RESPONSIBILITIES OF MANY STATE AGENCIES UNDER ONE SUPER DEPARTMENT WITH GREATLY EXPANDED DECISION-MAKING POWER. I WILL ENUMERATE THOSE CONCERNS.

ON A PHILOSOPHICAL LEVEL, WE QUESTION THE APPROPRIATENESS OF PUTTING AGENCIES SUCH AS THE AIR QUALITY BUREAU AND PORTIONS OF THE WATER QUALITY BUREAU, WHOSE PRIMARY OUTLOOK AND RESPONSIBILITY DEALS WITH THE PROTECTION OF HUMAN HEALTH UNDER THE DEPARTMENT OF NATURAL RESOURCES, WHOSE PRIMARY OUTLOOK HAS BEEN TOWARD RESOURCE ALLOCATION.

THE STATE AMBIENT AIR STANDARDS ARE BASED ON THE PROTECTION OF THE HEALTH OF CITIZENS OF THIS STATE. WE FEEL THAT THE AIR QUALITY BUREAU, WHOSE ENTIRE ADMINISTRATIVE FUNCTION IS BASED ON THE NECESSITY TO MEET THOSE STANDARDS, SHOULD REMAIN UNDER THE JURISDICTION OF THE HEALTH BOARD, WHOSE PRIMARY FUNCTION IS TO PROTECT PUBLIC HEALTH, RATHER THAN ALLOCATE RESOURCES.

ON AN ADMINISTRATIVE LEVEL, THIS BILL WOULD CREATE MORE INCONVENIENCE FOR OUR DEPARTMENT, DUE TO THE FACT THAT WE WOULD HAVE TO DEAL WITH TWO STATE DEPARTMENTS RATHER THAN ONE.

SECONDLY, WE ARE CONCERNED ABOUT THIS BILL BECAUSE OF THE TREMENDOUS CONCENTRATION OF REGULATORY AUTHORITY IT GIVES TO ONE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES. UNDER THIS BILL, DNR WOULD BECOME A SORT OF "ONE-STOP SHOPPING CENTER" FOR PRACTICALLY EVERY PERMIT NECESSARY FOR CONSTRUCTION OF MAJOR OR MINOR FACILITIES IN THIS STATE. SUCH PERMIT AUTHORITY WOULD INCLUDE: AIR CONTAMINATION PERMITS, WATER POLLUTION PERMITS, SOLID AND HAZARDOUS WASTE PERMITS, MAJOR FACILITIES SITING PERMITS, SEWER PERMITS, SUBDIVISION APPROVAL, MINING PERMITS, MINING RECLAMATIONS, WATER USAGE, PUBLIC WATER SUPPLY APPROVAL, AND SO ON, AND SO ON.

WHETHER A PERSON IS STRONGLY PRO-DEVELOPMENT, NO-GROWTH, OR A MIDDLE-OF-THE-ROADER, THE WISDOM OF PLACING SO MUCH POWER UNDER ONE ADMINISTRATIVE DEPARTMENT IS EXTREMELY QUESTIONABLE, IF ONE KEEPS IN MIND THAT THE ISSUANCE OR DENIAL OF ALL OF THOSE PERMITS WILL BE IN THE HANDS OF THE DIRECTOR OF DNR.

THIRDLY, AND MOST IMPORTANTLY, WE ARE EXTREMELY CONCERNED ABOUT THE AMOUNT OF DISCRETIONARY AUTHORITY THAT THIS BILL TAKES AWAY FROM VARIOUS BOARDS AND PLACES DIRECTLY UNDER THE ADMINISTRATION OF DNR.

THERE ARE NO LESS THAN 87 CHANGES IN SENATE BILL 258, WHERE THE WORD "BOARD" IS REPLACED BY THE WORD "DEPARTMENT". ADMITTEDLY, MANY OF THESE CHANGES ARE NOT TREMENDOUSLY IMPORTANT. HOWEVER, MANY OF THEM DO REPRESENT A MAJOR TAKING OF BOARD POWERS. FOR EXAMPLE, IN THE CLEAN AIR ACT, ALTHOUGH THE BOARD WOULD RETAIN ITS AUTHORITY TO SET EMISSION AND AMBIENT STANDARDS, THE POWER OF GRANTING VARIANCES TO THOSE STANDARDS WOULD BE GIVEN ENTIRELY TO THE BUREAUCRATS. THERE IS NO PROVISION FOR APPEAL TO THE BOARD. THE BOARD WOULD ALSO LOSE ITS AUTHORITY TO HOLD HEARINGS FOR VIOLATORS OF STANDARDS, TO ISSUE ORDERS, AND IN EFFECT IT LOSES CONTROL OVER THE DEPARTMENT ITSELF.

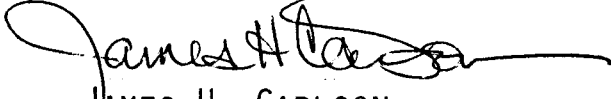
THE EXAMPLES I HAVE JUST GIVEN YOU APPLY ONLY TO THE PORTION OF THIS BILL DEALING WITH THE CLEAN AIR ACT; THERE ARE MANY SIMILAR CHANGES IN OTHER AREAS DEALING WITH WATER QUALITY, SUBDIVISION AND SOLID WASTE.

THIS BILL, AS PREPARED BY THE OFFICE OF THE GOVERNOR, IS CLEARLY AN ATTEMPT OF THE EXECUTIVE BRANCH TO TAKE AND CONSOLIDATE, IN ONE FELL SWOOP, MANY OF THE POWERS AND RESPONSIBILITIES THAT THE LEGISLATURE HAS WISELY DISTRIBUTED TO VARIOUS BOARDS AND AGENCIES OVER THE YEARS.

SENATE BILL 258 IS A BAD BILL BECAUSE IT DOES NOT PROVIDE FOR THE BALANCE AND DISTRIBUTION OF POWERS NECESSARY FOR A SUCCESSFUL DEMOCRATIC GOVERNMENT.

WE URGE THAT THIS BILL BE KILLED.

RESPECTFULLY SUBMITTED,


JAMES H. CARLSON

League of Women Voters of Montana

Testimony for SB 285

by Willa Hall

March 24, 1981



Because many important questions remain unanswered about transferring health decisions to the Department of Natural Resources and Conservation, we must oppose SB 258. Will you be sacrificing the health of our citizens in an effort to put permit systems in one agency? Will this move really accomplish more efficient management and streamline the permit system? The Major Facility Siting act was amended last session to streamline the permit system. Have these changes been adequately tested? Will the Board of Natural Resources be able to handle the additional work load?

Let's look at the functions of these two departments. The function of the Department of Health and Environmental Sciences is to protect the health of the citizens. DHES, local public health agencies and the medical profession work cooperatively to provide good health care. As an example, sewer permits are obtained through the local health department. Would DNRC have to set up their own bureaucracy at the local level? In contrast to the DHES mandate to provide a healthful environment, DNRC's charge is to develop and manage the natural resources. Definitely there must be coordination between the two departments but their separate purposes provides healthy checks and balances. (Just as you have with your two legislative bodies)

SB 258 puts tremendous responsibilities and power into one department and more specifically upon one person, the director. Many duties presently under the Board of Health would be transferred to the department of Natural Resources rather than the Board of Natural Resources. We find this disturbing and unwise. Specifically in Sec. 17, page 22, line 24, contested hearings concerning final decisions made by the Dept. would be heard by the Dept. How can there be a fair, unbiased hearing if the same people who made the original decision hear the contested case? If the board duties are to adopt, amend and repeal rules for the administration, implementation, and enforcement of this chapter (as so stated on page 35 beginning on line 5) then it would certainly be important to retain the responsibility of holding hearings related to any matters in the administration of this chapter, within the board. The board is a policy-making body for the Department and its functions should not be removed.

Although I hesitate to suggest an interim study, it seems a more responsible course of action, rather than rushing ahead with this major departmental change, without adequate research and review. If this is unacceptable to the committee, then we urge you to at least amend the bill to transfer Board of Health duties to the Board of Natural Resource rather than to the Department.

Thank you for this opportunity
to present our views.

SB 258 - H. S. HANSON - MONTANA TECHNICAL COUNCIL

WE OPPOSE THIS BILL AS LONG AS IT INCLUDES THE TRANSFER OF THE AIR WATER QUALITY, SUBDIVISION AND SOLID WASTE BUREAU.

- ATTACHED IS AN EXISTING ORGANIZATION CHART

ONE STOP PERMITTING IS THE EXPRESSED MOTIVATION FOR THE CHANGE. KEEP IN MIND THAT NOT ONLY DO THE VARIOUS ENGINEERING FIRMS CHECK WITH THE RELOCATED BUREAUS BUT ARE ALSO INVOLVED WITH THE DESIGN OF HOSPITALS.

I DO NOT KNOW HOW MUCH TIME THE VARIOUS COMPANIES SPEND IN THEIR TWO (2) STOP PERMITTING BUT I AM QUITE CONFIDENT THEY USE THESE BUREAUS ONLY A FRACTION OF THE TIME THAT THE DESIGN PROFESSIONS DO.

OUR DESIGNS INVOLVE PUBLIC HEALTH AND SHOULD REMAIN IN THAT DEPARTMENT. THIS BILL PROVIDES FOR A POTENTIAL CONFLICT BETWEEN THE TWO (2) DEPARTMENTS. ONE DESIGNS SAME AS OTHERS, HAS THE SAME DESIGN AND OPERATIONS. PUBLIC HEALTH SHOULD BE THE NUMBER 1 CONCERN, NOT ONE-STOP-PERMITTING. HEALTH IS THE MAJORITY OF THE TRANSFERED BUREAUS FUNCTIONS NOT PERMITTING.

(7)

SB-250

Mt. Tech. Council

- We oppose this bill as long as it includes the transfer of the Air, Water Quality, Subdivision and Solid Waste Bureau.
- Here is an existing Organizational Chart - This will give you a feeling
- Quick Note ABOUT letters.

One stop permitting is the expressed motivation for the change. Keep in mind that not only do the various engineering firms check with the relocated Bureaus but are also involved with the designs of hospitals.

I do not know how much time the various companies spend in their two (2) stop permitting but am quite confident they use these bureaus only a fraction of the time the design professions do.

Our designs involve Public Health and should remain in that Dept. This Bill provides for a potential conflict between the Two (2) Depts. One design some the other has some design and operation. Public Health should be ^{the} #1 concern, not one stop permitting. Health is the majority of the transferred Bureau functions, NOT Permitting.

Div - Div
Admin.
new

CONSULTING ENGINEERS COUNCIL OF MONTANA

Address Reply to:

March 13, 1981

MONTANA LEGISLATURE
State Capitol Building
Helena, Montana 59601

RE: SB-258

Gentlemen:

We understand amendments have been made to SB-258, which if enacted would transfer water quality, air quality, solid waste and other functions from the Department of Health and Environmental Science to the Department of Natural Resources.

Since about 1900 the Montana Board of Health has been responsible for "Public Health" in Montana. This has included health services, hospital facilities, consumer safety efforts and also water quality, solid wastes and air quality management.

All of these relate to public health and are logically located under the Department of Health. Our member firms work with the present department very frequently. Through the years they have provided a competent staff and have served the state well.

We strongly recommend the water quality, solid waste and air quality functions of the state be kept under the Department of Health.

Sincerely,

CEC/M

A handwritten signature in cursive script, reading 'Harold L. Eagle'.

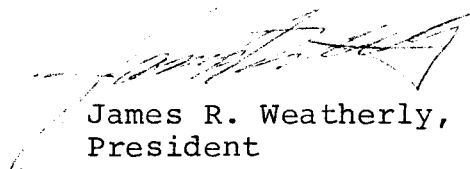
Harold L. Eagle, P.E.
President

HLE/smk/Nav11/D

Montana House of Representatives
State Administration Committee
March 12, 1981
Page Two

Thank you for this opportunity to register my opposition to a portion of Senate Bill 258 and I remain willing to discuss this in detail with any individual committee member.

Very truly yours,



James R. Weatherly, P.E.
President

JRW/lf

THOMAS, DEAN & HOSKINS INC.

ENGINEERING CONSULTANTS

1111 North Seventh Avenue • Bozeman, Montana 59715 • 587-0111 • Area Code 406

ENGINEERING STUDIES
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T. H. (TOM) THOMAS
President

JAMES A. CUMMINGS
Vice President

WAYNE W. DEAN
Secretary-Treasurer

L. DAVID HECKLER
Chief Sanitary Engineer

March 11, 1981

Honorable Legislator
Montana Legislature
State Capital
Helena, Montana 59601

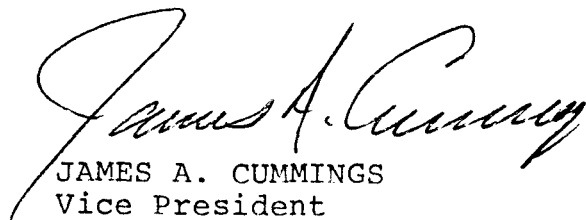
Dear Legislator:

It has been brought to my attention that portions of killed SB-430 are being transferred to SB-258. The portion that greatly affects our firm's operations deals with transferring the Subdivision Bureau, Water Quality Division, Air Quality and Solid Waste Bureau of the State Department of Health and Environmental Sciences to the jurisdiction of the Department of Natural Resources. This transfer of the Water Quality Bureau, in particular, would be a detriment to department operation. Their staff and administrators over the past five years have developed a very professional attitude. Their productivity and relationship to the public has been excellent in both quantity and quality.

The changes proposed in SB-258 would have great detriment to the above noted professional staff and have a great effect on tax payers within the state of Montana. I am therefore requesting your aid in deleting the Department of Health transfer to the Department of Natural Resources.

Sincerely yours,

THOMAS, DEAN & HOSKINS, INC.


JAMES A. CUMMINGS
Vice President

JAC: stm





**Sanderson/Stewart/Gaston
Engineering, Inc.**

March 13, 1981

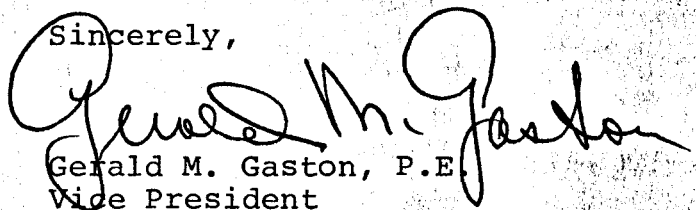
Mr. Sonny Hanson
c/o Phil Hauck
Division of Architects/Engineers
1500 East Sixth Avenue
Helena, Montana 59601

Dear Sonny:

Senate Bill #258 proposes to make several bureaus within the Health Department part of the Department of Natural Resources. Our firm has worked closely with both the Water Quality Bureau and the Subdivision Bureau, and we are strongly against this proposed action.

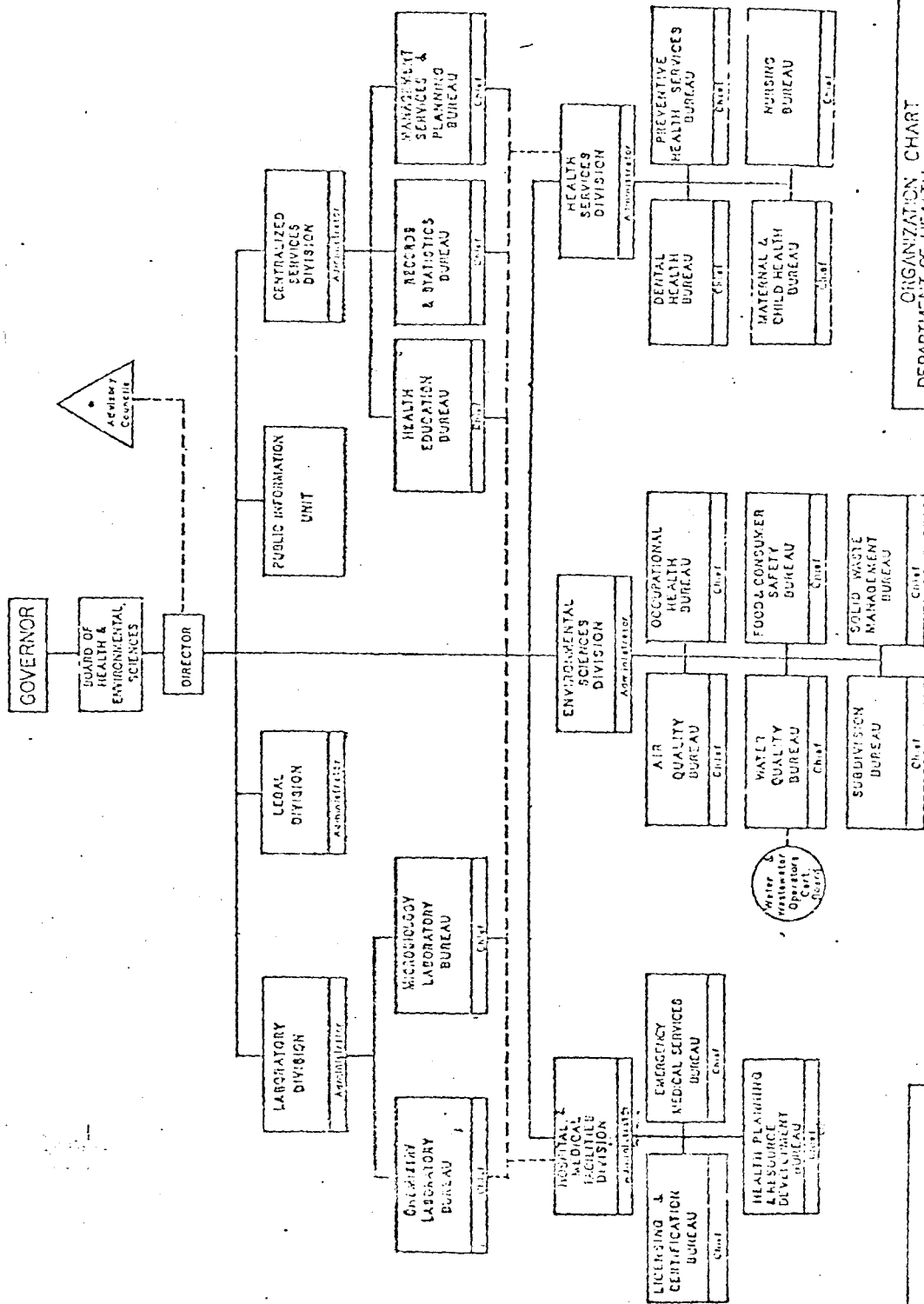
These bureaus are really part of the Montana State Department of Health and should remain as such.

Sincerely,



Gerald M. Gaston, P.E.
Vice President

GMG/dsh



ORGANIZATION CHART
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.
Sept. 1, 1977
Submitted by: *[Signature]* Director
Approved by: *[Signature]* Governor

Air Pollution Control Advisory Council
Water Pollution Control / Industry Council
Emergency Medical Services Advisory Council

Testimony on SB 258, House State Administration Committee
March 24, 1981; 8:00 a.m.

Mr. Chairman and Members of the Committee:

My name is Gail Peterson and I am a resident of the Deer Lodge Valley. At present I am employed in the family beekeeping business; but I have been an employee of the State Health Department, the Missoula County Health Department, and the Gallatin County Health Department.

I will be addressing my comments to that part of SB 258 which would transfer many of the functions of the Health Department and Health Board to the Department of Natural Resources and Conservation.

When I first heard of this intent, I had an immediate reaction of "this can't be right". In thinking of health departments, the protection of a quality of life and health for the individuals in this state comes to mind. By moving air quality, water quality, and even subdivision approval out of the Health Department, I feel that right procedure would be jeopardized.

I also feel the presence of medical personnel both in the Health Department and on the Health Board ^{does} ^ make a difference in the actions of the non-medical employees who make their decisions in the department. This, in my opinion, creates a more healthful environment.

I would like to ask the question of whether or not the transfer of the air quality is due to the controversy over air standards this past year, and if this is being used as a punishment to the Health Board and as a warning to the Health Department.

TESTIMONY IN OPPOSITION TO SB 258

My name is Jan Flaharty. I am a private citizen from Missoula. I hold a Master's Degree in Environmental Studies from the University of Montana and recently completed a two year study of the Board of Health and Environmental Sciences.

I oppose SB 258. At first glance, this bill seems fairly innocuous. It is supposedly intended to provide one-stop licensing for energy-related facilities. It is supposed to decrease the bureaucratic hassles with which many companies have to struggle with. However, SB 258 does much more than that. It would create a super agency, the likes of which have never before been seen in this state; and it would destroy the separation of powers policy under which our government is designed to operate.

I am most familiar with air quality matters, so I will direct my specific comments to this area.

As the Montana Clean Air Act now stands, a company which is not in compliance with state air quality laws may apply to the Board of Health for a one-year variance from the laws. The Board then holds a public hearing, listens to the testimony of all involved parties and grants or denies the variance.

The Department of Health is a party to these variance cases. It recommends to the Board that it grant or deny the variance. The Department is a legal party to these cases and, therefore, the Board can have no contact with the Department except during the actual hearing. The Montana Administrative Procedures Act makes this stipulation out of fairness for all parties involved in contested cases.

Under SB 258, a polluting company would apply to the Department of Natural Resources for a variance. The Department of Natural Resources would then hold a public hearing and rule on the variance.

I question how this system would work. Is the Department of Natural Resources to appear in these hearings as a party and as a ruling body? In a situation where the Department recommends denial of a variance, a company applying for a variance would be appearing before the very agency that doesn't want it to have the variance. This seems like a judge in a court case who also acts as the prosecuting attorney. Is this fair to all of the parties involved in such a case?

This same question arises under Section 75-2-211 of the Clean Air Act which regulates the construction of pollution-causing equipment. As the Act now applies, when the Department of Health grants or denies a permit application, any person adversely affected by the Department's decision may appeal to the Board of Health. Under SB 258, a person adversely affected would appeal the Department of Natural Resource's decision to the Department of Natural Resources.

Under the enforcement section of the Clean Air Act, Section 75-2-401, if the Department of Health believes that a violation of the Act has occurred, it issues a citation and states what corrective action should be taken. The alleged violator may then appeal the Department's action to the Board of Health. The Board holds a public hearing, listens to the testimony of all parties, and either affirms, rescinds or modifies the Department's corrective order.

Under SB 258, the Department of Natural Resources issues the initial corrective order, the alleged violator appeals to the Department of Natural Resources which then holds a public hearing and rules on its own decision.

I question SB 258 because it greatly weakens the separation of powers doctrine under which our government is supposed to operate. No single government agency should possess too much power. Under present law, one agency--the Department of Health--takes an action. An affected party may then appeal this action to another agency--the Board of Health. The Board then sits as an impartial judge and jury, listens to all of the evidence, and decides whether or not the Department's action is correct.

Under SB 258, an aggrieved party would appeal an action of the Department of Natural Resources directly to the Department of Natural Resources. Is this fair? Can one agency rule as impartially upon its own decisions as could another agency? Doesn't this seem like too much power is being invested into one government agency?

I oppose SB 258 because it places too much power into the hands of a few individuals. It would create a super agency, something which has no place in our government.

Thank you.

VISITORS' REGISTER

HOUSE STATE ADMINISTRATION COMMITTEE

BILL SB 258

Date 3/24/81

SPONSOR STEVE BROWN

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Garrett Moon	Helena	State Lands	X	
John McGraw	Great Falls	State & Forests		X
J. P. STEVENSON	HELENA	ASARCO, INC.		X
William Burke	Butte	Health Dept		X
Steve Elliot	Billings	WISCO Resources	X	
HS Hanson	HELENA	MONT. TECHNICAL COUNCIL		X
Pat Wilson	Billings	Montco	X	
Jim Mockler	Helena	MT Coal Council		
James Owen	Missoula	Mont. City - Co. Health		X
DAVID B. LACKMAN	Helena	MT Public Health Assn.		X
Jeanne T. Leonard	"	mt. public acm		✓
Pat Osborne	Glenaville	NPRC		X
Phil Peterson	Deer Lodge	self		X
Bob Helling	Missoula	mt. Word Products		
Gary Lee Ward	Helena	myself		X
Ernest Jackson	Helena	Writer	✓	
JAN FLEAHARTY	MISSOULA	MYSELF		X
Claiborne Brinck	Helena	Myself		X
Gael Bissell	Helena	Myself		X
Richard Stepp	Missoula	Self		X

KITA SLEEHY HELENA

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE COMMITTEE

BILL SB 758

Date _____

SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.