

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE
MONTANA STATE SENATE

FEBRUARY 2, 1981

The meeting of the Public Health, Welfare, and Safety Committee was called to order by Chairman Tom Hager on Monday, February 2, 1981 at 1:00 p.m. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present. Kathleen Harrington, staff researcher, was also present.

Many visitors were in attendance. (See attachment.)

CONSIDERATION OF SENATE BILL 251: Senator Larry Tveit of Senate District 27, sponsor of Senate Bill 251, gave a brief resume of the bill. This bill is an act to allow certain controlled burning for training of firefighters. This bill will allow a city or county to do controlled burning in order to train firefighters. This bill is directed at solid waste pits that counties and municipalities have to maintain and operate. The wood products including trees, brush and other wood material which have to be buried, uses up the existing pits much more rapidly. This in turn causes the buying of more land and stating all over much sooner. For example, the Sidney disposal pit would have lasted two years longer if the wood products could have been set aside and burned under the supervision of local fire departments for training of firefighters.

Dave Fischer, of the Montana Fire Chiefs Association stood in support of Senate Bill 251 and stated that this permissive legislation is needed for training fire fighters.

Art Korn of the Montana State Volunteer Firemen's Association stood in support of the bill and stated that this would bring about good fire training.

Henry Lohr of the Broadwater County Rural Fire District stated his support of the bill.

Dan Mizner of the League of Cities and Towns stated his support of the bill and stated that this would be a very good training program. Mr. Mizner felt the need for the bill as it gives the much needed authority. Mr. Mizner then commented that a representative from the Montana Association of Counties was across the hall testifying on another bill but that the Montana Association of Counties was also in favor of this bill.

With no further proponents Chairman Hager called on the opponents.

PUBLIC HEALTH, WELFARE, & SAFETY

PAGE TWO

FEBRUARY 2, 1981

Bob Raisch representing the Air Quality Bureau of the Department of Health and Environmental Sciences. Montana open burning restrictions already provides a means to conduct fire training. Issuance of a permit under this section insures that certain safety and air quality guidelines are met. These include: (1) permission for the fire must be obtained from the responsible fire control authority, (2) the responsible fire authority must insure that the fire is dead out after the completion of training, (3) the permitting agency can provide information on atmospheric ventilation conditions and material which might cause toxic or dense smoke resulting in a public nuisance. The Department believes these requirements are essential to insure public health and safety. Senate Bill 251, if enacted as is, could lead to legal confusion in regard to the permit requirements under the Montana Air Quality Rules. (See attachment.)

Duane Robertson of the State Department of Health and Environmental Sciences stated that the Department feels that a permit is necessary in order to control that only wood products and wastes are burned. Also that the atmosphere conditions be proper before starting the fire. Several disposal sites within the State are upwind from the communities causing a great deal of smoke. Federal regulations do not allow for these types of waste to be burned at a refuse disposal site but they do allow for burning at the site the wastes which are generated. This is totally against federal requirements.

With no further opponents the meeting was opened to a question and answer period from the Committee.

Senator Olson asked Mr. Fischer how he trains fire fighters. Mr. Fischer replied with some of the problems that they seem to have with the department in obtaining a permit.

Senator Olson asked Mr. Fischer again, how he trains fire fighters. Mr. Fischer replied that they are shown how to use fog nozzles and self contained masks and other equipment at actual fires. They are also shown how close they can safely have equipment to the fire.

Senator Himsel asked if this bill deals with landfill dump or the burning of old building for fire training.

Senator Tveit stated that the purpose of the bill is for landfill dumps and if the bill does not address such, it should be amended. He then commented that wood products will usually burn in one day so there is no problem with prolonged burning. The only remains from wood fire is the ashes.

Mr. Raisch stated that air quality has to be considered at all times.

PUBLIC HEALTH, WELFARE & SAFETY
PAGE THREE
FEBRUARY 2, 1981

Senator Tveit then closed by saying that the bill serves two purposes of both saving money for local counties and municipalities and fire training. He then asked for a favorable consideration of the bill.

CONSIDERATION OF SENATE BILL 241: Senator Frank Hazelbaker of Senate District 41, sponsor of Senate Bill 241 gave a brief resume. This bill was requested by the Commissioner of Insurance. This is an act establishing minimum standards for medicare supplement insurance; requiring the commissioner of insurance to adopt rules establishing policy provision requirements, minimum standards, loss ratio standards, and disclosure standards for such policies; and giving the commissioner of insurance authority to adopt rules establishing an informational brochure for such policies and authority to adopt rules establishing captions or notice requirements for certain nonmedicare supplement policies identifying them as such, and providing and immediate effective date.

Josephine Driscoll of the Insurance Commissioners office stated that this bill enables legislation granting authority to the commissioner to adopt rules establishing policy provisions requirements, minimum benefit standards, loss ratio standards and disclosure standards for medicare supplement insurance, necessitated by the so-called "Baucus Amendment" approved by congress June 9, 1980. The federal act would require that all states adopt such standards prior to January 1, 1982 or be pre-empted by the federal laws. Montana already has disclosure requirements and require prior approval of policies. However, the federal law goes further into the area of loss ratios, for example, agent's commissions, which the commissioner's office is opposed to, but none-the-less will be compelled to adopt. A statement of intent was handed out to the committee. (See attachment.)

Alan Cane, chief counsel for MPS and also Blue Shield, stood in support of the bill. Mr. Cane did offer an amendment to the end of present Section 5. "The Commissioner may authorize the sale of Medicare supplement policies with benefit levels below such standards if such policies are suitably labeled so as to indicate that they provide only limited coverage." Mr. Cain stated that Medicare is broader than is required. It will cost approximately \$5.00 per month more without the amendment which he offered to the consumers that he represents, otherwise, he supports the bill. (See attachment.)

Elmer Hausken, representing the Montana Association of Life Underwriters, stood in support of the bill. He stated that he did not seem to have any trouble with the amendment offered by Mr. Cain.

With no further proponents, Chairman Hager called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

PUBLIC HEALTH, WELFARE & SAFETY
PAGE FOUR
FEBRUARY 2, 1981

Senator Berg asked if the amendment would be okay with the federal government. Mrs. Driscoll stated that she did not know but would check into the matter.

Senator Berg asked Mr. Cain if he felt that the \$5 increase would be significant to his policy holders. Mr. Cain stated that these people as sometimes on a fixed income and sometimes \$5 can be the difference between keep and policy and letting it lapse.

Senator Himsl asked just what are the minimum standards.

Senator Berg stated that he would be reluctant to accept the amendment offered by Mr. Cain.

Senator Hazelbaker closed asking for favorable consideration from the Committee.

DISPOSITION OF SENATE BILL 230: This bill is an act to allow physical therapist to evaluate without referral. A motion was made by Senator Halligan that Senate Bill 230 receive a DO PASS recommendation from the committee. Motion carried unanimously.

DISPOSITION OF SENATE BILL 212: This bill is an act providing a program of hazardous waste management separate from the non-hazardous solid waste management program in Montana.

Kathleen Harrington, staff researcher, explained the proposed amendments to the Committee. With a discussion period following.

A motion was made by Senator Norman that the following amendments 1-2-3-5-6 be not adopted by the Committee. Motion carried.

1. Page 4, line 4
Following: "the"
Strike: "department of"
2. Page 4, line 4.
Following: "state"
Strike: "lands"
3. Page 4, lines 5 and 6
Following: "the"
Strike: "department of natural resources and conservation"
Insert: "state"
5. Page 12, line 21.
Following: "the"
Strike: "department of"

PUBLIC HEALTH, WELFARE & SAFETY
PAGE FIVE
FEBRUARY 2, 1981

6. Page 12, line 21.
Following: "state"
Strike: "lands"

Senator Hims1 made a motion that amendment #4 be accepted by the Committee. Motion carried.

4. Page 10.
Following: line 21.
Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, part 4."

Senator Hims1 stated that the states are becoming an administrative arm of the federal government.

Senator Halligan stated that the federal does not recognize our problems as well as those involved more closely with the state.

A motion was made by Senator Johnson to accept amendment #7. After some discussion she withdrew her motion.

Kathleen stated that amendments 8 and 9 were nothing more than drafting errors. A motion was made by Senator Berg to accept amendments 8 and 9. Motion carried.

8. Page 25, lines 22 and 23.
Following: "fine"
Strike: "of not less than"
Insert: "not to exceed"

9. Page 25, line 23 and 24.
Following: "imprisonment"
Strike: "for no less than"
Insert: "not to exceed"

A motion was made by Senator Berg that amendment #10 be adopted. Motion carried.

10. Page 25, line 24.
Following: "both"
Insert: "A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both."

A motion was made by Senator Hims1 that amendment #7 be adopted by the Committee. Motion carried.

PUBLIC HEALTH, WELFARE AND SAFETY
PAGE SIX
FEBRUARY 2, 1981

Kathleen will check with the EPA regarding regulations which were handed down and report at the next meeting. She will also check into manifests and report back at the next meeting.

Everyone stated that there would be a gentlemen's agreement concerning action taken on the amendments thus far on Senate Bill 212 so at the next meeting more work could progress on this bill.

ANNOUNCEMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be held on Wednesday, February 4, 1981 at 1 in Room 410 of the State Capitol Building to consider Senate Bill 310 and House Bills 62 and 70.

ADJOURN: With no further business the meeting was adjourned.


SENATOR TOM HAGER CHAIRMAN

eg

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date FEBRUARY 2, 1981 SENATE Bill No. 212 Time 2:25

NAME	YES	NO
TOM HAGER	✓	
MATT HIMSL	✓	
S. A. OLSON	✓	
JAN JOHNSON	✓	
BILL NORMAN		✓
HARRY K. BERG		✓
MICHAEL HALLIGAN		✓

Secretary

ELAINE GRAVELEY

Chairman

SENATOR TOM HAGER

Motion: A motion was made by Senator Himsl that Amendment #4
be adopted by the Committee. Motion carried.

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

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date FEBRUARY 2, 1981 SENATE Bill No. 212 Time 2:40

NAME	YES	NO
TOM HAGER	✓	
MATT HIMSL	✓	
S. A. OLSON	✓	
JAN JOHNSON	✓	
BILL NORMAN		✓
HARRY K. BERG		✓
MICHAEL HALLIGAN	✓	

Elaine Graveley
Secretary
ELAINE GRAVELEY

Tom Hager
Chairman
SENATOR TOM HAGER

Motion: A motion was made by Senator Himsl that Amendment #7
be adopted by the Committee. Motion carried.


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

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 2, 1981 SENATE Bill No. 212 Time 2:45

NAME	YES	NO
TOM HAGER	✓	
MATT HIMSL		✓
S. A. OLSON	✓	
JAN JOHNSON		✓
BILL NORMAN	✓	
HARRY K. BERG	✓	
MICHAEL HALLIGAN	✓	


Secretary
ELAINE GRAVELEY


Chairman
SENATOR TOM HAGER

Motion: A motion was made by Senator Berg that Amendment #10
be adopted by the Committee. Motion carried.

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

STANDING COMMITTEE REPORT

FEBRUARY 2

19 91

MR. PRESIDENT:

We, your committee on PUBLIC HEALTH, WELFARE & SAFETY

having had under consideration SENATE Bill No. 230

Respectfully report as follows: That SENATE Bill No. 230

DO PASS

4/6.

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date Feb 2, 1981

NAME	PRESENT	ABSENT	EXCUSED
Tom Hager	/		
Matt Himsl	✓		
S. A. Olson	✓		
Jan Johnson	✓		
Dr. Bill Norman	✓		
Harry K. Berg	✓		
Michael Halligan	✓		

Each day attach to minutes.

.....

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jack M. Kerner	Heart Assoc. & C.	SB 251	X	
John F. Kerner	Western Land & Cattle Assn	SB 251	X	
Henry E. Kerner	Protestant Rural Life Assn	SB 251	X	
ART KORN	MT. STATE VOL FIREMEN'S ASSOC	SB 251	X	
Duane Robertson	State Dept of Health	SB 251		✓
Dr. Sheehan, Jr.	MT Assoc. of Life Underwriters	SB 241	X	
Emel Hansen	mt assn of Firemen	SB 241	X	
Henry E. Kerner		SB 251		
R. J. Kerner				
Alan Cain	Blut Shisco	SB 241	X	
Stephen Kerner	mt Assn of Life Underwriters	SB 241	X	
Sheehan, Jr.	State Health Dept			
Robert Kerner	MT. STATE VOL FIREMEN'S ASSOC	SB 251		X

(Please leave prepared statement with Secretary)

SENATE BILL 251

Introduced by Senator Larry Tveit.

An act amending Section 75-10-214, MCA, to allow certain controlled burning for training firefighters.

This bill will allow a city or a county to do controlled burning in order to train firefighters.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

I am Senator Larry Tveit, District #27, Richland and Dawson Counties.

I am a sponsor of SB 251 (an act amending Section 75-10-214 MCA, to allow certain controlled burning for training firefighters).

The bill is directed at solid waste pits that counties and municipalities have to maintain and operate. The wood products, including trees, brush and other wood material which have to be buried, uses up the existing pits much more rapidly. This in turn causes the buying of more land and starting all over much sooner. For example, the Sidney disposal pit would have lasted two years longer if the wood products could have been set aside and burned under the supervision of local fire departments for training of firefighters.

I have other proponents to speak on behalf of the bill.

In closing I would like to say the bill serves two purposes of both saving money for local counties and municipalities and fire training.

Thank you!

wood products
this cannot be
burned
the law reads now that
the fire dept. ~~is~~ has a chief and he is
responsible for permit
the pit is not to be set afire
and rural chief

NAME Frank L. Lipe BILL NO. AB-251
ADDRESS 1403 S. Washington St. ^{13-14, Hunt} DATE 2-2-51
WHOM DO YOU REPRESENT Libertarian Civic Club
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Remain in this station

NAME ART KORN BILL NO. S 3251

ADDRESS 1916 SC WASH. DATE _____

WHOM DO YOU REPRESENT MONT. STATE VOL FIREMEN'S ASSOC.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

PERMISSIVE LEGISLATIVE

NAME Henry E. Lill BILL NO. SB 257
ADDRESS Townsend MT DATE 2-2-81
WHOM DO YOU REPRESENT Blaine Co. Rural Fire Dist.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: needed training

NAME: Robert Rausch DATE: 2/2/81

ADDRESS: 1027 Birch Helena Mont.

PHONE: 449-3454 Bus.

REPRESENTING WHOM? Dept. of Health & Env. Sci

APPEARING ON WHICH PROPOSAL: SB 251

DO YOU: SUPPORT? _____ AMEND? ☒ OPPOSE? ☒

COMMENTS: The Dept. wishes to point out that
the MONTANA OPEN BURNING RESTRICTIONS
already provide a means to conduct
training fires.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MEMORANDUM

TO: Members of the Senate Public Health Committee

FROM: Bob Raisch

SUBJECT: Testimony on Senate Bill 251

My name is Bob Raisch and I'm here representing the Air Quality Bureau of the Department of Health and Environmental Sciences. I would like to point out that the Montana Open Burning Restrictions (16.8.1404) provide for the issuance of an air quality open burning permit for "instruction in methods of firefighting".

- (1) (a) When such fire is set or permission for such fire is given in the performance of the official duty of the responsible fire control officer:
 - (i) for the purpose of the elimination of a fire hazard which cannot be eliminated by any other means;
 - (ii) for instruction in methods of fighting fires, provided the material burned shall not be allowed to smolder after the initial burn has been completed. Facilities to put the fire completely out shall be on hand and used by the responsible fire control officer until all smoldering has ceased. The responsible fire control officer shall not leave the scene of the burn until all smoking debris has been clearly extinguished and no smoking or smoldering occurs.

Issuance of a permit under this section insures that certain safety and air quality guidelines are met. These include: (1) permission for the fire must be obtained from the responsible fire control authority, (2) the responsible fire authority must insure that the fire is dead out after the completion of training, (3) the permitting agency can provide information on atmospheric ventilation conditions and materials which might cause toxic or dense smoke resulting in a public nuisance.

The Department believes these requirements are essential to insure public health and safety. Senate Bill 251, if enacted as is, could lead to legal confusion in regard to the permit requirement under the Montana Air Quality Rules.

Therefore, the Department recommends one of the following actions:

1. The public health committee issues a do not pass recommendation since training fires are already provided for in the Montana Air Quality rules, or
2. Amend SB 251 to read:

following "firefighters"

insert: "The municipality or county shall obtain an air quality permit from the department pursuant to Title 75, chapter 2, Part 2, MCA, and rules adopted thereunder before burning the materials.

NAME: Duane Robertson DATE: 2/2/81

ADDRESS: 777 8th Ave

PHONE: 442-6952

REPRESENTING WHOM? State Dept of Health + Env. Services

APPEARING ON WHICH PROPOSAL: SB 251

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: Air Quality Bureau already has
provisions in their Act & Rules. We feel that a
permit is necessary in order to control that the
only wood wastes are burned & also that the
atmosphere conditions be proper. Several disposal
sites within the state are upwind from the
communities causing a great deal of smoke. Federal
regulations do not allow for these types of
wastes to be burned at a refuse disposal site but
they do allow for burning at the site the wastes
are generated.

SENATE BILL 241

Introduced by Senator Frank Hazelbaker by the request of the department of Insurance.

An act establishing minimum standards for medicare supplement insurance; requiring the commissioner of insurance to adopt rules establishing policy provision requirements, minimum benefit standards for such policies; and giving the Commissioner of Insurance authority to adopt rules establishing an informational brochure for such policies and authority to adopt rules establishing captions or notice requirements for certain nonmedicare supplement policies identifying them as such; and providing an immediate effective date.

This bill establishes minimum standards for medicare supplemental insurance policies and enables Montana to meet the requirements of Public Law 96-265, the Social Security Disability Amendments of 1980. It defines a medicare supplemental policy as a policy that is designed primarily as a supplement to reimbursements under medicare for those eligible by age. It does not include a policy or contract of an employer, labor organization, professional, trade or occupational organization or the conversion privileges under these policies. The Commissioner of Insurance is given the authority to adopt rules for standards related to benefits, contents and sale of the supplemental insurance policies.

The Commissioner may adopt rules to prohibit discriminatory policy provisions.

The policy may not deny a claim for a pre existing condition diagnosed within a 6 month before the effective date.

The Commissioner must adopt rules to establish minimum benefits and loss ratio standards.

The policy must be accompanied by a brochure outlining the coverage that is included in the policy.

The policy must give notice that there is a period of time in which the policy may be examined and returned with full refund, if it is not satisfactory.

MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS ACT

This is enabling legislation granting authority to the commissioner to adopt rules establishing policy provisions requirements, minimum benefit standards, loss ratio standards and disclosure standards for medicare supplement insurance, necessitated by the so-called "Baucus Amendment", approved by congress June 9, 1980.

The federal act would require that all states adopt such standards prior to January 1, 1982, or be pre-empted by the federal law.

Montana already has disclosure requirements and requires prior approval of policies. However, the federal law goes further into the area of loss ratios, i.e., agent's commissions, which we opposed but none-the-less will be compelled to adopt.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Alan F. Cain DATE: 2/2/81

ADDRESS: 8404 Fuller Ave Hls A

PHONE: 442-5450

REPRESENTING WHOM? MPS / BLUE SHIELD

APPEARING ON WHICH PROPOSAL: SB 241

DO YOU: SUPPORT? _____ AMEND? ✓ OPPOSE? _____

COMMENTS: Proposed Amendment is submitted to
the Committee.

February 2, 1981

TO: Senate Public Health Committee
FROM: Alan Cain, General Counsel - MPS/Blue Shield

We recommend that SB 241 be amended by adding the following sentence at the end of present Section 5:

The commissioner may authorize the sale of Medicare supplement policies with benefit levels below such standards if such policies are suitably labeled so as to indicate that they provide only limited coverage.

AFC:dg

NAME: ELMER HASKEN DATE: 2-2-81

ADDRESS: 111 No Last Chance Street Suite 3-C Helena Mt.

PHONE: 443-6300

REPRESENTING WHOM? MALU (Montana Assn of Life Underwriters)

APPEARING ON WHICH PROPOSAL: SB 241

DO YOU: SUPPORT? yes AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

LC 776

PROPOSED STATEMENT OF INTENT
FOR MEDICARE SUPPLEMENT
INSURANCE MINIMUM STANDARDS ACT

This bill is adopted to enable the State of Montana to meet the requirements of Public Law 96-265, the Social Security Disability Amendments of 1980 (the Baucus Amendment). Public Law 96-265 establishes a program of federal certification of medicare supplemental insurance policies and provides that medicare supplemental policies issued in a state with an approved regulatory program shall be certified under the federal certification program. [In order to be approved, a state's medicare supplemental insurance policy regulatory program must provide for the application of standards with respect to such policies equal to or more stringent than the NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act, adopted by the National Association of Insurance Commissioners on June 6, 1979; include a requirement at least as stringent as the federal provision requiring that such policies return to policyholders in the form of aggregate benefits under the policy, at least 75% of the aggregate amount of premiums collected in the case of group policies and at least 60% of the aggregate amount of premiums collected in the case of individual policies; and apply these standards and requirements to all medicare supplemental policies issued in the state.]

A statement of intent is required for this bill because it delegates rulemaking authority to the Commissioner of Insurance. This bill is intended to give the Commissioner of Insurance the authority to adopt rules establishing minimum standards for benefits, contents, and sale of medicare supplemental insurance policies in the State of Montana to insure the implementation of a regulatory program which meets the minimum standards of Public Law 96-265, the Social Security Disability Amendments of 1980.

PROPOSED STATEMENT OF INTENT
FOR MEDICARE SUPPLEMENT
INSURANCE MINIMUM STANDARDS ACT

It is contemplated that such rules should address the following:

(a) prohibited policy provisions including the kinds of coverage that may be excluded from coverage in a medicare supplemental policy;

(b) minimum standards for medicare supplement policy provisions and minimum benefit standards;

(c) required disclosure provisions such as provisions regarding renewal, continuation, and nonrenewal, definition and explanation of terms, pre-existing condition limitations, "free-look" provisions and forms for a buyer's guide and an outline of policy coverage; and

(d) replacement requirements, including a form for notice to an applicant regarding replacement of disability insurance.

STANDING COMMITTEE REPORT

FEBRUARY

19 81

Journal

MR. PRESIDENT:

We, your committee on PUBLIC HEALTH, WELFARE, & SAFETY

having had under consideration SENATE Bill No. 212

Respectfully report as follows: That SENATE Bill No. 212,

introduced bill, be amended as follows:

1. Page 4, line 4

Following: "the"

Strike: "department of"

2. Page 4 line 4

Following: "state"

Strike: "lands"

3. Page 4, lines 5 and 6

Following: "the"

Strike: "department of natural resources and conservation"

Insert: "state"

4. Page 10.

Following: Line 21

Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, part 4."

~~EX-PASS~~

FEBRUARY 19 81
PUBLIC HEALTH
PAGE TWO
SENATE BILL 212

5. Page 12, line 21.

Following: "the"

Strike: "department of"

6. Page 12, line 21.

Following: "state"

Strike: "lands"

7. Page 14, line 6.

Following: "program"

Insert: ", except that the department is not permitted to adopt rules
under this act that are more stringent than those promulgated by
the federal government."

8. Page 25, lines 22 and 23.

Following: "fine"

Strike: "of not less than"

Insert: "not to exceed"

9. Page 25, line 23 and 24.

Following: "imprisonment"

Strike: "for no less than"

Insert: "not to exceed"

10. Page 25, line 24.

Following: "both"

Insert: "A person convicted for a violation of this section after a first
conviction under this section is subject to a fine not to exceed \$20,000
for each violation or imprisonment not to exceed 1 year, or both."

Department of Health and Environmental Science's response to proposed amendments to Senate Bill 212 offered by the Montana Coal Council.

(Response at request of Senator Tom Hager):

The Coal Council's proposed amendments seek two objectives: (1) that rules adopted by DHES under Senate Bill 212 are no more restrictive or stringent than federal rules under the Resource Conservation and Recovery Act, and (2) that coal mining is specifically excluded from coverage under the act. As stated in its testimony presented January 30, DHES will not oppose the Coal Council's objective (1). DHES will note below some language that it believes will aid accuracy of interpretation for that amendment. For the reasons noted below, however, the Department of Health objects to the need for statutory modification to accommodate Coal Council objective (2). In the event the Committee nevertheless wishes to incorporate language which would exclude coal from coverage, DHES offers substitute wording below which would focus the exclusion on coal and not all mining activities.

* * *

Regarding the "no more restrictive" language, p. 14, l.6, DHES proposes a substitution of the following:

" , except that the department may not adopt rules under (sections 8 through 28) that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended.

The foregoing substitution identifies the particular federal regulations that give guidance to the Department in measuring what may not be exceeded. Other changes reflect appropriate word choice for legislative drafting.

* * *

Regarding the amendments suggested for page 4, lines 4 through 6, the Department has no objection. They reflect the belief that mining and reclamation laws may soon be administered by the Department of Natural Resources and Conservation rather than Department of State Lands.

DHES objects to making a statutory exemption for coal mining. In accord with the Department's intent to parallel federal regulation under RCRA, DHES has already adopted or noticed for adoption rules which accomplish the same purpose as current federal rules exempting coal mines:

"ARM 16.44.304 EXCLUSIONS (1) The following are not subject to regulation under this chapter:

.....
(e) Mining overburden returned to the mine site;
....."
and also:

"(2) The following are not subject to regulation under this chapter but may be subject to regulation under the provisions of ARM Title 16, chapter 14:

.....

"(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore."

Title 16, Chapter 14 refers to ordinary solid waste regulations. The two sections quoted above are taken directly from the latest EPA regulations under RCRA exempting coal and other mineral mining from hazardous waste coverage. It is the Department's understanding, however, that the federal regulations from which Montana's have been taken are temporary in nature and will be reviewed within three years or less. At that time, federal policy may change to again include the wastes of certain metal mining operations as hazardous. DHES would like to be in a position to conform its rules if such a change is made, rather than wait to use the legislative process.

The Coal Council's proposed amendment excludes as hazardous wastes all those "functions" (presumably, wastes) governed by Title 82, Part 4, MCA. That is the 70-page reclamation law affecting not only coal but also metal and uranium mining. The Department believes the suggested language, if it must be included in the statute is overly broad. The Department suggests an alternative:

Page 10, line 21.

Following: "infections."

Insert: "(c) Hazardous wastes do not include coal mining overburden returned to the mine site or waste from the extraction, beneficiation and processing of coal."

As earlier stated, DHES believes that such statutory amendment is unnecessary since the Department's regulations presently effect the coal exemption and DHES has stated its intent not to make rules more restrictive than EPA's.