

HOUSE NATURAL RESOURCES Committee Minutes
March 9, 1983

The House Natural Resources Committee convened at 12:30 p.m., on March 9, 1983, in Room 224K of the State Capitol with Chairman Harper presiding and all members present except Reps. Brown and Quilici, excused, and Rep. Nordtvedt, absent. Chairman Harper opened the hearing on SB 349.

SENATE BILL 349

SENATOR HAROLD DOVER, District 25, chief sponsor, said this is a short but very important bill. It amends the provision that requires that no exemption be granted for a period to exceed one year. A copy of his testimony is Exhibit 1 of the minutes.

HAL ROBBINS, Department of Health, said they were in favor of the bill.

MIKE FITZGERALD, Montana Trade Commission, said this was a very important bill for industry. He said this simply stabilizes the process and puts some flexibility into something that is quite inflexible.

DON REED, Montana Environmental Information Center, said they see the bill as a reasonable, legitimate streamlining change in the Act.

There were no opponents.

SENATOR DOVER closed. He said he would like to emphasize that this bill will mean a lot to industry. He said this will save a lot of red tape for both the department and the industries.

There were no questions from the committee so Chairman Harper closed the hearing on this bill and opened the hearing on SB 400.

SENATE BILL 400

SENATOR BOB BROWN, District 10, chief sponsor, said this bill addresses the problem of pollution that happens in one jurisdiction and affects a person in another jurisdiction. He said the following proponent would explain it further.

MONA JAMISON, legal counsel for the Governor's Office, discussed the bill and a copy of her testimony is Exhibit 2.

ROBERT SULLIVAN, Commissioner on Uniform State Laws, spoke next in support and a copy of his testimony is Exhibit 3.

There were no opponents.

SENATOR BROWN closed. He said he would like Rep. Addy to carry the bill if the committee approved it.

Questions were asked by the committee.

Mr. Sullivan responded to a question that a similar act would need to be passed in Canada before it would be binding on Canadian courts.

Rep. Hand asked if this was being done as a quicker way than using the treaty route. He asked if this was with the approval of the United States government. Mr. Sullivan said yes.

Rep. Bergene asked if this had something to do with acid rain. Mr. Sullivan said he has studied research done on acid rain and there seems to be no scientific agreement as to the cause of acid rain and the extent of transferral of components from one area to the other.

Rep. Addy asked if any similar legislation was being considered in Canada. Mr. Sullivan said the plan was promulgated just in October of 1982 and he didn't know if anything had been done in Canada as yet. Rep. Addy mentioned that if Cabin Creek in British Columbia were to cause pollution problems, Montana would be a beneficiary.

Rep. Jensen asked why the Governor is interested in a one-way street bill. Ms. Jamison said it implies a one-way. She said if it would potentially harm the state more than benefit the state, we wouldn't be interested.

Mr. Sullivan mentioned there is a substantial difference in substantive law between British Columbia and Montana and Alberta and Montana. The law of the jurisdiction where the suit is filed is what is followed. Rep. Addy asked if this might cause us to come out on the short end. Mr. Sullivan said we may be a little more strict in some areas but the provinces' laws are adequate. Hal Robbins, Health Department, reminded that it speaks to the injury and not the standards. Mr. Sullivan added that the burden of proof is on the person bringing the suit.

Chairman Harper closed the hearing on this bill and opened the hearing on SB 291.

SENATE BILL 291

SENATOR DOROTHY ECK, District 39, chief sponsor, said under the law the Department of Health has 180 days to act on an application for a permit. She said in cases where they do the environmental statement they don't have a problem with the limit and that will continue. This would apply where other departments do the environmental impact statement. The 180 days may be up and they still do not have the EIS. They don't want to deny the permit

and also can't go with it until the EIS has been done. Now usually what is done is to make an agreement with the applicant to extend the period. What this bill would do is give them an additional 30 days after receiving the EIS from the Department of State Lands or whatever other agency might be doing it. This would grant the state ability to do this without having to rely on the good nature of the applicant to extend the time period.

HAL ROBBINS, Department of Health, spoke in support. He said the problem deals with EISs and the time necessary to get them done. Mr. Robbins said there are two kinds of applications. One is the kind that does not require an impact statement and these they have 60 days to issue or deny a permit to. The other category requires an impact statement and for these they have 180 days in which to issue or deny a permit. He said the problem is with coal mining and hard-rock mining. He said State Lands handles those impact statements and they have different time limits and have to consider different things. Often the time runs out and they need to ask for a waiver from the company. He said it would be better to modify the act to allow the lead agency to issue the permit within 15 days after receiving the final EIS. He said they had sent out inquiries about the bill to the various affected companies and for the first time had no response to their mailing.

DON REED, Montana Environmental Information Center, spoke in support. He said 30 days was a reasonable time extension.

There were no opponents.

SENATOR ECK closed.

Questions were asked by the committee.

Chairman Harper closed the hearing on this bill and opened the meeting to an executive session.

EXECUTIVE SESSION

SENATE BILL 291 Rep. Jensen moved BE CONCURRED IN. The motion carried unanimously with those present. Absent were Reps. Quilici and Nordtvedt. Rep. Metcalf will carry this bill on the floor.

SENATE BILL 400 Rep. Ream moved BE CONCURRED IN. The motion carried unanimously with those present. The same absent as previous bill.

SENATE BILL 349 Rep. Mueller moved BE CONCURRED IN. Rep. Bertelsen moved to amend on page 2, line 8, by striking "for like periods." This motion carried with Rep. Addy voting no and the same absent. Rep. Mueller changed his motion to AS AMENDED BE CONCURRED IN and this motion carried unanimously with those present (absent were Quilici and Nordtvedt).

SENATE BILL 101 Chairman Harper asked the researcher to explain what he had found out about the fishing license fee that had been questioned when the bill was last considered. He said the other bill changing the time from 2 days to 5 days has passed through the Senate. He said from the information he could gather it would be a good idea to change the non-resident time on this bill and then keep monitoring the other bill and if necessary this could be deleted later as this bill is following the other one. Rep. Metcalf so moved to amend on page 9, line 3 by striking "2-day" and inserting "5-day." Rep. Jenson opposed the motion and absent now were Reps. Fagg, Hand, Ream, Quilici and Nordtvedt. The motion carried. Rep. Addy moved the bill AS AMENDED BE CONCURRED IN. This motion carried unanimously with those present. Absent same as previous motion.

The meeting adjourned at 1:40 p.m.

Respectfully submitted,



HAL HARPER, CHAIRMAN

Emelia A. Satre, Sec.

MEMORANDUM

TO: HOUSE NATURAL RESOURCES COMMITTEE MEMBERS
FROM: JOHN CARTER
RE: Bill Summaries for SBs 291, 349, 400
DATE: March 9, 1983

SB 291
Eck

This bill seeks to eliminate a problem that now exists within the statutory timetable for issuance of air quality permits. Presently the Department of Health and Environmental Sciences is required to make a decision on the issuance or denial of a permit within 180 days after a completed application is received even though another agency of the state may be preparing an environmental impact statement (EIS) on the proposed project which requires more than 180 days to complete. Under the bill, when such a conflict arises, the 180 day deadline would be extended until 30 days following completion of a final EIS.

SB 349
Dover

This bill seeks to authorize the Board of Health and Environmental Sciences to grant an exemption from air quality rules for a period greater than one year. Under present law there is a one year limitation, but under certain circumstances the exemption may be renewed.

SB 400
B. Brown

This bill seeks to entitle persons suffering injuries outside of the state as a result of pollution originating within the state to seek redress in Montana, if the jurisdiction where the injury occurs provides reciprocal rights to persons in Montana.

TESTIMONY
FROM SENATOR HAROLD DOVER
IN SUPPORT OF SB 349

SB 349 amends Section 75-2-212 MCA. by amending the present provision which requires that, "No exemption or partial exemption may be granted . . . for a period to exceed one year", (for air compliance variance requests).

SB 349 would allow the Department and Board of Health to require phased periods of compliance. As an example, if air quality laws required a company to make a large investment in technology to comply and was going to take 3 years, the Department and Board could put the company on a 3 year phased compliance schedule which would eliminate the need, expense and publicity for the Department and Board to hold annual variance request hearings and it could stabilize the government regulatory process by allowing businesses a multi-year phased compliance period in which they could be sure of continuous, uninterrupted operations as long as they were adhering to the phased compliance schedule set by the Health Department. Even though the Department of Health has closed down only one company because of air compliance regulations, the present 1 year maximum exemption has the effect on business of creating the element of doubt or the unknown. For businesses presently operating or thinking of investing in Montana who are processing or manufacturing a product that puts them under the law, the present 1 year exemption has the effect of creating an unstable investment climate.

SB 349 will not, in any way, jeopardize the Department's or Board's legal authority to administer Montana's air quality compliance laws and regulations.

It will simply make the process more flexible and reasonable for business and state government.

Mona Ex. 2

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

TESTIMONY ON SENATE BILL 400

"Uniform Transboundary Pollution Reciprocal Access Act",
drafted, approved and recommended for enactment by the
National Conference of Commissioners on Uniform State Laws
(NCCUSL) and the Uniform Law Conference of Canada (ULCC)

BACKGROUND

In 1979, the Canadian and American Bar Associations each adopted a report prepared by a joint committee representing both associations pertaining to the settlement of international disputes. The report focused on the equalization of rights and remedies of U.S. and Canadian citizens affected by transboundary pollution. The report also suggested that a group be established between the NCCUSL and ULCC to draft a Transboundary Pollution Reciprocal Access Act.

Because of various "jurisdictional" problems currently existing, pollution problems arising in one jurisdiction and affecting another, usually cannot be litigated; or, if they can be litigated, they're not adequately recognized and enforced in the other jurisdiction.

PURPOSE OF BILL

This Act is designed to eliminate the basic jurisdictional problem with respect to pollution. "Whether the pollution originated in [Alberta] or [Washington], a [Montanan] injured in [Montana], thereby would be entitled to go into a Canadian court or a [Washington] court and maintain an action for damages for injury to [Montana] land." This statute overcomes common-law existing in Canada and the states which would prevent this litigation from occurring. This act applies inter-state, inter-provincial and transboundary (US/Canada). Note: Both the "polluting" and "polluted" jurisdictions must have enacted this act or provided substantially equal access to its courts or administrative agencies for it to be "operative."

"The basic thrust of reform is to change the local action rules (jurisdictional) and provide equal access for the victims of transfrontier pollution to the courts of the jurisdiction where the contaminant originated."

The Act is intended to fill a procedural gap and not to alter substantive laws or standards of either jurisdiction. If a suit is brought in a state or province where the pollution originated, the local law applies. If service of process is achieved in the pollution-harmed state, then that state would be free to apply either its own law, or the law of the alleged pollution-causing state. This situation is not changed by this bill.

Submitted by:

Mona Jamison
MONA JAMISON
Chief Legal Counsel

March 9, 1983
Date

WITNESS STATEMENT

Name Robert E. Sullivan Committee On Natural Resources
 Address 105 Rempark - Butte mt 59701 Date 3-9-83
 Representing Montana Commission on Uniform State Laws Support
 Bill No. S B # 400 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill has been Four years in preparation by a committee of the National Conference of Commissioners on Uniform State Laws. I am one of three Commissioners from Montana under appointment by the Governor and served as a member of the drafting committee of the Conference for this Act.
2. This is a Uniform and Reciprocal act. It should be passed without change and must be passed by another state or province (Reciprocal) to be activated.
 It is a procedural statute and makes no change in the substantive law. It provides access by non residents to the courts of a state or province of an exacting jurisdiction to seek relief from threatened pollution or damages for pollution that has occurred in that jurisdiction. The law of the state or province where the pollution may or does originate is the law that will be applied. Pollution is not defined by the Act. What is pollution is determined by the law of that state or province.
4. S.B.#400 was recommended to the Governor by the Montana Commission on Uniform State Laws as required by MCA §1-12-104 and the bill has been introduced at the Request of the Governor.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

STANDING COMMITTEE REPORT

March 9, 19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **291**

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color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT THE TIME LIMIT FOR ISSUANCE OF A DECISION ON AN AIR QUALITY PERMIT APPLICATION DOES NOT RUN PRIOR TO ISSUANCE OF AN ENVIRONMENTAL IMPACT STATEMENT WHENEVER AN ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED AND A STATE AGENCY OTHER THAN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IS THE LEAD AGENCY FOR PREPARATION OF THE STATEMENT; CORRECTING INTERNAL CITATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **SENATE** Bill No. **291**

BE CONCURRED IN

DO PASS

HAL HARPER

Chairman.

STANDING COMMITTEE REPORT

March 9, 1983

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **349**

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color

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORISE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO GRANT AN EXEMPTION FROM AIR QUALITY RULES, UNDER CERTAIN CIRCUMSTANCES, FOR A PERIOD GREATER THAN 1 YEAR; AMENDING SECTION 75-2-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **SENATE** Bill No. **349**

be amended as follows:

1. Page 2, lines 7 and 8.
Strike: "for like periods"

AND AS AMENDED
BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 9, 19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **400**

third reading copy (**blue**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM
TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS ACT."**

Respectfully report as follows: That **SENATE** Bill No. **400**

BE CONCURRED IN

DO PASS

HAL HARPER

Chairman.