

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 18, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, January 18, 1985 at 9:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Representative John Mercer who was excused previously by the chairman.

CONSIDERATION OF HB 181: Representative Bob Ream, chief sponsor of the bill, testified in support of his bill. The bill allows imposition of criminal penalties for violations of the Hazardous Waste Act even when civil penalties are being pursued. Representative Ream submitted a fact sheet for HB 181 marked as Exhibit A.

Duane Robertson, chief of Solid Waste Management Bureau for the Department of Health and Environmental Sciences, testified in support of the bill. He pointed out that the Department has the ability to access a civil and criminal penalty; they just can't do it at the same time.

There being no further proponents or opponents to the bill, and there being no discussion among committee members, hearing on HB 181 closed.

CONSIDERATION OF HB 187: Representative Hal Harper, chief sponsor for HB 187, testified in support of the bill. He said there are two reasons for proposing this bill. First, the number and complexity of public water and wastewater systems in Montana had greatly increased in the last several years, as have the problems associated with such systems. In investigating such problems, DHES' expenses for travel, inspection, monitoring and actual enforcement have been steadily increasing and draining the budget. Secondly, the department has the ability to obtain injunctions for criminal penalties against violators, but they have no access to civil remedies. Representative Harper feels these two acts should be commensurate.

Steve Perlmutter, representing the Department of Health and Environmental Sciences, submitted a fact sheet for HB 187 along with an office memo dated January 17, 1985 dealing with the subject of safe drinking water act enforcement costs. It is marked as Exhibit B. He informed the committee that the money recovered from investigations would go into the state's general fund and not into the

department's fund. He said that the cost recovery authority in the Water Quality Act has proven very beneficial in providing a valuable incentive for individuals and companies to enter into prompt and effective compliance efforts. Costs recovered would include only technical costs and not attorney fees.

There being no further testimony offered by proponents or opponents to the bill, the floor was opened for questioning.

It was Representative Keyser's concern that the department could basically call in all sorts of professional people without any limitation because the cost would be passed on to individuals and companies. He feels that this would eliminate the incentive to make a reasonable investigation at a limited cost. Mr. Perlmutter stated that the limitation is the bureau's budget. The bureau is still limited by its appropriations. He said the bureau would try to make the investigation as economical as possible.

Mr. Steve Pilcher, chief of the Water Quality Bureau, informed the committee that the primary costs include staff, travel expenses and other analytical costs. He stated that they have initiated 20 formal enforcement actions under the provisions of the Safe Drinking Water Act in the last two years.

Representative Addy had a question as to why the costs in the bill could not be recovered under section 25-10-201. Mr. Perlmutter replied that it could be argued that the costs are recoverable under that section. However, the department would like a specific law that would make it clear that costs can be recovered. Representative Addy also asked if Mr. Perlmutter would agree to an amendment to the bill to provide that the prevailing party can recover the costs rather than the department.

Representative Hannah questioned whether this bill would encourage the investigation of more water systems. Mr. Pilcher stated that he didn't see it having any real impact with regard to the bureau's zealousness to deal with more enforcement cases. He stated that there was no incentive to comply with the present law.

In response to one of Representative Grady's questions, Mr. Perlmutter stated that they do not have a statutory remedy to recover these costs.

There being no further discussion, hearing closed on HB 187.

EXECUTIVE ACTION:

ACTION ON HB 181: Representative Montayne moved that HB 181 DO PASS. The motion was seconded by Representative Brown. Discussion on the motion followed.

Representative Keyser stated that he doesn't necessarily agree with some of the procedures the Department of Health and Environmental Sciences have.

Representative Hannah pointed out a conflict of testimony. He wanted to clear this up by stating the bill would allow that both a civil and criminal proceeding can be pursued at the same time. He felt the question was whether or not we can extend or limit the power of the state in a legal action.

Representative O'Hara questioned whether or not this could be abused by giving the state an additional hammer. Representative Keyser stated that he didn't want to see the department with an additional hammer.

Representative Eudaily asked how long the E.P.A. Final Authorization that became effective on July 25, 1984 lasts. Committee researcher, Brenda Desmond, thought it lasted until it was revoked, but she said she wasn't sure.

A discussion on the meaning of the necessity for the provision extending rule making authority to the Department followed.

The question was called, and the motion for a DO PASS was carried 14 to 4. (See roll call vote.)

ACTION ON HB 187: Representative Darko moved that HB 187 DO PASS. The motion was seconded by Representative Krueger, and discussion followed. Representative Krueger stated that by passing this bill, we are making sure the money is recovered from investigations being made.

Representative Addy stated that there is a fundamental question of fairness involved here. For that reason he suggested an amendment to the bill. Representative Krueger restated Rep. Addy's proposed amendment as such: page 1, line 22 following "aware the" strike: "department" and insert: "prevailing party". Then on page 1, line 23, following: "violation" insert: "or in defending against an alleged violation".

Representative Eudaily stated that the title should be corrected to conform with the body of the bill. However, Representative Eudaily questioned if the intent of the bill would be changed by the addition of this amendment. Rep. Grady was concerned about this, also.

It was Representative Addy's opinion that the intent of the bill will not be changed because of the amendment. Representative Hannah expressed his support for the amendment. A motion having been moved to include the above amendments and that motion having been seconded by Representative Krueger, the motion to amend carried with Representatives Eudaily and Grady dissenting.

Representative Brown then moved that HB 187 DO PASS AS AMENDED. Representative Gould seconded the motion, and a brief discussion followed. Representative Miles stated her strong support for the passage of this bill. Representative Eudaily doesn't think the department is fully investigating cases at the present time and does not need any further authority given to it.

Representative Hannah stated that the issue involves a gray area, and he stated his concern for payment of penalties. Representative Krueger stated that the amendments have addressed this problem.

The question was called, and the motion to pass as amended carried with Representatives Cobb, Eudaily and Grady dissenting.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 10:15 a.m.



REP. TOM HANNAH, Chairman

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-18-85 BILL NO. 181 TIME 9:55

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		✓
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Montayned moved that HB 181 DO PASS. The motion was
seconded by Rep. Brown and carried 14-4.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-18-85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer			✓
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

January 13 19 25

page 1 of 2

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 187

FIRST reading copy (WHITE color)

RECOVERY OF COSTS FOR ENFORCING PUBLIC WATER SUPPLY LAW

Respectfully report as follows: That HOUSE Bill No. 187

Be amended as follows:

1. Title, line 7.

Strike: "DEPARTMENT" through "SCIENCES" on line 8.

Insert: "PREVAILING PARTY"

2. Title, line 8.

Strike: "BY IT TO INVESTIGATE AND ABATE"

Insert: "IN INVESTIGATING AND ABATING"

3. Title, line 9.

Following: "ACT"

Insert: "OR IN DEFENDING AGAINST ALLEGATIONS OF VIOLATIONS OF
THE ACT"

4. Page 1, line 22.

Following: "award the"

Strike: "department"

Insert: "prevailing party"

XXXXXX
DO PASS

CONTINUED

January 18

19 35

page 2 of 2

5. Page 1, line 23.

Following: "violation"

Insert: "or in defending against an alleged violation"

AND AS AMENDED,
DO PASS

STANDING COMMITTEE REPORT

January 13 1935

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 131

FIRST reading copy (WHITE
color)

**COLLECTION OF CIVIL AND CRIMINAL PENALTY FOR HAZARDOUS WASTE
VIOLATION**

Respectfully report as follows: That HOUSE Bill No. 131

DO PASS.

Jvr 1/18

FACT SHEET FOR

House Bill 181

In the process of negotiating with the U.S. EPA for Authorization (primacy) of the Montana hazardous waste program, a provision of the Montana Hazardous Waste Act dealing with enforcement remedies was deemed unacceptable by the EPA. The EPA objected to the last sentence of Section 75-10-417 (2), MCA, which states that "Any civil penalty collected under this sections is in lieu of the criminal penalty provided for in 75-10-418". EPA insisted that to demonstrate equivalency with RCRA an authorized state must have the ability to seek both criminal and civil remedies for the same offense, even if the likelihood of such an eventuality is remote.

The EPA later decided not to let this legal issue stand in the way of authorization and granted Final Authorization to Montana on July 25, 1984. However, EPA still strongly objects to this provision of state law. In order to forestall possible future problems in seeking to update and expand program authorization,* the Department of Health and Environmental Sciences is requesting that the "in lieu of" language be removed from the law. The Department envisions few if any circumstances under which both civil and criminal enforcement remedies would ever be sought for a single violation.

*The 1984 amendments to the Resource Conservation and Recovery Act of 1976 (RCRA) will result in major changes in the federal hazardous waste program. States will have to seek authorization from the EPA for these new aspects of their state programs.

FACT SHEET FOR
LC 510 (House Bill 187)

The Department of Health and Environmental Sciences is proposing this bill for two reasons. First, the number and complexity of public water and wastewater systems in Montana has greatly increased in the last several years, as have the problems associated with such systems. In investigating such problems, DHES' expenses for travel, inspection, monitoring, and actual enforcement have been steadily increasing. These expenses are a one-way flow out of the executive branch budget. By recovering some of these costs, the state could reduce the drain of state resources.

Secondly, the Public Water Supply Act currently provides for injunctions and criminal penalties (\$50--\$500/day), but makes no provision for civil penalties. Since the DHES rarely pursues criminal actions and since injunctions do not require the defendant to pay out costs, owners and operators of these public water and wastewater systems (including cities, towns, subdivisions, and trailer courts) usually do not have a substantial financial incentive to come into compliance.

DHES has found that the cost recovery authority in the Water Quality Act (Title 75, Chapter 5, MCA) has provided a valuable incentive for individuals and companies to enter into prompt and effective compliance efforts. Similar authority in the Public Water Supply Act should greatly assist DHES in obtaining prompt and responsive cooperation from the owners of non-complying public water and wastewater systems. The final decision on DHES recovery of costs and expenses is left to the discretion of the court.

Office Memorandum

STATE DEPARTMENT OF HEALTH
AND ENVIRONMENTAL SCIENCES

TO : Steve Pilcher, Chief, WQB
FROM : Kevin Keenan, Enforcement, WQB
SUBJECT : Safe Drinking Water Act Enforcement Costs

DATE : January 17, 1985

Since approximately January 1, 1983, we have initiated about 20 formal enforcement actions under the provisions of the Safe Drinking Water Act.

Of those, 13 were notably expensive to the Bureau, averaging \$800 each, to date, for a total of \$10,500 exclusive of our costs in purchasing Legal Division time. Unfortunately, only six of these are resolved; the other 7 continue to be a drain on our resources as pending actions or re-occurring violations.

1-17-85
Keenan

approx. 20 actions in 2 years

Drinking Water Program Enforcement Costs / exclusive of legal costs

- | | |
|--|--|
| 1) 3-11-83 Jeffers Pump \$149.01
(violation has re-occurred) | 2) 4-13-83 Dyba \$220.00
(violation re-occurring) |
| 3) 5-17-83 Horton Duplexes \$160.92
(resolved) | 4) 6-15-83 CMR Prop. \$230.00
(resolved) |
| 5) 3-9-84 Springdale \$264.95
6-18-84 Springdale \$325.00
(resolved) | 6) 6-26-84 Thiel \$200.00
(unresolved) |
| 7) 9-5-84 Mission Meadows \$200.00
(resolved) | 8) 10-11-84 Hilldale \$162.20
(resolved) |
| 9) Jackson \$400.00
(unresolved) | 10) Bompart \$1750.00
(unresolved) |
| 11) Meadow Hills \$5000.00
(unresolved) | 12) Franchi \$800.00
(resolved) |
| 13) EM-KAYAN \$575.00
(unresolved) | |

Total of above = \$10,438 x = \$ 800.00

Includes - professional services
- travel
- misc. (laboratory, postage, duplicating, photos)

JANUARY 18, 1985

1. HB 187: Permits DHES to obtain from the district court an order requiring that violator of the Public Water Supply Act pay the costs incurred by the department in investigating & stopping the violation. Generally speaking, PWSA applies to any water system that provides water to 10 or more families or 25 or more persons.

O.K.

2. HB 181: Allows imposition of criminal penalties for violations of Hazardous Waste Act even when civil penalties are being pursued.

O.K.