

MINUTES OF THE MEETING
NATURAL RESOURCES-COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 21, 1985

The meeting of the Natural Resources Committee was called to order by Chairman Dennis Iverson at 3:15 p.m. in Room 312 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL 178: Rep. Robert Ream (District 54), sponsor of HB 178, introduced the bill. HB 178 was requested by the Dept. of Health and Environmental Sciences as part of a package of bills dealing with management of hazardous wastes.

Duane Robertson, a representative of DHES, said HB 178 is necessary for Montana to comply with federal regulations for hazardous waste disposal which will take effect March 31, 1986. Those regulations, he said, will require that producers of small amounts of hazardous wastes take the same disposal precautions that are required of major producers. About 1,000 small businesses in the state will be affected by the new regulations.

Montana has no recognized dumps or collection sites for hazardous wastes. Major producers (in excess of 2,200 lbs. per month) currently have procedures for transporting wastes to dump sites in Idaho, Oregon and Utah. Producers of smaller amounts are now disposing of those wastes in municipal and private landfills around the state. Collection and transfer of hazardous wastes is too costly for small businesses to perform, Robertson said. HB 178 would allow the state to finance a collection and transportation facility for such materials, while assessing fees from users to help defray the costs of the facility. A proposal for funding the facility has been submitted to the Legacy Fund for consideration. If HB 178 is enacted but no funding from the Legacy Fund is obtained, Robertson said, the hazardous waste management facility will not be built.

George Ochenski, of the Environmental Information Center, said that organization supports the package of hazardous waste management bills (HB 178, 179 & 180) as a comprehensive unit to address the inevitable increase in hazardous materials, with the following conditions:

- 1) Development should take place in a coordinated manner;
- 2) Public input must be part of the process;
- 3) All possible precautions must be taken to insure that only in-state waste is handled and that Montana does not become a national hazardous waste disposal site; and
- 4) The process is kept competitive, but the State maintains close oversight of contract services.

No opponents spoke against HB 178.

In questions from committee, Rep. Miles asked Mr. Robertson what businesses would do with their hazardous wastes if money from the Legacy Fund is not granted and the facility is not built. Mr. Robertson said that those producers of hazardous waste would continue to send such materials out of state at an approximate cost of more than \$300 per barrel. The construction of a facility in Montana could reduce that cost to about \$100 a barrel, he said.

Rep. Asay asked what sort of wastes would be part of the disposal process. Robertson said those wastes included oils, solvents, pesticides, herbicides and various solid wastes.

Rep. Krueger asked where the proposed management facility would be located. Mr. Robertson said that although no final plans had been developed, a transfer station alone would likely be built in Billings, while a collection and transfer station might more likely be built in the Helena area. Selection of a site, however, remains to be determined through cost analysis and study, he said.

Rep. Krueger expressed concern that the state would be entering the business of hazardous waste collection and transportation. Mr. Robertson said that although studies are still continuing, those that have been completed indicate that safe management of hazardous waste is not financially feasible for private industry. Government subsidy is necessary, he said.

Rep. Raney asked if the fees for use of the proposed facility could be set high enough to cover operational costs, and was told by Mr. Robertson that such costs would be prohibitive, and would encourage indiscriminate dumping.

Mr. Robertson assured Rep. Kadas that the proposed collection and transfer facility would not become a permanent storage facility for hazardous wastes. Such wastes would be shipped out in small lots to avoid long storage, he said.

Upon questioning by the committee, Robertson said that the fees charged to waste producers would vary depending on the amount and type of waste, and that the percentage of collection and transfer costs paid by the state has not been determined.

He said that private industry may opt to continue collection and transfer of hazardous wastes individually if such a procedure is more cost-effective. He told Rep. Moore that state regulatory authority and stiff fines will be relied upon to prevent unsafe dumping of hazardous wastes.

HOUSE BILL 179: Rep. Ream introduced HB 179, also requested by DHES. Rep. Ream said that although he had initial reservations about the bill because of his concern with keeping information from the public, those concerns were allayed by DHES. He said HB 179 strikes a balance between the public's right to know and industry's right to maintain trade secrets. Ream said that under HB 179, the final decision on establishing a standard of trade secrecy is up to the district court, and not to DHES.

Frank Crowley, attorney for DHES, spoke in favor of HB 179. He said no claims of confidentiality have been pursued in Montana to date, but HB 179 would set up a procedure for dealing with such claims if they occur. He said HB 179 encourages the hazardous waste management industry to perform research and development by assuring that their advances would remain confidential. Such protection encourages full disclosure, he said. Crowley said about 26 states have statutes providing confidentiality for hazardous waste trade secrets.

No opponents spoke against HB 179.

Rep. O'Hara began questioning on HB 179, asking for an example of a situation in which the bill would be necessary. Mr. Crowley said that some disposal technology, such as methods of incineration or chemical stabilization of hazardous materials, is considered valuable property within the industry.

Rep. Asay questioned whether the bill would protect trade secrets or make them more easily released. Mr. Crowley said that the bill covers documents that are now required to be turned over to regulating agencies, and automatically become public information. The possibility of confidentiality, upon request and review, could only provide protection of those trade secrets, he said.

Mr. Crowley told Rep. Kadas that there is no definite evidence that lack of confidentiality has hindered funding for research and development within the waste disposal industry. He also told Rep. Krueger that industry has made no complaints about the current status of Montana law, but that HB 179 could prevent such complaints from occurring.

HOUSE BILL 180: Rep. Ream introduced HB 180 at the request of DHES. He stated that he had no qualms about sponsoring HB 180, which allows the state district courts to require mandatory action to force compliance with the Montana Hazardous Waste Act.

Mr. Crowley also spoke as the DHES representative in support of HB 180. He said the bill would clarify the court's injunctive power under the Hazardous Waste Act by recognizing cases in which the courts could require injunctive action, not just prevent or halt action through injunction.

No opponents spoke against HB 180.

EXECUTIVE ACTION: Rep. Harp offered a Do Pass motion on HB 180, which was unanimously approved by the committee.

Rep. Addy moved Do Pass on HB 178. Rep. Asay said he was not convinced that the proposal had been well-enough developed and substituted a Do Not Pass motion.

Rep. Iverson said that the study on which the bill was based was extensive and could be relied upon by the committee. Rep. Ream said that HB 178 does not require that a collection and transfer site be built, but rather allows the state to charge fees to offset the costs of such a facility if it is built.

Rep. Miles said the issue of hazardous waste disposal is a crucial one, and that the state should begin immediately to encourage safe waste disposal practices. For that reason she opposed the Do Not Pass motion. Rep. Raney indicated agreement.

Rep. Ream asked Rep. Iverson to indicate the findings of the Environmental Quality Council on the issue. Rep. Iverson said that the EQC had heard no negative comments about the proposed facility when it studied the issue. He said the new federal standards would definitely cause problems in the state by increasing the number of producers that would be forced to comply. He also said that municipal and private landfills are becoming less accessible as disposal sites because of concern over liability.

Rep. Krueger said that he is concerned about the possibility of the state getting into the business of waste collection and transportation.

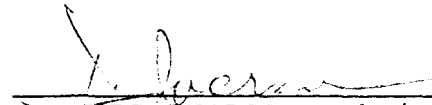
Rep. Miles said the enabling legislation for the establishment of a collection and transfer site is already in law, and that HB 178 simply allows the state to collect fees to offset the costs of operating such a facility.

Rep. Asay withdrew his Do Not Pass motion and the committee unanimously passed HB 178.

Rep. Driscoll made a Do Pass motion on HB 179. Rep. Krueger substituted a Do Not Pass motion, saying that there had been no evidence of abuse of documented trade secrets, and no need for the bill had been shown. He said the state already has sufficient procedures to protect trade secrets in the event of a problem, and that the public's right to know supercedes the need for trade secrecy in the absence of contrary evidence.

Rep. Addy moved to table the bill as a substitute for all motions pending. Rep. Ream voted against that motion, all other committee members voted in favor of it.

There being no further business before the committee, the meeting was adjourned at 4:30 p.m.



DENNIS IVERSON, Chairman

STANDING COMMITTEE REPORT

.....JANUARY 21..... 19 85.....

MR.**SPEAKER**.....

We, your committee on.....**NATURAL RESOURCES**.....

having had under consideration**HOUSE**..... Bill No.**180**....

FIRST reading copy (**WHITE**)
color

AUTHORITY TO COMPEL COMPLIANCE WITH HAZARDOUS WASTE ACT

Respectfully report as follows: That.....**HOUSE**..... Bill No.**180**....

DO PASS

STANDING COMMITTEE REPORT

January 21

19 85

SPEAKER

MR.

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **173**

FIRST reading copy (**WHITE**)
color

ASSESSMENT OF FEES FOR STATE OPERATED HAZARDOUS WASTE FACILITY

Respectfully report as follows: That **HOUSE** Bill No. **173**

DO PASS

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date

January 21, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

Exhibit #1
1/21/85
Natural Resources
~~HB~~ 178

49th Legislature

LC 559

STATEMENT OF INTENT

HOUSE BILL NO. 178

A statement of intent is required for House Bill 178 because it amends 75-10-405 of the Montana Hazardous Waste Act to allow the department of health and environmental sciences to establish, by rule, a schedule of fees applicable to hazardous waste generators that utilize any state-owned facility developed under the authority of 75-10-412. Should the department develop one or more hazardous waste management facilities under 75-10-412, it is the intent of the legislature that the costs of operating such facilities be offset through reasonable fees charged to all facility users. The legislature, however, does not expect that the fee system to be implemented under House Bill 178 will serve as the sole source of funding the costs of operating any such facilities.

Exhibit #2
1/21/85
HB 180
Natural Resources

HB 180
STATEMENT
OF
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

HB 180 is requested by the Montana DHES in order to codify existing Montana case law which authorizes the district courts to issue injunctions that are mandatory in nature, even at the preliminary injunction stage.

All of the environmental statutes administered by DHES authorize the DHES to seek injunctions to abate violations of state law. When DHES files a civil action under environmental statutes, the action invariably is a Complaint and Application for Injunction which seeks the court to order that the Defendant take some affirmative act to abate a violation of state law.

Typically the Department applies for a preliminary injunction. While the department usually settles its cases prior to any court proceedings the department has had a couple of cases where the Defendant has argued that preliminary injunction can only be used to stop someone from doing something and can't be used to affirmatively order something to be done. However, this is not the case. The Montana Supreme Court has held that under appropriate circumstances, a preliminary injunction may order affirmative acts to be done.

Under the injunction sections of its laws, the Department uses the preliminary injunction procedure in order to expedite the process of securing a hearing. However, the granting of a

Exhibit #2
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1/21/85
HB 180

mandatory injunction is fully within the discretion of the court and is only issued after a full show cause hearing.

If the Department were operating under the Federal Rules of Civil Procedure, a motion to consolidate (Rule 65) would be what we'd seek in these cases. However, since Montana Rules don't clearly provide for consolidation, we're trying to allow the court to basically hear the case without the need first to receive briefs over whether the court can order affirmative acts at a preliminary stage. Under Montana law they clearly can in the proper cases. HB 180 would merely recite this in the Hazardous Waste Act.

WITNESS STATEMENT

NAME GEORGE OCHENSKI BILL NO. 178, 179, 180
ADDRESS 813 9TH DATE Jan. 21, 85
WHOM DO YOU REPRESENT? ENV. INFO. CENTER
SUPPORT ☒ OPPOSE _____ AMEND _____
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support development of a Comprehensive
Haz. Waste Management System to
address the inevitable increase in
Haz. Materials because of RCRA changes.
with following reservations.

- 1.) Development takes place in a logical,
co-ordinated manner.
- 2.) Public input be planned into the
process every step of the way.
- 3.) All possible precautions be
included to handle in-state wastes
and not become a national Haz. Waste
Site.
- 4.) Keep the process competitive but
also provide close state oversight on
contract services.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL 178DATE January 21, 1985SPONSOR ROBERT REAM

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Duane Robertson	Helena	State Dept of Health	✓	
Roger Thorvilson	Helena	state Health Dept.	✓	
Marianne Donnelly		Mont. Assoc. of Counties		✓
George Ochenski	HELENA	E.I.C.	✓	
Lauri Craig	Helena	MT Univ Systems		
Les BERRY	Helena	mt RR Ass		

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE NATURAL RESOURCES

BILL 179

DATE January 21, 1985

SPONSOR ROBERT REAM

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL 180

DATE January 1985

SPONSOR ROBERT REAM

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.