

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on March 31, 1989, at 3:35 p.m.

ROLL CALL

Members Present: All members present except:

Members Excused: Rep. Brooke

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: None

HEARING ON SB 465

Presentation and Opening Statement by Sponsor:

REP. PIPINICH, Senate District 33, opened on the bill. He said the bill provided for a smoke management system. He said the system was in effect right now in Missoula and the surrounding district on a voluntary basis. He said he had worked with the Department of Health and Environmental Sciences (DHES), and the forest management people to develop a bill to fund this program. He said the bill was necessary to support the continued operation of the Montana Smoke Management Program, a cooperative effort by state, private and federal land management agencies. He said the bill provided for DHES to monitor the smoke from slash burning, open burning, and burning of some lands in valleys.

REP. PIPINICH introduced an amendment, EXHIBIT 1, which he distributed to the committee. He said it represented changes in the wording requested by the forest products industry.

Testifying Proponents and Who They Represent:

Chuck Homer, Environmental Specialist, DHES
Don Allen, Montana Wood Products Association

Proponent Testimony:

CHUCK HOMER, Air Quality Bureau, testified in favor of the bill, and said that Montana was one of the few Rocky Mountain

States that disposed of a large quantity of forestry type waste materials by prescribed open burning. He continued as set forth in EXHIBIT 2.

DON ALLEN gave a history of the bill. He said he testified as an opponent on the Senate side, but with the sponsor's amendments, he now felt the bill was workable. He commented on his philosophic disagreement with the practice of the federal government starting up a program, and then pulling back the funding to leave it up to the states. He suggested that the department consult with an advisory group before developing the fee structure.

MR. ALLEN said the people in his industry had participated voluntarily in this program from the start. He said it was all over western Montana, and that the cooperation with DSL, DHES and the Forest Service had worked very well. He said he would prefer the voluntary program, but in the interest of the continuation of the program, he could support the amended bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. O'KEEFE asked about amendment #2, and the mention of a smoke management group. He asked if there was such a group at present. MR. ALLEN said there was such a group, and that was the group he was referring to. REP. O'KEEFE asked if there were any members of the public represented on that group. MR. HOMER said they were all agency people. MR. ALLEN added that DHES and other agencies were considered to represent the public. He said it was a technical group.

REP. GILBERT said he did not like the bill.

Closing by Sponsor:

SEN. PIPINICH said this was the 6th time the bill had tried to get out. He said they had eliminated residential burning, all of the backyard burners, and the three tepee burners still in the district. He said this bill was for the big slash burning and prescribed burns. He said he had checked with all of the counties affected, and they were all in favor of the bill.

REP. ROTH asked about the origin of the \$23,300 figure in the fiscal note. SEN. PIPINICH said that amount represented the cost of maintaining the monitoring system in Missoula for

all of the areas. He said that in the next few bienniums, if the cost were to go up, the bill requested deferment of some of those costs.

REP. ROTH asked who paid for it now, and Sen. Pipinich said it was voluntary, paid by the industry. Mr. Allen said that EPA and the department were paying for part of it, with the Forest Service and industry contributing in-kind services. SEN. PIPINICH said that money would no longer be available. REP. RANEY said this was state special revenue funding, and without the contribution, that fund would not be there. REP. ROTH asked if money would still come in from the industry. MR. ALLEN said that the Forest Service contributed 55 % of the money, with the agencies and industry providing the rest.

REP. HANNAH asked Mr. Homer if there was money in HB 100 to do this, and what they did last year to fund this project. Mr. Homer said the money in HB 100 was in the Special Revenue Fund. Therefore, if this bill were not passed, there would be no money to fund this. He said that support for this program came out of the Air Quality budget last biennium. There were also EPA funds. He said the program couldn't continue due to new priorities set by EPA. He said that the EPA portion was the major part of the Air Quality Bureau budget for this project. Rep. Hannah asked if a portion of these monies spent last biennium had come from industry. Mr. Homer said the monies spent by the Air Quality Bureau had not come from industry. The support of the industries and other agencies came in the form of supplying staff support, communications equipment, etc., and they were assuming that would remain the same.

REP. HANNAH commented that this was a \$23,000 increase in fees on the timber industry. Mr. Homer said yes, and that it also represented an increase for federal and state land managers.

DISPOSITION OF SB 465

Motion: REP. ADDY moved the bill BE CONCURRED IN.

Discussion: REP. COHEN asked if specific counties could be specified in legislation, or if it had to apply statewide. He said this bill specified certain counties, and asked if that would create a problem legally. He expressed concern that counties without the problem of large slash burns would not be impacted by the bill. He asked if it could read "those counties that wish to participate". Mr. Zackheim said he was not sure; that the guidelines from the attorneys said to not pass special legislation naming counties if general legislation would do the job. Sen. Pipinich said that these were the counties with the big timber burns and with ventilation problems.

Amendments, Discussion, and Votes: REP. COHEN moved the amendments, removing the word "existing" from the second amendment. The motion on the amended amendments CARRIED unanimously.

Recommendation: REP. COHEN moved the bill BE CONCURRED IN AS AMENDED.

Discussion: REP. OWENS said he did not like the bill, and said the voluntary system worked. He said it was unfair to discriminate against certain counties, and to bring everyone in when it was a Missoula problem. He said other counties were getting help they did not need. REP. COHEN said everyone had seen what had happened with the voluntary system, and that there were still problems. He said it was a good bill.

REP. KADAS said everyone knew Missoula had a problem, but mentioned that wood burning had reduced and was no longer a large part of the problem. He said that improvement was the result of a great deal of effort and study, and that this bill would allow them to continue.

Substitute Motion: REP. HANNAH introduced an amendment to set a floor, similar to the bill passed last session for Yellowstone County regarding SO2 emissions. He suggested that, instead of designating counties, language be used stating "wherever there were open burning sources capable of producing 500 tons of CO per year."

Discussion: REP. RANEY said that was how it read in the original version. Mr. Zackheim said timber slash could be specified, if the intent of the senate amendments was to exclude agricultural burning.

REP. GILBERT asked if there was time to have the research done on the issue of specifying counties. He said he had problem with making the bill statewide, because of the possibility of shutting down agricultural burning.

REP. HARPER said he saw this as enabling legislation for a program already in place. He said there was a logical reason for the counties to be listed in the bill. He suggested that putting the executive action off was just wasting time. REP. RANEY said an amendment regarding the counties could be introduced on the floor.

REP. KADAS referenced the section of the constitution regarding local or special legislation, which reinforced Rep. Hannah's position, and supported the motion.

REP. HARPER disputed this position, and Rep. Cohen suggested that the bill be written such a way that it was a local option, with the county commissioners of those counties that were to participate writing a resolution to that effect.

Vote: REP. HANNAH's amendment CARRIED on a roll call vote, 9-5.

Recommendation and Vote: REP. ADDY moved the bill BE CONCURRED IN. The motion CARRIED on a roll call vote, 9-7.

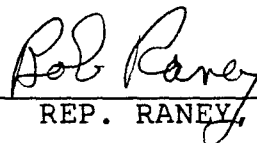
REP. HANNAH again reviewed the amendments he was proposing to SB 223, Sen. Keating's Siting Act Bill. He said he would like the members of the committee to review the amendments (EXHIBIT 3). He stated that when SB 223 first came forward, there were some things he was not happy with. He said that these amendments represented constructive action on the part of the committee in the interest of streamlining the Siting Act. He said the need criteria could be determined first before the expense was endured on the environmental assessment, rather than at the same time as it presently stood.

REP. HANNAH said much of the environmental or natural resource legislation that originated in the House died in the Senate, and vice versa. He said his experience on the EQC was different, in that it was less confrontive and more cooperative. He suggested breaking the loggerhead that seemed to form between the industry and the environmentalists. He said if the process could be streamlined without weakening the environmental protections, it would be a good idea. He suggested meeting during the following week to consider the amendments.

REP. ADDY asked if Sen. Keating was on the EQC, and REP. HANNAH said he had suggested that he be appointed to EQC and that he thought it would be helpful. REP. RANEY suggested that the amendment did not fit the title of the bill. REP. HANNAH said he was offering an olive branch, and suggested the committee talk to Van Jamison.

ADJOURNMENT

Adjournment At: 4:45 p.m.



REP. RANEY, Chairperson

BR/cm

7212.min

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 5-31-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke			✓
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

STANDING COMMITTEE REPORT

April 3, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 465 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Bob Raney, Chairman

[REP. Bob Raney WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 13.

Strike: "SOURCES"

Insert: "OF TIMBER SLASH"

2. Page 1, line 22.

Strike: "source"

Insert: "of timber slash"

3. Page 2, lines 7 through 9.

Following: "shall" on line 7

Strike: remainder of line 7 through "and" on line 9

4. Page 2, line 14.

Following: "fees"

Insert: "for timber slash"

5. Page 2, line 17.

Strike: "source"

Insert: "of timber slash"

6. Page 2, lines 18 through 21.

Following: "emitting"

Strike: ", "

Following: "basis"

Strike: the remainder of line 18 through line 21 in its entirety

7. Page 3, line 5.

Following: "annually"

Strike: ", "

Following: "department"

Insert: ", in consultation with any organized smoke management group composed of representatives of the department, public agencies, and industry,"

8. Page 3, line 7.

Following: ";

Insert: "and"

9. Page 3, line 9.

Strike: "; and"

Insert: "."

10. Page 3, lines 10 through 13.

Strike: subsection (c) in its entirety

Amendments to Senate Bill No. 465
Third Reading Copy

Requested by Senator Bob Pipinich
For the House Committee on Natural Resources

Prepared by Tom Gomez, Staff Researcher
March 30, 1989

1. Page 2, lines 7 through 9.
Following: "shall" on line 7
Strike: remainder of line 7 through "and" on line 9
2. Page 3, line 5.
Following: "department"
Insert: ", in consultation with any existing organized smoke management group composed of representatives of the department, public agencies, and industry,"
3. Page 3, line 7.
Following: " ; "
Insert: "and"
4. Page 3, line 9.
Strike: " ; and "
Insert: "."
5. Page 3, lines 10 through 13.
Strike: subsection (c) in its entirety

TESTIMONY
ON
SENATE BILL NO. 465

BEFORE THE NATURAL RESOURCES
COMMITTEE OF THE MONTANA
HOUSE OF REPRESENTATIVES

BY JEFFREY CHAFFEE, P.E., CHIEF OF THE
AIR QUALITY BUREAU OF THE MONTANA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES IMPOSING FEES FOR ANY PERMITS REQUIRED TO CONTROL EMISSIONS FROM MAJOR OPEN BURNING SOURCES; CREATING A SMOKE MANAGEMENT ACCOUNT; AND PROVIDING EFFECTIVE DATES."

Montana is one of a few Rocky Mountain States that disposes of large quantities of forestry waste materials (i.e., slash) by prescribed open burning. Because of the concerns about air quality impacts from prescribed forestry and wildland burning, Montana has cooperatively developed a nationally recognized Smoke Management Program. Private forestry companies, state and federal land management agencies, the Montana Department of Health and Environmental Sciences (DHES) and others have formed the Montana Smoke Management (Airshed) Group which oversees the program.

Each fall season, the Smoke Management Group operates a monitoring unit in Missoula to provide daily air dispersion forecasts which are used to control air quality impacts from prescribed burning. The monitoring unit is staffed by a Montana Department of State Lands Forestry Representative and a contract meteorologist; daily messages from the unit explaining any burning restrictions are provided to each airshed in western Montana through the U.S. Forest Service DG Communication Network and to the public through a toll-free hotline at DHES. The monitoring unit has an excellent overall track record of assuring that burning is completed without allowing smoke buildup in populated areas.

The U.S. Environmental Protection Agency (EPA) adopted new ambient air quality standards for ten-micron particulate (PM-10) in 1987. Because forestry and wildland burning is a significant source of PM-10 in western Montana, these new standards have placed new emphasis on the smoke management program. EPA requires areas that violate the PM-10 standards to develop control plans and to come into compliance within three years; failure to achieve compliance could result in the application of EPA sanctions, including a construction ban on new air pollution sources in the area. DHES strongly feels that continuance of the smoke management program is key to achieving the PM-10 standards in numerous western Montana communities which have experienced violations of the standards.

In past years, DHES has funded the participation of the contract meteorologist and field meteorological station operators in the monitoring unit, and has provided staff support for the smoke management program. Because of funding curtailments and because of EPA emphasis on other air quality activities in the State-EPA Agreement, DHES is forced to look for alternate sources of funding for the program during the 1990-91 biennium. The program provides a service to member burners by assuring that land management goals are achieved while protecting air quality. Through this bill, DHES is proposing to collect fees to support the costs of the monitoring unit meteorologist and field station operators; however, staff support for the program would continue to be funded by the DHES. Fees would be fairly divided among members of the Smoke Management (Airshed) Group based upon their use of the program and recognizing their voluntary contributions to the program. As stated in the bill, program costs would be reviewed annually to assure that group members have input on the establishment of fees and to assure that they are maintained at a reasonable level.

DHES asks that the committee favorably consider this bill and we would be glad to answer any questions.

Amendments to Senate Bill No. 223
Third Reading Copy (BLUE)

Requested by Representative Hannah
For the Committee on Natural Resources

Prepared by Valencia Lane
March 16, 1989

1. Title, line 6.

Following: "BY"

Strike: remainder of line 6 through line 14 in its entirety

Insert: "PROVIDING THAT THE BOARD OF NATURAL RESOURCES AND
CONSERVATION MAY HOLD PROCEEDINGS FOR FINDINGS NECESSARY FOR
DETERMINING NEED SEPARATELY FROM PROCEEDINGS FOR FINDINGS
NECESSARY FOR DETERMINING ENVIRONMENTAL COMPATIBILITY; AND
AMENDING SECTION 75-20-301, MCA."

2. Strike: everything after the enacting clause

Insert: "Section 1. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board -- findings necessary for
certification. (1) Within 60 days after submission of the
recommended decision by the hearing examiner, the board
shall make complete findings, issue an opinion, and render a
decision upon the record, either granting or denying the
application as filed or granting it upon such terms,
conditions, or modifications of the construction, operation,
or maintenance of the facility as the board considers
appropriate.

(2) The board may not grant a certificate either as
proposed by the applicant or as modified by the board unless
it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental
impact, considering the state of available technology and
the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid
transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall
be located underground;

(ii) that the facility is consistent with regional
plans for expansion of the appropriate grid of the utility
systems serving the state and interconnected utility
systems; and

(iii) that the facility will serve the interests of
utility system economy and reliability;

(f) that the location of the facility as proposed
conforms to applicable state and local laws and regulations
issued thereunder, except that the board may refuse to apply
any local law or regulation if it finds that, as applied to
the proposed facility, the law or regulation is unreasonably
restrictive in view of the existing technology, of factors

of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health ~~have~~ has issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities.

(5) For a facility defined in 75-20-104(10)(a) proposed by utility applicants, the board may make the findings required to determine need separately from the findings required to determine environmental compatibility. The board may authorize separate proceedings for each set of findings."

NEW SECTION. Section 2. Extension of authority. Any existing authority of authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act]."

VISITORS' REGISTER
Natural Resources COMMITTEE

DATE March 31, 1989

SPONSOR Sen. Pipirich

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 3-31-89 BILL NO. 445 NUMBER 1

NAME	AYE	NAY
Rep. Hal Harper		✓
Rep. Tom Hannah	✓	
Rep. Mike Kadas	✓	
Rep. Mary McDonough	✓	
Rep. Lum Owens	✓	
Rep. Vivian Brooke		
Rep. Robert Clark	✓	
Rep. Mark O'Keefe		✓
Rep. Leo Giacometto		✓
Rep. Bob Gilbert		✓
Rep. Kelly Addy	✓	
Rep. Clyde Smith	✓	
Rep. Janet Moore	✓	
Rep. Rande Roth		✓
Rep. Ben Cohen, Vice-Chairman	✓	
Rep. Bob Raney, Chairman		✓

TALLY

9 5

Charles Montague
Secretary

Bob Raney
Chairman

MOTION: motion on Rep. Hannah's amendment

ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE

3-31-89

BILL NO.

465

NUMBER

2

NAME	AYE	NAY
Rep. Hal Harper	✓	
Rep. Tom Hannah		✓
Rep. Mike Kadas	✓	
Rep. Mary McDonough	✓	
Rep. Lum Owens		✓
Rep. Vivian Brooke	✓	
Rep. Robert Clark		✓
Rep. Mark O'Keefe	✓	
Rep. Leo Giacometto		✓
Rep. Bob Gilbert		✓
Rep. Kelly Addy	✓	
Rep. Clyde Smith		✓
Rep. Janet Moore	✓	
Rep. Rande Roth		✓
Rep. Ben Cohen, Vice-Chairman	✓	
Rep. Bob Raney, Chairman	✓	

TALLY

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Clara Montoya
Secretary

Bob Raney
Chairman

MOTION:

SP 465

Be incurred in as amended