

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas F. Keating, on February 13, 1989,
at 1:00 pm, Room 405 of the State Capitol

ROLL CALL

Members Present: Senators: Thomas F. Keating, Chairman,
Larry Tveit, Fred Van Valkenburg, Loren Jenkins, Darryl
Meyer, Pete Story, Bill Yellowtail, Elmer Severson,
Cecil Weeding, Dorothy Eck, and Jerry Noble.

Members Excused: None

Members Absent: Lawrence Stimatz

Staff Present: Bob Thompson and Helen McDonald

EXECUTIVE ACTION

SB 211

Senator Noble moved the bill DO NOT PASS in its original form. Six voted for and five voted against, with Senator Stimatz being absent. Senator Keating stated that if the vote ties, the motion fails and the bill remains on the table.

Upon the return of Senator Stimatz, Senator Keating explained to him about SB 211. Senator Stimatz voted no, thereby tying the vote. SB 211 was tabled. Motion fails. (Exhibit 4)

SB 321

Senator Keating stated that SB 321 is Senator Beck's bill on underground tanks and there are several sets of amendments. (Exhibits 1, 2, & 3) Senator Jenkins moved the amendments. These amendments were brought up during the discussion of the bill. One section of the amendments states fees are "not to exceed \$50 per tank". Implementation could run into some problems so the second amendment reads: "The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the state fire marshal that relate to underground storage tanks." Another amendment specifies that the department may inspect tanks only "if the

department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part."

Senator Keating asked for comments or questions.

Bob Thompson noted that section #2 of the amendment on the delegation of authority held by the state is also addressed by one of Senator Beck's proposed amendments.

Senator Keating suggested segregating section #2 of Senator Eck's amendments from sections 1, 3, 4, & 5.

Senator Van Valkenburg wondered if there would be enough money to pay for the FTE that the fiscal note talks about employing. One man who was here said that a cap of somewhere around \$50 per tank would cover everything.

Senator Weeding Stated if section #2 was adopted would there be a conflict when we get to section #3.

Larry Mitchell thought that the local agent through the department could have authority because there can be a delegation of authority, although the authority remains with the department until delegated. There would not be a conflict between section #3 on Senator Jenkins' amendments and section #2 on Senator Beck's amendment.

Bob Thompson stated that his answer originally was in response to sections #2 and #3 to Senator Jenkins' amendment.

Larry Mitchell stated that section #2 on Senator Beck's amendment would be the one that concerns what the state fire marshal has expressed about the need to coordinate enforcement. The state fire marshal would be concerned about public safety requirements and the Department of Health would be concerned with underground storage tanks and preventing leaks to underlying water reserves.

Senator Keating wondered if section #3 on Senator Jenkins' sheet overlapped section #2 on both Senators Jenkins' and Beck's amendments.

Larry Mitchell stated that once a tank is closed the concern is that liability may remain and that amendment simply says the department may go back in and inspect tanks.

Senator Weeding wanted to know if in section #3 the department had reason to suspect that 10% of the tanks in the state leak. Does this amendment restrict the department in seeking on these tanks? There would have to be some

physical evidence before the department could monitor a tank.

Larry Mitchell stated he believes the amendment is in response to Mr. Mockler's concern that the department could come back in on a closure and require additional testing and monitoring at a site that had already been closed. That would not occur unless there was evidence of an impact on ground water in the area. The department would check all the active sites and if there were some closures four years ago in the same location then it could double check to make sure they were properly closed.

Senator Keating asked for other questions. A vote was taken on sections 1. 2. 3. 4. & 5. of Senator Jenkins' amendments. The amendments passed.

Senator Jenkins stated that both Senator Beck's section #2 and his section #2 address the same topic.

Bob Thompson stated that Senator Beck had requested two changes. The first would go into the statement of intent. The amendment suggests that it is the intent of the legislature that the underground storage tank program be implemented in a manner consistent with the rules stated by the fire marshal and conducted in a cooperative effort. The second section of Senator Beck's amendment suggests that if any rule promulgated under the underground storage tank rulemaking section affects the authority provided by the state fire marshal, then the rule must also be approved by the state fire marshal. This amendment would ensure that the state fire marshal could implement the uniform fire code and other rules that he administers.

Senator Keating wanted to know if there is a conflict between the two amendment sections.

In general, Bob Thompson thought not. However, there could be a conflict if the approval of the state fire marshal was not obtained and that prevented the department from administering its program according to the requirements of the Environmental Protection Agency.

Senator Jenkins asked if this program would be completely under the fire marshal, although it is administered by the Department of Health.

Bob Thompson indicated that the language was written narrowly so that the approval of the fire marshal would only be required when his authority was affected. If there is any rule adopted by DHES that affects the fire marshal, then in that "zone" of rules there could be some conflict. If

there is no effect on the fire marshal's authority, then there would be no need for his approval.

Senator Eck moved that we adopt both of the amendment sections proposed by Senator Beck. The #2 amendment is specific so that there won't be any doubt about the meaning of coordinating.

Senator Story had misgivings because if the fire marshal's and DHES's standards are different for underground storage tanks, then who should be in charge. In the case of houses and aboveground storage tanks where the chief problem is the possibility of an explosion that sort of thing is the problem of the fire marshall, but not for underground tanks. Senator Story noted the underground tanks at the Burlington Northern yard in Livingston and some of the gas stations that are threatening Livingston's water supply. He wants the agency in charge who has the best resources to handle the problem. Who would be in the best position to do something? If there is any question about creating a second agency to get into the business of worrying about leaking tanks, Senator Story thought the authority should go to the DHES and not the fire marshal's office.

Senator Keating wanted to hear from the fire marshal regarding underground tanks.

The fire marshal stated the uniform fire code contains about 110 pages that deals with flammable liquid and storage in general. There are very specific requirements that deal with underground storage tanks and those are the requirements currently used by DHES for regulating their program along with the federal requirements. The fire marshal's office tries to cooperate as fully as possible with the DHES in developing rules and some of these programs.

Senator Keating asked if the fire marshal's codes deal primarily with the installation of storage tanks.

The fire marshal stated they deal with installation, fuel, monitoring of the tank, and maintenance. The existing codes talk about using the stick method and the inventory method to make sure they are not losing product into the soil. In the cities enforcement people are the local fire departments. Unfortunately, nobody has the manpower to check on the more rural stations to make sure that they are following the codes.

Senator Jenkins stated that this is probably your amendment that we have here.

The fire marshal stated that was correct.

Senator Jenkins indicate one rule must be approved by you and the other one says it must complement and not duplicate your authority.

The fire marshal stated he was more responsible for the wording in Senator Beck's amendment. He added that uniform fire code is not the only code used.

Senator Severson wanted to know if local fire departments enforce something like this since he thought most fire departments in Montana would be volunteer fire departments.

The fire marshal indicated that the biggest share of the fire departments doing underground storage tank enforcement are paid departments. He stated a couple of rural fire districts and some volunteer fire departments are doing some active enforcing.

Senator Eck indicated it was her understanding that the fire department supervises the installation of the tank. Does the DHES ever do it?

The fire marshal answered that the fire departments and the local health authorities are there sometimes.

Senator Eck stated it was her understanding that in order to get liability insurance there had to be an inspection of the installation. Can that service be provided now?

The fire marshal indicated the fire departments don't have a form for inspections but will provide a written verification of an inspection.

Senator Eck wanted to know if Montana is going to rely on somebody to do inspections.

Senator Keating stated this bill deals with the working of underground tanks that are thought to be leaking and was not sure that what Senator Eck was getting into was germane to the bill.

Senator Keating added that what the committee is dealing with here is two things. The fire marshal is fulfilling his job under the codes. Now some new legislation is giving the DHES authority to do things that the fire marshal does not address. There will be overlapping to some extent between what the DHES and the fire marshal do, particularly in regard to installation and monitoring of underground storage tanks. Does the amendment that Senator Jenkins proposed say that the delegation of authority must complement and not

duplicate the fire marshal's duties help the DHES implement its program.

Larry Mitchell indicated that the department tries to work closely with the fire marshal and to not contradict or go in a different direction from the fire codes. The federal regulations cite NFPA standards and fire codes. The only real major departure from what has already been in existence for 20 years in fire codes is the EPA mandate to require some additional leak protection. The DHES needs the help of the local fire departments, local health departments, and building inspectors. The primary purpose of this bill is to generate some tank fees to get this done.

Senator Keating indicated that the DHES is going to touch many more tanks than the fire marshal.

Larry Mitchell stated this bill only regulates underground tanks.

Senator Keating indicated that the fire marshal has a superior objective here and the DHES will complement his objective.

Larry Mitchell stated the department would like to count on their help to prevent leaks.

Senator Keating asked if it mattered to DHES which amendments are used.

Larry Mitchell preferred Senator Jenkins' amendments over the others, noting that fire codes have a lot of exceptions.

Senator Jenkins made a substitute motion that SB 321 be amended with his section #2 along with Senator Beck's amendment to the statement of intent. Motion carried.

Senator Tveit moved to amend to follow the federal rules that exempt home-farm and residential tanks under 1100 gallons or less that store motor fuel for noncommercial purposes. Several other states have exempted farm tanks.

Senator Keating questioned if this includes diesel or gasoline tanks above ground with no lines or connections of metal ground pipes going underground.

Larry Mitchell stated that if the tank is above ground and there are no underground pipes, even under the existing law that tank would not be regulated under the underground storage program.

Larry Mitchell indicated that what Senator Tveit's amendment

would do is to remove from regulation underground tanks used for farm or residential purposes of 1100 gallons or less. Aboveground tanks are exempt from whatever program the State of Montana develops for underground storage tanks.

Senator Van Valkenburg asked if DHES had a position in regard to this amendment.

Larry Mitchell indicated the DHES opposes the amendment because there is no valid reason to exempt tanks by size. Farm-home tanks would not be regulated as heavily as the major commercial tanks. He added that the federal laws exempt these tanks, but there is really no environmental reason to exempt them.

Senator Story questioned whether a person that puts in a 1100 gallon tank or less would be able to financially comply with the rules.

Senator Tveit thinks this is a case of the federal government saying certain tanks are exempt and the state saying they are not exempt. The state should not be any stricter than the feds in this particular area.

Senator Tveit's amendment to SB 321 failed on a 6-6 tie (Exhibit #5)

Senator Weeding moved that SB 321 do pass as amended. Motion carried.

ADJOURNMENT

Adjournment At: 2:00 p.m.


THOMAS F. KEATING, Chairman

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-13-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz		✓	
Senator Pete Story	✓		
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 14, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration SB 321 (first reading copy -- white), respectfully report that SB 321 be amended and as so amended do pass:

1. Page 2.

Following: line 2

Insert: "It is the intent of the legislature that the underground storage tank program be implemented in a manner consistent with rules adopted by the state fire marshal as they relate to underground storage tanks; that the program not duplicate inspections and existing regulatory efforts conducted under the uniform fire code; and that the department and local health and fire officials work together cooperatively in implementing a program for the prevention of leakage from underground storage tanks."

2. Page 10, line 22.

Following: "fees"

Insert: "not to exceed \$50 per tank"

3. Page 11, line 1.

Following: "implementation"

Strike: "i"

Insert: ". The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the state fire marshal that relate to underground storage tanks."

4. Page 11, line 14.

Following: "tanks"

Insert: "if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part"

5. Page 14, line 21.

Following: "or"

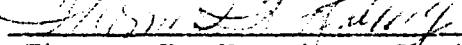
Insert: ", if mutually agreed upon by the affected parties,"

6. Page 14, line 22.

Following: "County"

Strike: ", whichever the department considers appropriate"

AND AS AMENDED DO PASS

Signed: 
Thomas F. Keating, Chairman

Statement of Intent adopted.

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2/15/89
7:40
C.M.
scrsb321.214

Proposed Amendments to SB 321
First Reading Copy
Requested by Senator Loren Jenkins

1. Page 10, line 22.

Following: "fees"

Insert: "not to exceed \$50 per tank"

2. Page 11, line 1.

Following: "implementation"

Strike: "i;"

Insert: ". The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the state fire marshal that relate to underground storage tanks."

3. Page 11, line 14.

Following: "tanks"

Insert: "if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part"

4. Page 14, line 21.

Following: "or"

Insert: ", if mutually agreed upon by the affected parties,"

5. Page 14, line 22.

Following: "County"

Strike: ", whichever the department considers appropriate"

SENATE NATURAL RESOURCES
2
2-12-89
BILL NO. SB 321

Amendments to Senate Bill No.
Introduced Copy

Requested by Senator Beck
For the Senate Committee on Natural Resources

February 13, 1989

1. Page 2.

Following: line 2

Insert: "It is the intent of the legislature that the underground storage tank program be implemented in a manner consistent with rules adopted by the state fire marshal as they relate to underground storage tanks; that the program not duplicate inspections and existing regulatory efforts conducted under the uniform fire code; and that the department and local health and fire officials work together cooperatively in implementing a program for the prevention of leakage from underground storage tanks."

2. Page 11.

Following: line 7

Insert: "(3) If any rule promulgated under subsection (2)(c) would affect authority provided to the state fire marshal under 50-3-102 and 50-3-103, the rule must be approved by the state fire marshal."

Amendments to Senate Bill No. 321
First Reading Copy

Requested by Senator Larry Tveit
For the Senate Committee on Natural Resources

Prepared by Bob Thompson
February 13, 1989

1. Page 7.

Following: line 14

Insert: "(i) a farm or residential tank of 1,100 gallons or less
capacity used for storing motor fuel for noncommercial
purposes;"

Renumber: subsequent sections

ROLL CALL VOTE

SENATE NATURAL RESOURCES *Pass*

EXHIBIT NO. 4

DATE 2-13-89

BILL NO. SB 211

SENATE COMMITTEE NATURAL RESOURCES

Date 2-13-89 Bill No. 211 Time _____

NAME	YES	NO
Vice-Chairman Larry Tveit		✓
Senator Fred VanValkenburg		✓
Senator Loren Jenkins	✓	
Senator Darryl Meyer	✓	
Senator Lawrence Stimatz		✓
Senator Pete Story	✓	
Senator Bill Yellowtail		✓
Senator Elmer Severson	✓	
Senator Cecil Weeding		✓
Senator Dorothy Eck		✓
Senator Jerry Noble	✓	
Chairman Tom Keating	✓	
	6	6

Secretary _____

Chairman _____

Motion: do pass - fail

ROLL CALL VOTE

Tveit Amendment
Amended to SB 321
SENATE NATURAL RESOURCES

SENATE COMMITTEE _____

NATURAL RESOURCES

EXHIBIT NO. 5

Date 2-13-89

BILL NO. SB 321

Date 2-10-89

Bill No. SB 321 Time _____

NAME	YES	NO
Vice-Chairman Larry Tveit	✓	
Senator Fred VanValkenburg		✓
Senator Loren Jenkins	✓	
Senator Darryl Meyer	✓	
Senator Lawrence Stimatz	✓	
Senator Pete Story		✓
Senator Bill Yellowtail		✓
Senator Elmer Severson	✓	
Senator Cecil Weeding		✓
Senator Dorothy Eck		✓
Senator Jerry Noble		✓
Chairman Tom Keating	✓	
	6	6

Secretary _____

Chairman _____

Motion: Tveit amendment - fail

