

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PROPERTY TAX

Call to Order: By **CHAIRMAN COHEN**, on March 22, 1991, at 7:30 AM

ROLL CALL

Members Present:

Rep. Ben Cohen, Chairman (D)
Rep. Ed Dolezal (D)
Rep. Orval Ellison (R)
Rep. Russell Fagg (R)
Rep. David Hoffman (R)
Rep. Ed McCaffree (D)
Rep. Mark O'Keefe (D)
Rep. Ted Schye (D)
Rep. Fred Thomas (R)
Rep. Dave Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Julia Tonkovich, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

DISCUSSION ON HB 781

Mr. Heiman explained the new Grey Bill, which adds the amendments discussed on March 20, and includes both the authorizing and the appropriations language in the statement of intent. **Exhibit 1**

Chuck Homer, Air Quality Bureau (AQB), explained the proposed air quality permit fee structure and how it compares to fees in other states. **Exhibit 3** Most of these states do not charge on a dollar/ton basis; to obtain the values expressed here, the annual permit fee revenue was divided by the annual emissions tonnage. Some states charge no fees or very nominal fees; other states (California) charge very high fees. Washington and Minnesota have received approval for their development programs; the other states are, like Montana, currently attempting to draft legislation that will bring them up to the new Title V Clean Air Act standards. The fees proposed under HB 781 would be less than those in Washington and Minnesota. The average fee for the two tiers of pollutants in Montana would be \$1.83/ton. Currently, Montana charges no fees.

Tim Baker, AQB, explained the statement of intent, which defines

the fee structure, and authorizes the board of rules to draft rules ensuring that the fee structure will not collect more than is authorized and appropriated by the legislature.

Mr. Heiman explained amendments 1, 2 and 5 (**REP. KIMBERLEY's** amendments). **Exhibit 2** Amendment 1 provides an extra assessment to provide geographical area studies, based upon a certain type of modeling, and the cost of the studies will be spread among pollution point sources (or suspected point sources). Amendments 2 and 5 refer to the statement of intent; Amendments 3 and 4 refer to the per ton fee.

REP. WANZENRIED asked for clarification of the special studies program. **Jeff Chaffee, AQB**, said if there were a demonstrated need for a special study in an area (such as Kalispell) to identify the source of pollution, the bureau would seek approval from the Board of Health to charge fees to partially fund the study.

REP. WANZENRIED asked what the industry's concern was regarding funding these special studies. **John Augustine, Dupont-Conoco**, stated that the industry will support the department's bill; however, it will oppose the bill if any of **REP. KIMBERLEY's** amendments are added. The mechanism **Mr. Chaffee** described authorizes a separate funding mechanism which would not be subject to the appropriations process; it would not require legislative approval, but only administrative approval from the Board of Health.

REP. COHEN asked how the Board of Health is appointed. **Mr. Augustine** replied the positions are appointed by the Governor, in staggered terms which last for four years; he added that the issue is not who is on the board, but the propriety of the mechanism for collecting and assessing the funds.

Mr. Chaffee said the studies would not only require the Board of Health's approval, but the approval of the legislative appropriations process.

REP. COHEN asked whether any studies have yet been proposed. **Mr. Chaffee** replied that three studies have been proposed; one for Billings and East Helena in regards to sulfur dioxide, and one additional study. The East Helena study is the most important of those three.

REP. HOFFMAN said this bill is going beyond what the sponsor intended in the original bill. **Mr. Baker** said the original bill was initiated by the Department of Health; the sponsor and the department offered amendments at the time of the hearing. The amendments the Department offered at the hearing resulted from the passage of the federal Clean Air Act. The sponsor's amendments were not offered by the department. **REP. HOFFMAN** asked whether **REP. KIMBERLEY's** amendments are worth the political risk, seeing as the industry will oppose the entire bill if those

amendments are included. **Mr. Baker** said the department neither supports nor opposes the sponsor's amendments.

Mr. Chaffee explained the projected dollar amounts AQB would need to fund the three proposed special studies. **Exhibit 4**

REP. COHEN asked whether the fees would replace the General Fund appropriation. **Mr. Chaffee** said the fees could be raised to replace the General Fund appropriation if the legislature approved such an action. However, AQB is only requesting \$400,000 to be raised by the fees. The Board of Health will set the actual fees within the appropriations authority given by the legislature.

REP. FAGG asked what the \$350,000 General Fund contribution will finance. **Mr. Chaffee** said that amount was part of AQB's base budget; \$350,000 has been the state's General Fund contribution to AQB for the past few years. In order to be eligible for federal funding, AQB must put up at least 25% of the costs; that has usually been General Fund money. Part of the money in the base budget has been directed towards permitting; the other part will go to other aspects of the program.

Mr. Augustine said the administration originally sought \$400,000 to implement the program. Between the time the administrative budget was prepared and the time it came before the appropriations subcommittee, 75% of the requested funds had been covered by a federal grant. To keep the amount AQB wanted, the subcommittee added another 6 1/2 FTEs to bring their actual "need" up to \$400,000. The entire amount is the cost of running the program for the next two years. None of it is federal grant money, because they have already recalculated the figure and added new FTEs. **Mr. Chaffee** said the 6 1/2 FTEs were added to meet expanding federal requirements relative to the revised Clean Air Act. AQB did not arrive at the \$400,000 and then try to spend it regardless of need.

REP. FAGG said the state must be primarily responsible for the permitting program; the bill must be passed through both houses and signed by the Governor in order for this to happen. The addition of **REP. KIMBERLEY's** amendments could jeopardize the bill's passage. The legislature could implement it for two years, and look at it again in 1993.

REP. WANZENRIED asked if the legislature provided this kind of appropriation authority, what would the industry's position be on having these fees included? **Mr. Augustine** said the industry is seeking the protection of the appropriations process.

REP. COHEN asked whether the industry would continue to participate in the Billings-area studies if the sponsor's amendments are not added to the bill. **Mr. Augustine** said he did not know. **Mary Westwood, Montana Sulphur and Chemical**, said most

industries are seeing the value of seeking long-term solutions to pollution problems; some may need more prodding than others. Mr. Chaffee said this was true, as far as the industries involved with the Blacktech project were concerned. The special studies would provide an opportunity for industries to demonstrate their willingness to help solve the pollution problem in Billings and elsewhere.

REP. O'KEEFE spoke in support of the sponsor's amendments (1, 2 and 5). The amendments give the Board of Health discretion. Industry has been making a reasonable attempt to address the department's concerns. These amendments do not increase fees, nor do they take care of the study cost problem. If the industry wants to oppose the bill because of these amendments, it can also risk going under federal control as far as the Title V Clean Air Act standards go. The bill has at least five more hearings before it will be signed by the Governor; if these amendments are problematic, they will be removed during the process. This option should not be precluded at this early stage.

REP. HOFFMAN said approving the amendments, even if they are not attached to the Grey Bill, will send the wrong message to the taxation committee. Much more assessment of the studies is necessary.

Dennis Olson, Northern Plains Resource Council (NPRC), said Billings has had difficulty enforcing air quality laws. Without the sponsor's amendments, the industry will go to the EPA and say Billings has a viable air quality program. NPRC does not believe it has an enforceable program. Without the amendments, NPRC will probably not support the bill. Billings requires a \$1-2 million study before the pollution problems can be identified to the point where remedies can be enforced. NPRC would rather have no bill than have the bill without amendments; the industry can take issue with EPA. Mr. Augustine said the amendments have nothing to do with enforcement; they deal with raising fees.

Mr. Chaffee said the sponsor's amendments would fund special studies that may aid planning and other activities necessary to setting fees for operating permits. The department cannot guarantee that there is a strong need for all of these special studies. Further, some industries may be willing to pay for needed studies, so these funds may not be necessary. Statutory language in the Grey Bill gives the department and the Board the option of implementing special studies by using the operating permit fees.

REP. COHEN said four years ago, the legislature reduced the state's air quality standards (rather than mandating reduced emissions) so that Billings plants would no longer be out of compliance with state standards.

Motion/Vote: REP. O'KEEFE moved the subcommittee DO RECOMMEND amendments 1,2 and 5 to the full committee. Motion failed 5 to

4. Amendments will be submitted to the committee without recommendation.

Motion/Vote: REP. FAGG moved the committee DO RECOMMEND the Grey Bill of HB 781 (with the department's amendments) to the full committee. Motion carried unanimously.

Mr. Heiman said Steve Brown recommended the effective date be implemented later (rather than being effective upon approval) to allow time for the rulemaking process to occur before the fees are collected. Mr. Chaffee said the fees are needed soon after July 1 in order to get the program running. Mr. Augustine said an immediate effective date mandates immediate substantive permitting provisions. The department should be authorized immediately to draft the rules, but the effective date should be delayed until the date the rules are adopted. Mr. Heiman said this is possible.

REP. O'KEEFE said he could make that recommendation on the floor of the House. The committee approved this "conceptual amendment" unanimously.

Motion/Vote: REP. O'KEEFE moved to amend page 2, line 16, to read "proved by the Board and implemented based upon the size and nature of the source or its emissions." Motion carried unanimously.

DISCUSSION OF DEP'T OF REVENUE ASSESSMENT PROCEDURES

REP. COHEN said REP. WYATT was informed by her county treasurer that the assessed value of personal property in Cascade County had dropped significantly. The treasurer said the Department of Revenue (DOR) had discarded the green book values. If the department changed its assessment method, did it follow the proper procedure?

Ken Morrison, DOR, said the department has changed the way it assesses value on heavy equipment. In the past, the department has adopted the "green guide," which is a listing of equipment value. There are several other methods, such as acquired costs. The "green guide" has been the department's first choice in the past; however, there is a question as to how accurate the guide's values are for Montana. The department feels acquired costs give a more accurate value, and has asked assessors to use them as a primary source rather than the green guide. Acquired costs result from information provided by the owner. We can verify it by checking income tax records. The loss in taxable value that resulted from this change was not anticipated.

DISCUSSION ON HB 801

Mr. Heiman explained the amendments, which limit the bill to EPA/Superfund sites, put a base price in (50 cents/square foot). If

the tax goes unpaid, the lien on the unpaid tax will not be exclusive to the Superfund site, but will extend to all property of the taxpayer. The tax rate will be close to 8% (which adds up to approximately \$80,000/acre). The bill won't go all the way through the process, but it will provide an incentive to the company that owns the Superfund site to rehabilitate the site, or at least to negotiate with county officials on rehabilitation or clean-up.

Motion/Vote: REP. DOLEZAL moved the subcommittee DO RECOMMEND HB 801 as amended to the full committee. Motion carried 6 to 2.

DISCUSSION ON HB 452

Mr. Heiman explained the Grey Bill version of HB 452. This version is a "value-added, expanding-industry, taxable-value decrease bill." When an expanding industry uses Montana raw or semi-finished materials, the new real property acquired for expansion can be taxed at a decreasing rate, depending on the percentage of new qualifying employees the business hires.

A qualifying employee makes .75 or more of the average wage determined by the Department of Labor. If a business hires 4 new qualifying employees, and if there were 10 old employees, this ratio is used to determine the percentage at which the new expansion equipment is taxed. New equipment is currently taxed at 9%; under this bill it cannot be taxed at a rate lower than 3%.

DOR takes an initial request for the expanding property to qualify, and they make the initial determination, which the local government can veto. The rate changes annually based on the number of new employees and the qualifying property. The tax break lasts up to seven years. During some of those years there may be no tax break, and during others there may be a large one; it all depends on the number of qualifying employees.

In the determination process, DOR must ensure that no employees have been laid off in order to make room for "new" employees.

REP. DOLEZAL added that the state provides the exemption, and then gives that exemption to the counties, who have the power to vote on whether they wish to approve the tax incentive.

REP. MCCAFFREE said if the bill creates competition at the local level, the counties won't implement it.

REP. WANZENRIED said the determination of "new" and "expanding" as far as employees were concerned may be a difficult process.

Motion/Vote: REP. THOMAS moved the subcommittee DO RECOMMEND the amendments to HB 452 to the full committee. Motion passed 9 to 1.

HOUSE PROPERTY TAX COMMITTEE

March 22, 1991

Page 7 of 7


Motion/Vote: REP. THOMAS moved the subcommittee DO RECOMMEND HB 452 as amended to the full committee. Motion carried 6 to 4.

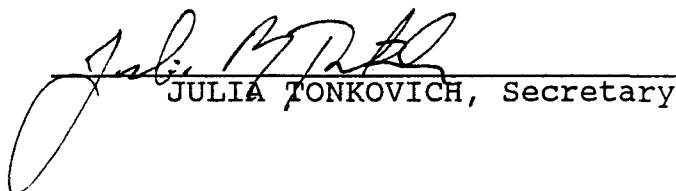
70 Motion/Vote: REP. THOMAS moved the subcommittee DO RECOMMEND the amendments to HB 970 to the full committee. Motion carried unanimously.

Motion/Vote: REP. THOMAS moved the subcommittee DO RECOMMEND HB 970 as amended to the full committee. Motion carried unanimously.

ADJOURNMENT

Adjournment: 8:50 AM


BEN COHEN, Chair


JULIA TONKOVICH, Secretary

BC/jmt

HOUSE OF REPRESENTATIVES

PROPERTY TAX SUBCOMMITTEE

ROLL CALL

DATE

3/22/91

NAME	PRESENT	ABSENT	EXCUSED
REP. BEN COHEN, VICE-CHAIR	X		
REP. ED DOLEZAL	X		
REP. ORVAL ELLISON	X		
REP. RUSSELL FAGG	X		
REP. DAVID HOFFMAN			X
REP. ED MCCAFFREE	X		
REP. MARK O'KEEFE			X
REP. TED SCHYE	X		
REP. FRED THOMAS	X		
REP. DAVE WANZENRIED	X		
REP. DAN HARRINGTON, CHAIRMAN			

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Incorporates Proposed Amendments of DHES into
First Reading Copy of HB 781
Version 2: March 21, 1991

EXHIBIT 1
EXHIBIT 3/22
DATE _____
HB 781

HOUSE BILL NO. 781

INTRODUCED BY _____

By Request of the Department of Health
and Environmental Sciences

1 A bill for an act entitled: "An act authorizing the Department
2 of Health and Environmental Sciences to adopt rules for the
3 collection of fees for the issuance and renewal of air quality
4 construction and operating permits; providing for the
5 expiration of the permits; clarifying the authority of the
6 Department of Health and Environmental Sciences to issue an
7 operating permit; amending sections 75-2-111 and 75-2-211,
8 MCA; and providing an immediate effective date and retroactive
9 applicability dates."

STATEMENT OF INTENT

14 A statement of intent is required for this bill because
15 [section 1] requires the board of health and environmental
16 sciences to adopt by rule fees for air quality permit
17 applications. The purpose of this bill is to allow the
18 collection of an ongoing annual fee to cover the costs
19 associated with the DEVELOPMENT AND administration, including
20 implementation and enforcement, of all AN air quality permits
21 PERMITTING PROGRAM. While there is a need for a fee system to
22 cover these costs, it is not the legislature's intent that
23 these fees be used to recover other costs not delineated in
24 this bill. The legislature recognizes that the identification
25 of actual costs associated with specific permits AND
26 PERMITTING ACTIVITIES may be difficult and envisions that a
27 fee schedule may be established with generic applicability to
28 . THIS MAY RESULT IN FEES FOR classes of sources ACCORDING TO
29 THE TYPE OR AMOUNT OF EMISSIONS OR THE TYPE OF SOURCE. For
30 example, it may be determined that the costs associated with
31 ~~permit implementation and enforcement~~ THE DEVELOPMENT AND

Unofficial Gray Bill

*Incorporates Proposed Amendments of DHES into
First Reading Copy of HB 781
Version 2: March 21, 1991*

1 ADMINISTRATION OF A PERMITTING PROGRAM vary directly with the
2 amount or type of regulated pollutants emitted. In such a
3 case, a fee based upon the tons of a regulated pollutant
4 emitted may be appropriate. THE BOARD'S RULES DEFINING THE FEE
5 STRUCTURE TO BE USED BY THE DEPARTMENT SHALL ENSURE THAT THE
6 FEES CHARGED WILL NOT COLLECT, IN THE AGGREGATE, MORE THAN IS
7 AUTHORIZED AND APPROPRIATED BY THE LEGISLATURE TO THE
8 DEPARTMENT FOR THE DEVELOPMENT AND ADMINISTRATION OF THE
9 PERMITTING PROGRAM.

10 This bill also clarifies the authority of the department
11 of health and environmental sciences to issue an operating
12 permit for air contaminant sources. It is the legislature's
13 intent that all air contaminant sources operating within the
14 state ~~and not otherwise exempted~~ obtain an operating permit,
15 INCLUDING THOSE SOURCES THAT ARE "GRANDFATHERED" UNDER CURRENT
16 AIR QUALITY REGULATIONS. REASONABLE EXEMPTIONS FROM THIS
17 REQUIREMENT MAY BE IMPLEMENTED, BASED UPON THE SIZE OR NATURE
18 OF THE SOURCE OR ITS EMISSIONS.

19 ~~This bill also provides for the insertion of expiration~~
20 ~~dates into all air quality permits, specifically including~~
21 ~~those issued prior to October 1, 1991. For permits issued~~
22 ~~prior to that date, the department is authorized to adopt~~
23 ~~rules providing for expiration dates, according to the year of~~
24 ~~issuance, in order to provide for staggered renewal.~~

25 FOR SOURCES OF AIR CONTAMINANTS THAT ARE SUBJECT TO
26 TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ.,
27 AS AMENDED, THE BOARD MAY PROVIDE FOR THE EXPIRATION AND
28 RENEWAL OF PERMITS ISSUED TO SUCH SOURCES, AS NECESSARY TO
29 MEET THE REQUIREMENTS OF TITLE V. TO PROVIDE FOR THE ORDERLY
30 TRANSITION TO TITLE V PERMITS FOR BOTH CURRENT PERMIT HOLDERS
31 AND GRANDFATHERED SOURCES, THE BOARD SHALL ESTABLISH A
32 TRANSITION SCHEDULE. THE TRANSITION SCHEDULE MAY NOT SPECIFY
33 DATES FOR OBTAINING TITLE V PERMITS THAT ARE EARLIER THAN THE
34 TIMES CONTAINED IN THE FEDERAL CLEAN AIR ACT, 42, U.S.C. 7401,
35 ET. SEQ., AS AMENDED.
36

Unofficial Gray Bill

Incorporates Proposed Amendments of DHES into
First Reading Copy of HB 781
Version 2: March 21, 1991

EXHIBIT 31
DATE 3/22/91
HB 781

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits and permit applications, consistent with ~~under~~ this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 2. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section part.

~~(2) A permit issued by the department pursuant to this part is not effective for more than 5 years, after which time renewal is required. THE DEPARTMENT MAY PROVIDE FOR THE EXPIRATION OF PERMITS ISSUED PURSUANT TO THIS PART AND FOR THE RENEWAL OF PERMITS THAT HAVE EXPIRED. The department may provide for the expiration of permits issued by the department~~

Unofficial Gray Bill

Incorporates Proposed Amendments of DHES into

First Reading Copy of HB 781

Version 2: March 21, 1991

1 ~~under this part prior to October 1, 1991 [THE EFFECTIVE DATE~~
2 ~~OF THIS SUBSECTION].~~ FOR ALL SOURCES OF AIR CONTAMINANTS THAT
3 ARE SUBJECT TO THE PROVISIONS OF TITLE V OF THE FEDERAL CLEAN
4 AIR ACT, 42, U.S.C. 7401, ET SEQ, AS AMENDED, THE PROVISIONS
5 OF THIS SECTION APPLY, IN ADDITION TO THE OTHER APPLICABLE
6 PROVISIONS OF THIS CHAPTER.

7 (A) THE BOARD SHALL BY RULE REQUIRE THAT PERMITS ISSUED
8 TO SUCH SOURCES BE OF LIMITED DURATION, BUT MAY NOT LIMIT THE
9 DURATION OF THE PERMITS BEYOND THAT REQUIRED BY THE FEDERAL
10 CLEAN AIR ACT, 42, U.S.C. 7401, ET SEQ, AS AMENDED.

11 (B) THE BOARD SHALL BY RULE PROVIDE FOR THE RENEWAL OF
12 PERMITS ISSUED TO SUCH SOURCES.

13 (C) THE BOARD SHALL, BY RULE, ESTABLISH A TRANSITION
14 SCHEDULE FOR AIR QUALITY PERMITS HELD BY SOURCES OF AIR
15 CONTAMINANTS SUBJECT TO THE PROVISIONS OF THIS SUBSECTION.
16 THE TRANSITION SCHEDULE SHALL SPECIFY DATES FOR THE EXPIRATION
17 OF SUCH PERMITS, ABSENT AN APPLICATION FOR RENEWAL BY THE
18 SOURCE. THE TRANSITION SCHEDULE MAY NOT SPECIFY EXPIRATION
19 DATES THAT ARE EARLIER IN TIME THAN THOSE REQUIRED BY TITLE V
20 OF THE FEDERAL CLEAN AIR ACT, 42, U.S.C. 7401, ET SEQ, AS
21 AMENDED. THE TRANSITION SCHEDULE ESTABLISHED BY THE BOARD
22 ALSO APPLIES TO EXISTING SOURCES OF AIR CONTAMINANTS THAT ARE
23 SUBJECT TO THE PROVISIONS OF TITLE V OF THE FEDERAL CLEAN AIR
24 ACT, 42, U.S.C. 7401, ET SEQ, AS AMENDED, AND THAT DO NOT HOLD
25 AN AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF [THE EFFECTIVE
26 DATE OF THIS ACT].

27 ~~(2)(3)~~ Not later than 180 days before construction
28 begins, ~~not later than 120 days before, installation, or~~
29 alteration begins, or as a condition of use of any machine,
30 equipment, device, or facility which the board finds may
31 directly or indirectly cause or contribute to air pollution or
32 which is intended primarily to prevent or control the emission
33 of air pollutants ~~and not later than 120 days before~~
34 installation, alteration, or use begins, the owner or operator
35 shall file with the department the appropriate permit
36 application on forms available from the department, ~~and pay to~~

Unofficial Gray Bill

Incorporates Proposed Amendments of DHES into
First Reading Copy of HB 781
Version 2: March 21, 1991

EXHIBIT 1

DATE 3/22/91

HB 781

1 ~~the department a fee sufficient to cover:~~

2 ~~(a) the reasonable costs of reviewing and acting upon~~
3 ~~the application for such permit; and~~

4 ~~(b) the reasonable costs of implementing and enforcing~~
5 ~~the terms and conditions of such permit if the permit is~~
6 ~~granted (not including any court costs or other costs~~
7 ~~associated with any enforcement action). The fee shall be~~
8 ~~deposited in the state special revenue fund to be used by the~~
9 ~~department for administration of this section.~~

10 ~~(4) Not later than 90 120 days prior to the expiration~~
11 ~~date of a permit issued pursuant to this part, the owner or~~
12 ~~operator of the air contaminant source shall file with the~~
13 ~~department the appropriate application for permit renewal on~~
14 ~~forms available from the department.~~

15 (4) Concurrent with the submittal of a permit
16 application required by subsection (3) and annually for the
17 duration of the permit, the applicant shall submit to the
18 department a fee sufficient to cover THE REASONABLE COSTS,
19 BOTH DIRECT AND INDIRECT, OF DEVELOPING AND ADMINISTERING THE
20 PERMITTING REQUIREMENTS IN THIS CHAPTER, INCLUDING THE
21 REASONABLE COSTS OF:

22 (a) the reasonable costs of reviewing and acting upon
23 the application; and

24 (b) the reasonable costs of implementing and enforcing
25 the terms and conditions of the permit if the permit is
26 issued. However, this amount does not include any court costs
27 or other costs associated with any enforcement action. If the
28 permit is not issued, the department shall return this portion
29 of the fee to the applicant.

30 (C) EMISSIONS AND AMBIENT MONITORING;

31 (D) PREPARING GENERALLY APPLICABLE REGULATIONS OR
32 GUIDANCE;

33 (E) MODELING, ANALYSIS, AND DEMONSTRATIONS; AND

34 (F) PREPARING INVENTORIES AND TRACKING EMISSIONS.

35 (5) As a condition of the continuing validity of permits
36 issued by the department under this part prior to October 1,

Unofficial Gray Bill
Incorporates Proposed Amendments of DHES into
First Reading Copy of HB 781
Version 2: March 21, 1991

1 1991, the department may require the permit holder to pay an
2 annual fee sufficient to cover the costs identified in
3 subsection ~~(5)(b)~~ (4).

4 (6) FOR ANY EXISTING SOURCE OF AIR CONTAMINANTS THAT IS
5 SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT, 42 U.S.C.
6 7401, ET SEQ., AS AMENDED, AND THAT IS NOT REQUIRED TO HOLD AN
7 AIR QUALITY PERMIT FROM THE DEPARTMENT AS OF [THE EFFECTIVE
8 DATE OF THIS SUBSECTION], THE BOARD MAY AS A CONDITION OF
9 CONTINUED OPERATION REQUIRE BY RULE THAT THE OWNER OR OPERATOR
10 OF THE SOURCE PAY THE ANNUAL FEE PROVIDED FOR IN SUBSECTION
11 ~~(5)~~ (4). NOTHING IN THIS SUBSECTION MAY BE CONSTRUED AS
12 ALLOWING THE DEPARTMENT TO CHARGE ANY SOURCE OF AIR
13 CONTAMINANTS MORE THAN ONE ANNUAL FEE THAT IS DESIGNED TO
14 COVER THE COSTS IDENTIFIED IN SUBSECTION ~~(5)~~ (4).

15 (7) The fees collected by the department pursuant to
16 this section must be deposited in the state special revenue
17 fund to be appropriated by the legislature to the department
18 for THE DEVELOPMENT AND administration of 75-2-215 and this
19 section THE PERMITTING REQUIREMENTS IN THIS CHAPTER.

20 (8) (A) THE DEPARTMENT MUST GIVE WRITTEN NOTICE OF THE
21 AMOUNT OF THE FEE TO BE ASSESSED AND THE BASIS FOR THE
22 DEPARTMENT'S FEE ASSESSMENT UNDER THIS SECTION TO THE OWNER OR
23 OPERATOR OF THE AIR CONTAMINANT SOURCE. THE OWNER OR OPERATOR
24 MAY APPEAL THE DEPARTMENT'S FEE ASSESSMENT TO THE BOARD WITHIN
25 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

26 (B) AN APPEAL MUST BE BASED UPON THE BELIEF THAT THE FEE
27 ASSESSMENT IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY NOT BE
28 BASED ONLY ON THE AMOUNT OF THE FEE SCHEDULE ADOPTED BY THE
29 BOARD.

30 (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED IT
31 MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE IN
32 SUBSECTION (9) (A).

33 (D) THE CONTESTED CASE PROVISIONS OF THE MONTANA
34 ADMINISTRATIVE PROCEDURE ACT PROVIDED FOR IN TITLE 2, CHAPTER
35 4, APPLY TO ANY HEARING BEFORE THE BOARD UNDER THIS SUBSECTION
36 (9).

Unofficial Gray Bill

Incorporates Proposed Amendments of DHES into

First Reading Copy of HB 781

Version 2: March 21, 1991

EXHIBIT 1

DATE 3/22/91

HB 781

1 ~~(3)(8)(9)~~ Nothing in this section shall restrict the
2 board's authority to adopt regulations providing for a single
3 air quality permit system.

4 ~~(4)(9)(10)~~ The department may, for good cause shown,
5 waive or shorten the time required for filing the appropriate
6 applications.

7 ~~(5)(10)(11)~~ The department shall require that
8 applications for permits be accompanied by any plans,
9 specifications, and other information it considers necessary.

10 ~~(6)(11)(12)~~ An application is not considered filed until
11 the applicant has submitted all fees and information and
12 completed all application forms required by subsections ~~(2)~~,
13 ~~(3)~~, and ~~(5)~~ through (5) and (10) (11). However, if the
14 department fails to notify the applicant in writing within 30
15 days after the purported filing of an application that the
16 application is incomplete and fails to list the reasons why
17 the application is considered incomplete, the application is
18 considered filed as of the date of the purported filing.

19 ~~(7)(12)(13)~~ (a) Where an application for a permit
20 requires the compilation of an environmental impact statement
21 under the Montana Environmental Policy Act, the department
22 shall notify the applicant in writing of the approval or
23 denial of the application within:

24 (i) 180 days of the receipt of a filed application, as
25 defined in subsection ~~(6)~~ ~~(11)~~ (12), if the department
26 prepares the environmental impact statement; or

27 (ii) within 30 days after issuance of the final
28 environmental impact statement by the lead agency if a state
29 agency other than the department has been designated by the
30 governor as lead agency for preparation of the environmental
31 impact statement.

32 (b) However, where an application does not require the
33 compilation of an environmental impact statement, the
34 department shall notify the applicant in writing within 60
35 days of the receipt of a filed application, as defined in
36 subsection ~~(6)~~ ~~(11)~~ (12), of the approval or denial of the

Unofficial Gray Bill

Incorporates Proposed Amendments of DHES into
First Reading Copy of HB 781
Version 2: March 21, 1991

1 application. Notification of approval or denial may be served
2 personally or by registered or certified mail on the applicant
3 or his agent.

4 ~~(8)-(13)-(14)~~ When the department approves or denies the
5 application for a permit under this section, a person who is
6 jointly or severally adversely affected by the department's
7 decision may request, within 15 days after the department
8 renders its decision, upon affidavit setting forth the grounds
9 therefor, a hearing before the board. A hearing shall be held
10 under the provisions of the Montana Administrative Procedure
11 Act.

12 ~~(9)-(14)-(15)~~ The department's decision on the application
13 is not final unless 15 days have elapsed and there is no
14 request for a hearing under this section. The filing of a
15 request for a hearing postpones the effective date of the
16 department's decision until the conclusion of the hearing and
17 issuance of a final decision by the board."

18 NEW SECTION. Section 3. Retroactive applicability. (1)
19 [~~Subsections (2) and~~ SUBSECTION (6) of section 2] apply
20 APPLIES retroactively, within the meaning of 1-2-109, to all
21 permits issued by the department of health and environmental
22 sciences pursuant to Title 75, chapter 2, and prior to [the
23 effective date of ~~this act~~ THAT SUBSECTION THIS ACT].

24 (2) [~~Subsection 3~~ SUBSECTIONS (2), (3) AND (7) of
25 section 2] ~~applies~~ APPLY retroactively, within the meaning of
26 1-2-109, to all uses identified in ~~that section~~ THOSE
27 SUBSECTIONS that are not currently subject to a permit issued
28 by the department of health and environmental sciences
29 pursuant to Title 75, chapter 2.

30 (3) [SUBSECTION (2) OF SECTION 2] APPLIES RETROACTIVELY,
31 WITHIN THE MEANING OF 1-2-109, TO ALL PERMITS ISSUED BY THE
32 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES PURSUANT TO
33 TITLE 75, CHAPTER 2, AND PRIOR TO THE [EFFECTIVE DATE OF THAT
34 SUBSECTION THIS ACT].

35 NEW SECTION. Section 4. Effective date ~~DATES~~ DATE.
36 [~~This act~~] is ~~(1) [SECTION 1, SUBSECTIONS (1), (3), AND (5)]~~

Unofficial Gray Bill

Incorporates Proposed Amendments of DHES into

First Reading Copy of HB 781

Version 2: March 21, 1991

EXHIBIT

DATE

HB

3/22/91

781

~~THROUGH (16) OF SECTION 2, SECTION 3, AND THIS SECTION] ARE~~

~~[THIS ACT] IS effective on passage and approval.~~

~~(2) [SUBSECTIONS (2) AND (4) OF SECTION 2] ARE EFFECTIVE~~

~~ON NOVEMBER 1, 1992.~~

-End-

Amendments to House Bill No. 871
First Reading Copy

Requested by Sponsor
For the Committee on Taxation

Prepared by Lee Heiman
March 21, 1991

1. Title, line 9.

Following: "PERMITS;"

Insert: "ALLOWING FEE ASSESSMENTS TO FUND DEPARTMENTAL AIR
QUALITY ACTIVITIES FOR GEOGRAPHIC AREAS;"

2. Page 2.

Following: line 10

Insert: "This bill also allows for the assessment of those fees
necessary to fund activities of the department that are
intended to address specific air quality problems in the
state. For example, it may be necessary to conduct
additional ambient monitoring in a particular geographic
area in order to determine the compliance status of that
area with applicable ambient air quality standards. The
legislature intends that this provision be used only to fund
those activities that look at specific problems in
particular geographical areas. The assessments for funding
should be levied in an equitable fashion, and only upon
those sources whose emissions both are of the type being
focused upon and thought to impact the geographical area."

3. Page 3, line 19.

Following: "fees"

Insert: "not less than \$9 per ton of sulfur dioxide (SO2)
particulates and lead, and not less than \$3 for nitrogen
oxides (NOx) and volatile organic compounds"

4. Page 3, line 21.

Following: "chapter"

Insert: "The department may adopt fees for other pollutants."

5. Page 5.

Following: line 19

Insert: "(6) In addition to the fee required under subsection
(5), the board may order the assessment of additional fees
required to fund specific activities of the department that
are directed at a particular geographic area, and include
emissions or ambient monitoring, modeling analysis or
demonstrations, or emissions inventories or tracking.
Additional assessments may be levied only on those sources
that are within, or are believed by the department to be
impacting the geographical area, and whose emissions are of
the type within the focus of the activities to be funded.
Before the board may require the assessments, it must first
determine, after opportunity for hearing, that the
activities to be funded are necessary for the administration

or implementation of this chapter and that the assessments
apportion the required funding in a equitable manner."
Renumber: subsequent subsections

PERMIT FEES IN SELECTED STATES¹

<u>State</u>	<u>Current Fee²</u>	<u>Proposed Fee</u>
Maine	\$4/ton, \$8/ton - two-tier	
Texas	\$8.50/ton	\$5 to \$25/ton ³ additional
Missouri	\$50/hr of staff time	\$25/ton ³
Arizona	None	\$25/ton ⁴
Colorado	\$7.50/ton	\$25/ton ⁴
Washington	None	\$10/ton during two-year program development ⁵
Utah	\$4.50/ton	\$25/ton ⁴
Oregon	\$3.20/ton	\$60/ton ⁴
Nevada	\$16/ton	\$25/ton ³
California	\$20/ton to \$300/ton depending on pollutant	
Idaho	None	Actual cost of program ³
Minnesota	\$4.00/ton	\$8/ton, 1st year ⁵ \$16/ton, 2nd year \$25/ton, 3rd year
Wyoming	None	Actual cost - \$10/ ton estimate ³
North Dakota	<\$1.00/ton	Actual cost ³
Alaska	None	Actual cost - \$25/ ton estimate ³

¹From telephone interviews, 3/21/91.

²Approximate costs per ton -- most states do not charge on a per ton basis currently.

³Agency proposal.

⁴Draft legislation.

⁵Approved by legislature.

SPECIAL STUDIES

EXHIBIT 4
DATE 5/22/91
HB 781

Fiscal Year 1992

1. Billings/Laurel SO₂ Source Apportionment Study
 - Study protocol development \$ 50,000
 - Operate BLAQTC SO₂ sites 135,000
 - \$ 185,000
 2. East Helena SO₂ SIP Revision \$ 145,000
 3. Meteorological Monitoring in Columbia Falls for PM-10 SIP \$ 7,500
- \$25,000 x 30% (industry contribution to problem)
- TOTAL FY 92 \$ 337,500

Fiscal Year 1993

1. Billings/Laurel SO₂ Source Apportionment Study
 - Emissions inventory/met data \$ 200,000
 - Continue monitoring at BLAQTC SO₂ sites 60,000
 - Begin modeling study 40,000
 - \$ 300,000
 2. Dispersion Modeling in Columbia Falls and Meteorological Monitoring in Thompson Falls \$ 13,500
- \$45,000 x 30% (industry contribution)
- TOTAL FY 93 \$ 313,500

March 22

HOUSE BILL NO. 452
INTRODUCED BY LARSON, ET AL

BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A ~~5-YEAR~~ 7-YEAR PROPERTY TAX ~~EXEMPTION~~ REDUCTION FOR QUALIFYING PROPERTY OF ~~NEW AND~~ EXPANDING INDUSTRIES THAT PROCESS MONTANA RAW MATERIALS OR USE MONTANA SEMIFINISHED PRODUCTS IN MANUFACTURING; DEFINING QUALIFYING PROPERTY; PROVIDING FOR GOVERNING BODY APPROVAL; ~~PROVIDING FOR THE RECAPTURE OF PROPERTY TAXES; AMENDING SECTION 15-6-134, MCA;~~ AND PROVIDING ~~A DELAYED~~ AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration of this bill.

The legislature contemplates that rules adopted by the department should, at a minimum, provide the following:

(1) guidelines for information that must be contained in the application for taxable value decrease;

(2) the forms to be used by a firm to apply for the taxable value decrease and to report employment associated with the use of tax-exempt property;

(3) the procedures to ensure that a taxpayer receiving a taxable value decrease under this bill does not receive any other property tax reduction for qualifying property;

(4) the definition of terms and establishment of procedures that are appropriate for the efficient administration of the taxable value decrease;

(5) procedures to the annual recomputation of numbers of employees and numbers of new employees; and

(6) criteria the department intends to use to safeguard the faithful reporting of old and new employees to deter taxpayers from using temporary measures or other artifices to deflate the number of old employees or inflate the numbers of new employees contrary to the spirit of program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

<substitute bill>

NEW SECTION. Section 1. **Purpose.** The purpose of [sections 2 through 5] is to encourage value-added manufacturing in Montana by providing a taxable value decrease for a seven year period for qualifying personal property of expanding industries that process Montana raw materials or use Montana semifinished products in manufacturing.

NEW SECTION. Section 2. **Definitions.** The following definitions apply to [sections 2 through 5] unless the context

requires otherwise:

(1) "Expansion" means that the industry has after January 1, 1992, added qualifying machinery and equipment within the jurisdiction either in the first tax year in which the taxable value decrease provided for in [section 3] is to be received or in the preceding tax year. Expansion does not include property that:

(a) has qualified for the tax exemption under 15-24-1402; or

(b) will create an adverse impact on existing state, county, or municipal services.

(2) "Industry" is a firm that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget and engages in the:

(a) processing of Montana raw materials such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semifinished products produced in Montana that are used by the industry as a raw material in further manufacturing.

(3) "Qualifying employee" means a person:

(a) whose job was created as a result of expansion; and

(b) a position that pays not less than three-quarters of the amount of the average wage as determined by the quarterly statistical report published by the department of labor.

(4) "Qualifying property" means machinery and equipment that results in the hiring of qualifying new employees used for the manufacture or processing of products described in subsection (2).

NEW SECTION. Section 3. **Expanding industry taxable value decrease -- application -- approval -- reports.** (1) After January 1, 1992, qualifying property that represent expansion of an existing industry are entitled to receive a decrease in the tax rate for class eight property if the property result in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection

(1) shall apply to the department of revenue on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the number and rate of pay of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition

to the existing workforce of the industry; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department of revenue must make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a personal taxable value decrease, the governing body of the affected county or the incorporated city or town shall give due notice as defined in 76-15-103 and hold a public hearing. The governing body may either approve or disapprove the grant of taxable value decrease. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document granting approval of the application submitted to the department of revenue by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed for local high school district and elementary school district purposes:

(b) the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion; and

(c) statewide levies.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7), shall be determined by the wages paid to qualified employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The employee is the equivalent of a new employee in the same fraction that his wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight rate. The reduced taxable value rate is determined by calculating the inverse of the number of new employees divided by the number of old employees, and the product of that calculation is multiplied by the decimal equivalent of tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 of each year to the department of revenue on forms prescribed by the department the number of qualifying employees and their wages that are used in the operation of the qualifying property for

1 which the taxable value decrease was granted.

2 NEW SECTION. Section 4. **Exclusion from other property**
3 **tax reductions or exemptions.** If a taxable value decrease is
4 taken pursuant to [sections 1 through 5], other property tax
5 reductions or exemptions, including but not limited to 15-6-
6 135, 15-24-1402, and 15-24-1501, are not allowed for the
7 qualifying property.

8 NEW SECTION. Section 5. **Rules.** The department of
9 revenue shall prescribe rules necessary to carry out the
10 purposes of [sections 1 through 5].

11 NEW SECTION. Section 6. **Codification instruction.**
12 [Sections 1 through 5] are intended to be codified as an
13 integral part of Title 15, chapter 24, and the provisions of
14 Title 15, chapter 24, apply to [sections 1 through 5].

15 NEW SECTION. Section 5. **Effective date --**
16 **applicability.** [This act] is effective on passage and approval
17 and applies to tax years beginning after December 31, 1991.

18 -End-
19