

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Larry Stimatz, on March 23, 1991, at 8:37 a.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused:

Staff Present: Paul Sihler (EQC).

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

Announcements/Discussion: Senator Weeding announced that the Subcommittee on HB-671 will met Sunday, March 24, 1991 at 2:00 p.m. in Room 405. All committee members are welcome.

The secretary called the roll.

EXECUTIVE ACTION ON HB-240

Discussion: Chairman Stimatz said the hearing on HB-240 was held March 8, 1991. Representative Raney introduced this bill by request of EQC. There were no opponents to the bill.

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Amendments, Discussion, and Votes: Senator Grosfield offered some amendments to HB-240 (Exhibit #1). Senator Grosfield said the bill tries to make it clear that kinds of contracts are authorized under both the Water Development Program (WDP) and the Renewable Resources Development Program (RRDP). Frankly, they are already authorized under the RRDP, and the number one project that is being looked at this legislative session is this kind of a project under the RRDP. What the amendment does is to strike everything to do with WDP, and leave it alone for RRDP, so that it would precede as it has regarding the funds for RRDP.

Senator Keating asked why the bill was needed at all? Senator Grosfield said that the bill clarifies, and that is really the intent and that funds are available under RRDP.

Motion: Senator Grosfield moved the amendments.

Discussion: Senator Tveit said the intent of the bill is to go into the WDP also along with the RRDP, so there is a larger base to draw from. Senator Grosfield has said that they are under the RRDP now, but they want to spread to WDP, so they can get funds from two areas. Senator Grosfield said this was correct, but he had a problem with it because so many things going after WDP money are not exactly "water development". There are a lot of good projects, but the waste water development is being funded, and each new one approved could loosen the fund permanently.

Senator Bengtson said she had a problem with the whole bill. The RRDP started out for water because she carried the bill in 1977, but then each year something has been added. Then we added a category called "other" to it, so the program has been diluted from what it was originally intended. They have been good projects.

Senator Hockett supported the amendments. He realized that this relates to water in a sense because there are chemical inputs that reduce the contamination of the water aquifer, but as Senator Grosfield said there are projects in the second and third year that are doing this under the RRDP. This is intended to clarify, but he opposed going further at this time because there are lots of other projects. Water is a high priority.

Senator Keating said the statement of intent just goes to the WDP, and does not include anything regarding RRDP? Senator Bianchi said yes it does on line 9. Senator Keating said he was talking about the statement of intent not the title. Line 19

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"emphasizes entities receive funding from the water development program...", and there is no reference any further to the RRDP grant. With the amendments we are restricting these chemical reduction programs to that RRDP. In section 3, it talks about grants from state and local governments from RRDP, and then on Page 6, line 10 & 11, we are adding the clarification that this includes projects that provide research and demonstration of farm projects reducing agriculture chemical use. So what we are amending the existing law to provide for these kinds of agriculture programs under the RRDP. So actually we could delete the statement of intent because it only refers to the WDP, and delete section 1 & 2 because they too are WDP. Then the bill clarifies that these projects qualify and are added to the criteria list for projects under the RRDP.

Senator Grosfield said that is what the amendments do.

Recommendation and Vote: The motion to amend HB-240 passed 9 to 2. Senators Weeding and Bianchi voted against.

Motion: Senator Grosfield moved to Concur in HB-240 as Amended. The motion carried unanimously, and was recorded as a roll call vote. Senator Grosfield will carry HB-240.

EXECUTIVE ACTION ON HB-351

Discussion: Senator Keating said this bill would add wildlife as a factor for consideration in the Best Management of Forest, and require more FTEs and study by the Department of State Lands. The bill was opposed by Logging, Wood Products, and the Farm Bureau, and all the people that would be affected. He understood that wildlife is benefitted by the Best Management Practices (BMP) that are going on now, and that there is no need to emphasize it, or study it, or do anything about it. As long as the BMP's are being developed and practiced wildlife is going to benefit. We do not have to spend a lot of money to have someone look at this.

Senator Bianchi said when timber is being cut and logging is being done that one of the considerations should be wildlife. He did not remember that this would require an FTE. In many instances, the FWP would like to, and sometimes does, actually

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review these projects with the State Forestry Division. He did not think it would hurt to have it in the law that wildlife is actually a consideration like the range, water, and other things listed. This is a minor point, but having wildlife should not change that much, and he did not think it would add any FTEs. It might be beneficial for the public resource of wildlife when we are doing some logging practices in Montana.

Senator Hockett said that the proponents were wildlife groups, and this bill is voluntary. So this does not take an employee assigned to it.

Senator Keating said if something is in law, and any individual wants to press a point, then pressure can be brought to bear. Threatening noncompliance with the law can happen. The more we add to the list of things to be considered, then the more compulsory it becomes. It won't be voluntary, it will be compulsory once it is added to the law. Wildlife already benefits inherently from the BMP that we passed last session. It was looked at, and we passed a bill giving the State Lands the ability to respond to inquiries by people who were developing their private forests. The State Land Department goes out and helps them with the BMP for cutting, thinning, logging, or whatever. So we do have state personnel and experts out there helping the citizens, as well as managing our own forests. All of this benefits wildlife. If we specify in the law that wildlife have to be a part of this, then it will take personnel to do that. There is no two ways about it, and it will end up costing money. If this was not going to hurt anything and was voluntary then the Farm Bureau, Wood products, and Logging people would not have objected to this bill. They know what happens when these things into law.

Motion: Senator Keating moved to Do Not Concur in HB-351.

Discussion, and Votes: Senator Weeding said the Fish and Game has already been a part of this. The BMP process that came out of the study two years ago created a task force, a cooperative, that reviews these projects as they are ongoing, and FWP are part of it. The Department of State Lands is the primary administrator of the cooperative. BMP's are voluntary in the sense that the operator is not legally bound to follow any of the recommendations. They are perhaps, morally bound, because nearly all the major timber operators have signed on to this in their own best interest. They signed on to avoid a forced practices act that would have all kinds of stringent requirements. He

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doubted that this bill would require a great deal of extra work because the FWP people are already there. It is mostly a matter of informing those timber operators of what a BMP for wildlife would be along with the water practices. The BMP is focused on water quality now, in fact it is called the BMP Water Shed Affects Group. That is exactly what their focus is. We are not adding a whole lot.

Chairman Stimatz asked Mr Sihler what he knew about BMP's? Mr. Sihler said the BMP's right now are only focused on water quality, and only deal with water quality. They do not deal with timber harvest, thinning, wildlife, or anything except the potential affects on soil erosion and water quality. The BMP's are presently voluntary. This bill would add wildlife as another one of the voluntary BMP's. Chairman Stimatz asked how these things come about? Are they written? Mr. Sihler said there was a technical group that developed a series of consensus water quality BMP's. Those BMP's have been distributed to various loggers and companies throughout the state via the Montana Logging Association as a list of voluntary practices to consider when conducting logging activities around stream site areas. Chairman Stimatz asked what happens if somebody does not follow the BMP's? Mr. Sihler said that there is no regulatory component to this program. There is nothing to enforce, so there is no legal action that the state or anyone else can take.

Senator Tveit stated when the Water Quality BMP's were established that the Fish and Game and wildlife people were there, and at that time no one was concerned with adding wildlife. He is concerned about adding wildlife even as a wildlife lover. This is a tool that can be used in many ways. We do have to protect our wildlife, but if we start adding on to the BMP act it can go on and on, and pretty soon you won't be able to step in the forest for anything. Our laws are in place, and to just arbitrarily add this is a real step backwards. There was a lot of agreement between a number of different entities in approving the BMP's for the management of forests. Now we want to add language, and it will manage forests, but it will shut down the forests for logging too. This is just one more way to do it. This is wrong, and we do not need this bill.

Senator Grosfield said he agreed, and he supported Senator Keating's motion. The definition of wildlife on Page 5, it says, "wildlife means any species or animal naturally occurring on those lands." The Fish and Game code's definition of wildlife is "any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, pellet, or egg, or offspring, or the dead body or parts thereof." They are talking

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about the world here. The statement of intent does provide some direction by stating "the goal is to provide a diversity of habitat and to assure the greatest diversity of species within these habitats." This would do something pretty major.

Senator Bianchi said this occurs mostly on private land. This is no more than a recommendation to an individual that may be cutting his own timber on what he might do to improve the habitat for wildlife. If he's worried about mollusks or whatever, and he wants to improve the habitat for them, then that should be his prerogative. He should have the opportunity to go to state officials and private officials based on BMP to do that. We are not making him do anything, and you are blowing this way out of proportion. This is just giving them the opportunity to get the expertise, if in fact they want to do something on their own lands to protect wildlife. Whatever species they want to protect they would have the opportunity to look at the BMP, and maybe do something on their own land to improve wildlife habitat. This is not going to shut down logging with a law like this.

Senator Anderson said he has private timber, and is in the process of harvesting it, and has worked with the State Foresters who helped decide how to best harvest it. They also helped put the contract in place, so that we will do the best and proper job as far as harvesting the timber. By doing this he has taken care of wildlife as well as the resource itself. We really don't need a bill of this kind.

Senator Bengtson said she did not worry so much about what happens in the state because we can trust one another to do the right thing. But the national animal rights groups could create real problems in our state with this bill. Many of them are not state based, who knows what they'll do. You get spooked after awhile wondering what group will come forward and question certain practices. These are all what ifs, but in the real world if you put something in the law anything can happen.

Senator Hockett said Senator Bengtson's philosophy is interesting because he could argue equally on the other side. If you don't have something in law anything can happen also, and usually does. He is not as trusting as she is of the good intentions of all. That is a false way to look at things. He is not too excited about this, but he agreed with Senator Bianchi that we are blowing this way out of proportion. He argued that this could be a great benefit to the logging industry down the road. It is voluntary. He said he would hate to see Montana get to the state that Washington and Oregon are in with regard to the spotted owl. This has become the major confrontational issue, and it is a

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losing operation for everyone. This may have been the intent of the bill. There was testimony that one state that has done something like this in the past has not had the problems of shutting down the whole forest. He argued that the bill is not as hazardous as you might think, and it may be beneficial to almost everyone down the road. The voluntary way of dealing with things is much better than eventually getting to the fighting point of few where it is one way or the other. Then you choose sides, and whomever wins really doesn't win.

Senator Keating closed by stating that the last sentence of the statement of intent says, "in developing these practices the department shall consult with wildlife officials, federal, state, private organizations...etc." Now that means somebody has to take some action. Somebody in the department is spending all their time reviewing and developing something to do with wildlife. This costs money, and it will cost the department money. There might be 2 or 3 people doing it, and there will be reams of paper, public testimony, and expenses involved with this thing. So you are spending taxpayer dollars to do something that probably is not necessary. If we do have a voluntary program, and people have a unique situation and they want to protect some kind of wildlife, then there are all kinds of private organizations that have programs and books on how to provide habitats. He guaranteed if this is put in the law on what appears to be a voluntary basis, it will eventually become part of a mandatory system. That is exactly why the opponents that make their living in this business objected.

Senator Tveit said the language on Page 9 and 10, the word "shall" is in the bill, and voluntary is not "shall". The department will play an important role.

Recommendation and Vote: The question was called for. The motion to Do Not Concur in HB-351 passed 6 to 5, and was recorded as a roll call vote. Senators Bianchi, Doherty, Hockett, Kennedy, and Weeding voted against the motion. Senator Keating will carry the Adverse Committee Report.

EXECUTIVE ACTION ON HB-383

Motion: Senator Grosfield moved to Concur in HB-383.

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Discussion: Senator Grosfield said that he did not feel that this bill did a lot.

Senator Kennedy said that this bill addresses cement factories that want to burn hazardous waste more efficiently with more BTUs. There is some concern about the air quality if this is done, so it is just as good that the department write regulations that will head off a lot of unfounded opinion out there. People are concerned that black smoke is equated to cancer.

Senator Tveit asked about Page 5, line 19, "may be more restrictive than federal regulations". He does not have a problem writing regulations, but we do this in other areas, and the stricter than federal cause a lot of problems. We can become to restrictive. We can go too far with regulations.

Amendments, Discussion: Senator Tveit made a substitute motion to move to strike Page 5, line 19 from the bill.

Discussion: Senator Keating said we would have to strike line 18 as well. Senator Grosfield added that while they were at it to strike lines 16 & 17 as well.

Senator Weeding jokingly said nothing would be left. Senator Grosfield said that line 14 & 15 are the guts of the bill. So if 19 is struck, the lines 17 & 18 should be, too.

Senator Doherty disagreed. There may not be federal regulations.

Senator Grosfield said that didn't matter because on line 14, it says "may adopt rules", so it does not matter if there are federal rules or not.

Senator Doherty asked to speak to the body of Senator Tveit's motion that the state should never say anything about what the federal government ever does. He always thought it was a good thing that Montanans could say to the federal government that they wanted do it stricter than the feds. Montana has historically maintained this position that we can do with our water rights what we want and what we are going to do. We can have stricter standards if we want. There is a good basis for this, and it is good public policy. What is good across the country, may not be sensitive enough for Montana. The SO2 discussion was that we wanted stricter standards because we grow wheat in Montana, and there is some evidence that lower SO2 standard that federal standard would protect our wheat farmers. This is historically accurate that we can adopt stricter standards depending on our particular circumstances. He resisted

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the motion. Senator Doherty said that Senator Keating said initially that you get the rules and regulations out there, and figure what the particular problems in Montana are to forestall any problems.

Senator Hockett said he agreed with Senator Doherty. This talks about burning hazardous waste, and he is not too excited about Montana having some kind of "mecca" for people who want to burn hazardous waste. He also resisted the motion.

Senator Keating said line 14 & 15 says "they may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous waste." Now that is all inclusive. That is as broad as you can get. There are no qualifications at all. If you keep line 16-19, then you begin to qualify the ability to make rules. They may adopt federal standards if there are some, or you may be more restrictive, so now you are fooling around with the thing. The plain language is go make some safe standards. It is up to the DHES to determine whether the standards are fair and protective and not too restrictive. He did not see anything wrong with the motion to delete 16-19.

Chairman Stimatz asked Senator Tveit if added line 16-18 to his motion? Senator Tveit said no. Senator Tveit added that line 14 says "they may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous waste." The rules on line 16, go right back to line 14, "may be adopted if there are no federal regulations" You will not adopt rules if there are federal regulations. They tie together don't they? He was asking for the right for the state to adopt rules if the language is left in, and if the feds don't have regulations. He just doesn't want them more restrictive than federal regulations. The state can still write rules, but the rules on line 16 are the same as the rules on line 14. But the state can't adopt rules if the feds have regulations in place. He asked if how he interpreted this was right or wrong?

Paul Sihler, Legislative Council staff (EQC) said that he would read lines 14-16 as giving broad authority to adopt rules without any constraints. Lines 17, "may be adopted if there are no federal regulations", really doesn't add much. If you were to take out line 19, it really doesn't matter if you take 17 & 18 in there or not.

Senator Kennedy asked that can't the state adopt rules and laws that are more restrictive than federal? Mr. Sihler said there is a restriction in the hazardous waste laws that the state can not adopt hazardous waste laws more stringent than the federal

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standards. He suspected that is why this is in this bill. Senator Kennedy said in the pharmacy business, the State Board of Pharmacy can adopt rules more stringent than the federal, but not less stringent. Mr. Sihler said generally with federal laws, in order for the state to retain primacy, the state must adopt laws that are equivalent to the federal standards. In a case of hazardous waste laws, the Legislature some years ago, decided that they did not want the state adopting more stringent laws than the federal standards. There is something in the statute that prohibits the DHES from adopting any regulations and hazardous waste statutes that are more restrictive than federal standards. He thought it was 75-10, the hazardous waste statute. Senator Kennedy asked if this law could be passed to supersede that law? Mr. Sihler said if this bill is passed as drafted it would be an exception in the law where hazardous waste furnaces and boilers burn hazardous waste that the DHES would be able to adopt standards and regulations that are stricter than the federal requirements. Senator Kennedy said he opposed the motion because there might be a case where we might need to establish stricter rules. If we don't need to do it, then we won't do it.

Senator Weeding was not sure of the motive was, but he suspected that language was used because the state air quality standards are higher than the federal by 50%. Are we down to the .02 or .03, and Billings comes in regularly and asks for a waiver for the refineries. We do have a state air pollution standard that is stricter than the feds.

Senator Keating said that is air quality not hazardous waste. Senator Bianchi added that air quality is what we are really talking about.

Senator Weeding said it is the fluent from the burning of those types of hazardous waste that is the concern. Chairman Stimatz added that you have to get rid of it somehow. By burning it you are throwing something through your stack.

Senator Grosfield asked the Legislative Staff if HB-383 and HB-607 are related? HB-607 is the air quality, and HB-383 is not air quality? Mr. Sihler said he was entirely correct. Senator Grosfield asked if HB-383 just referred to hazardous waste that will be burned from transportation to storage. Then HB-607 kicks in when the hazardous waste gets in the incinerator. Mr. Sihler said that he did not think that HB-383 dealt with transportation. It would address the handling and the hazardous waste when it goes from the site into the boiler. Then HB-607 would address from the incinerator out the stack. Senator Grosfield said that HB-383 is a storage and handling bill.

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Votes: Senator Keating called for the question. The substitute motion to delete Page 5, line 19 was defeated 3 to 8. Senator Grosfield's motion to Concur in HB-383 passed unanimously, and was recorded as a roll call vote. Senator Rea will carry this bill.

ADJOURNMENT

Adjournment At: 9:25 a.m.


LARRY STIMATZ, Chairman


JOYCE INCHAUSPE-CORSON, Secretary

LS/jic

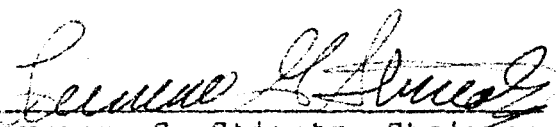
SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 383 (third reading copy -- blue), respectfully report that House Bill No. 383 be concurred in.

Signed:


Lawrence G. Stimatz, Chairman

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And. Coord.

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Sec. of Senate