

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on January 29, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: SB 60, SB 72, SB 102, SB 128

EXECUTIVE ACTION ON SB 60

Discussion: Sen. Tveit introduced and discussed his amendments (Exhibit #1).

Motion: Sen. Tveit MOVED to AMEND SB 60

Discussion: Sen. Weldon said bona fide research and development activities are protected in 85-3-201, but noted SB 60 repeals 85-3-201. Sen. Tveit said he did not intend to affect research and

development. Paul Sihler said the repealer annuls the section of the law dealing with licenses and permits. He suggested the permitting process be left intact, and a moratorium issued on permits under that process. Sen. Bartlett said the repealer's effective date is June 1, 1995. She observed the amendments "provide a delayed effective date for the repealer, anticipating a temporary moratorium with an EIS."

Sen. Weeding expressed concern that SB 60 would hamper fog control efforts at the Missoula airport. Mr. Sihler said the Department of Natural Resources and Conservation (DNRC) is authorized in the license and permitting process to establish rules exempting certain activities, such as protection from fire, frost, sleet or fog. He suggested adding 85-3-202 to New Section 2 in Sen. Tveit's amendments. Sen. Bartlett said SB 72 includes 85-3-202.

Sen. Kennedy asked if SB 60 would have a fiscal impact, since it requires an Environmental Impact Statement (EIS). Mr. Sihler said it depends on the way the EIS is framed, noting a state action is necessary to trigger an EIS. An EIS conducted as a result of a permit application is potentially covered by the fees paid to DNRC. Mr. Sihler stated a programmatic assessment may have a fiscal impact. Don McIntyre, DNRC legal counsel, said if a moratorium is placed on cloud seeding, there would not be a specific permit application. He added in that case DNRC would conduct a programmatic EIS, which would have a fiscal impact.

Gary Fritz, DNRC, estimated an EIS on North Dakota's cloud seeding activity would cost about \$20,000. He said the amendments would warrant a statewide programmatic approach to an EIS, which would cost more. Mr. Fritz stated DNRC has never budgeted funds for weather modification programs.

Sen. Doherty said he would like to vote for SB 60, but needs to know how much a programmatic EIS would cost. Sen. Grosfield asked why an EIS could not be attached to an application. Sen. Doherty suggested a method to circumvent having to conduct a costly programmatic EIS.

Sen. Kennedy suggested that the Committee adopt SB 72 instead of SB 60 to deal with North Dakota's pending permit. Mr. Sihler said amendments for SB 72 have been drafted which would bring applications to the 1995 legislature. Sen. Tveit insisted that the bill direct DNRC to conduct an EIS. Sen. Keating discussed the difference between an EIS and an Environmental Assessment (EA).

Sen. Swift said an EA should be performed to determine whether an EIS is needed. Sen. Tveit stated DNRC informed Baker residents that North Dakota would sue Montana if the Board of Natural Resources and Conservation turned down North Dakota's permit. Sen. Tveit added a deal has been cut between North Dakota and DNRC, which he resents.

Mr. Fritz said DNRC discussed SB 60 with Sen. Devlin and suggested a moratorium on weather modification activities east of the 106th meridian, which was applied to SB 72. He said Sen. Tveit's and Sen. Devlin's concerns may be particular to their districts. Mr. Fritz said DNRC believes it would be legal to apply a moratorium to a portion of the state. He said an EIS is in progress for North Dakota's application, but added there may be weather modification activities elsewhere in the state which would not require an EIS. He said DNRC suggested the option of an EA in SB 72 for the projects which do not need an EIS.

Sen. Tveit stated DNRC's amendments give North Dakota the right to seed clouds next year. He said he will get a fiscal note for SB 60.

Paul Sihler stated Section 4 of the amendments to SB 72 requires legislative approval before the Board of Natural Resources and Conservation can issue a weather modification permit. He added everything in the amendments will be applied retroactively, so the legislature would have to approve North Dakota's application before the state received a permit. Sen. Bartlett noted the Board cannot issue a permit if it does not petition the legislature. She added Section 7 makes New Section 4 retroactive, and the Board may not issue a permit on anything pending without petitioning the legislature.

Sen. Tveit WITHDREW his MOTION TO AMEND SB 60, noting he plans to obtain a fiscal note.

EXECUTIVE ACTION ON SB 72

Motion: Sen. Swysgood MOVED to AMEND SB 72 (Exhibit #2)

Discussion: Don McIntyre, DNRC legal counsel, said New Section 4 stipulates that before a weather modification permit is issued, an applicant must request a permit through DNRC. DNRC would then be required to petition the legislature before granting a permit. He said Section 7 provides retroactive applicability to pending applications. Mr. McIntyre stated North Dakota would not be able to seed clouds over Montana until: 1) an EIS had been conducted; 2) North Dakota had gone through the hearing process established in SB 72; and 3) DNRC had petitioned the legislature. He added North Dakota could not seed clouds in Montana until June 1995.

Mr. McIntyre said DNRC must comply with the Montana Environmental Policy Act (MEPA), which stipulates that an EA or an EIS must be conducted. Mr. McIntyre stated language in the title of SB 72 is intended to be consistent with language in the Montana Water Use Act.

Sen. Weldon asked why the EIS in Section 4 of the amendments is being struck if 75-1-201 requires an EIS. Mr. McIntyre replied "environmental review" means the state determines whether the

activity under consideration warrants an EA or an EIS.

Sen. Grosfield asked if legislative review would still be required on a project which DNRC determined warranted an EA, not an EIS. Mr. McIntyre replied that legislative review would be required. He discussed public vote and public input during an EIS and mentioned the possibility of commerce clause challenges.

Sen. Weeding asked for the difference between the two sets of amendments (Exhibits #2 and #3). Mr. McIntyre replied DNRC hoped the second set of amendments (Exhibit #3) would alleviate Sen. Devlin's concerns about preventing permitting in the next two years.

Sen. Tveit said he has received conflicting information from Legislative Council legal staff and Mr. McIntyre, and added he wants time to gather more information. Sen. Tveit asked if agricultural economics were included in the EIS that is currently being conducted. Mr. McIntyre stated DNRC is holding meetings and identifying the issues of concern. He discussed the cost of an EIS with Sen. Tveit.

Sen. Swysgood WITHDREW his MOTION TO AMEND SB 72.

Motion: Sen. Tveit MOVED to PASS CONSIDERATION on SB 72 and SB 60. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 102

Discussion: Sen. Grosfield stated he is uncomfortable with the provision in SB 102 requiring an owner of a severed mineral interest to file every 20 years. He said he believes the initial filing should stand until there has been activity on the property. Sen. Grosfield said he wants to protect individual ownership rights in a partner ownership situation.

Sen. McClernan said one of his concerns with SB 102 is how it might affect a metal-rich state. He added Butte lies on a number of mining claims with dormant mineral interests, which could potentially become connected to surface interests. Sen. McClernan said Butte is in the middle of a superfund site and is concerned that he may be named a potentially responsible party in the future, as he owns 3 lots in town. Sen. McClernan said the purpose of SB 102 is to "preserve mineral interests from being fractionated." He stated Butte's mineral interests are owned by Dennis Washington and New Butte Mining Company. He said if mineral interests ever revert back to all the owners of lots in Butte, it "will fractionate the mineral interest to the point where nobody will ever be able to develop it."

Motion/Vote: Sen. McClernan MOVED to TABLE SB 102. The MOTION CARRIED with Senators Hockett, Swift, Tveit and Weeding voting NO.

EXECUTIVE ACTION ON SB 128

Motion: Sen. Weeding MOVED to AMEND SB 128.

Discussion: Sen. Weeding said his amendment (Exhibit #4) strikes the \$15 fee and lets the Board of Natural Resources and Conservation set the fee. He said SB 128 is needed to clarify the Board's right to charge fees. Sen. Swysgood said he is adamantly opposed to leaving the amount of the fee up to the Board.

Sen. McClernan reminded the Committee that Sen. Burnett preferred that the Committee kill SB 128 rather than amend it.

Sen. Weldon said the Board is not setting fees to rationalize its existence, but to continue what the legislature has charged it to do.

Sen. Grosfield said the fees were established as a result of legislative action cutting \$80,000 from DNRC's budget during the last special session. He said he does not favor allowing the Board to set fees. Sen. Grosfield agreed there should be some fee to discourage frivolous objections, but feels \$50 is too expensive.

Sen. Weldon discussed Sen. Burnett's amendment (Exhibit #5).

Gary Fritz, DNRC, said the Board attempts to set fees to reflect the amount of time spent on processing permits. He added all of the fees generate about \$160,000, which is 10% of the cost of the program.

Substitute Motion/Vote: Sen. Kennedy made a SUBSTITUTE MOTION TO TABLE SB 128. The MOTION CARRIED with Senators Weldon and Weeding voting NO. Senators Bartlett, Doherty and Keating were absent at the time the vote was taken.

ADJOURNMENT

Adjournment: 2:50 p.m.



SEN. DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 1/29/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Suysgoal	✓		
Sen. McCernan	✓		
Sen. Treitz	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 5, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 72 (first reading copy -- white), respectfully report that Senate Bill No. 72 be amended as follows and as so amended do pass.

Signed: 
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 10.

Following: "PUBLIC GOOD"

Strike: ", "

Insert: "AND"

2. Title, line 10.

Following: "PROCEDURES"

Strike: ", AND A PUBLIC VOTE IN AFFECTED COUNTIES"

Following: " ; "

Insert: "PROVIDING FOR LEGISLATIVE APPROVAL OF PERMITS FOR
WEATHER MODIFICATION ACTIVITIES IN MONTANA IF THE PRIMARY
BENEFIT OF THE ACTIVITY IS OUTSIDE MONTANA ;"

3. Title, line 13.

Strike: "AN"

Insert: "A RETROACTIVE"

4. Page 2, lines 18 and 19.

Strike: "-- public vote"

5. Page 4, lines 15 and 16.

Following: "report"

Strike: remainder of line 15 through "met" on line 16

6. Page 4, line 17 through page 5, line 2.

Strike: subsection 4 in its entirety

Renumber: subsequent subsection

7. Page 5, lines 4 and 5.

Following: "(2)" on line 4

Strike: remainder of line 4 through "1" on line 5.

8. Page 5, lines 7 through 15.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Legislative approval. The board may not issue a permit for a proposed weather modification activity in Montana if the primary benefit of the weather modification activity is outside Montana until the department petitions the next regular session of the legislature and the legislature affirms the decision of the board to grant the permit.

NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 3].

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively within the meaning of 1-2-109, to applications currently pending with the department of natural resources and conservation on or after [the effective date of this act] and to applications currently pending with the department for which a commitment to a funding agreement exists for the preparation of an environmental impact statement.

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

-END-

ROLL CALL VOTE - to table 102

SENATE COMMITTEE Natural Resources BILL NO. 102

DATE _____ TIME _____ A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	X
Vice Chairman Hockett Hockett		X
Sen. Bartlett		
Sen. Doherty		
Sen. Grosfield	X	
Sen. Hockett		
Sen. Keating	X	
Sen. Kennedy	X	
Sen. McLernan	X	
Sen. Swift		X
Sen. Snygaard	X	
Sen. Treit		X
Sen. Waldin	X	
Sen. Weeding		X
	7	4

Lorraine Hunt
SECRETARY

Sen. Don. Bianchi
CHAIR

MOTION: To table SB 102

ROLL CALL VOTE

to Table 128

SENATE COMMITTEE Natural Resources

BILL NO. _____

DATE _____ TIME _____ A.M. P.M.

NAME	YES	NO
Chairman Banchi	X	
Vice Chairman Weeding H	X	
Sen. Bartlett	—	
Sen. Doherty	—	
Sen. Grosfield	X	
Sen. Hockett	—	
Sen. Keating	—	
Sen. Kennedy	X	
Sen. McLernan	X	
Sen. Swift	X	
Sen. Snygaard	X	
Sen. Treit	X	
Sen. Waldin		X
Sen. Weeding		X
	8	2

Lorraine Hunt
SECRETARY

CHAIR

MOTION: Sen. Kennedy Moved to table SB 128

Amendments to Senate Bill No. 60
Introduced Reading Copy

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 1/29

BILL NO. SB 60

Requested by Senator Tveit
For the Committee on Natural Resources

Prepared by Doug Sternberg, Council Staff
January 20, 1993

1. Title, line 5.

Following: "PENALTY;"

Insert: "ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF
LICENSES AND PERMITS FOR WEATHER MODIFICATION AND CONTROL
ACTIVITIES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION TO PREPARE AN ENVIRONMENTAL IMPACT
STATEMENT ON ALL ASPECTS OF WEATHER MODIFICATION AND CONTROL
FOR CONSIDERATION BY THE 1995 LEGISLATURE;"

2. Title, line 12.

Strike: "AN IMMEDIATE"

Following: "EFFECTIVE"

Strike: "DATE"

Insert: "DATES"

3. Page 2, line 3.

Following: "waters"

Insert: "; and

WHEREAS, it is appropriate to establish a temporary moratorium on the issuance of weather modification licenses and permits and require preparation of an environmental impact statement on all aspects of weather modification and control in order to allow the Legislature to adequately consider whether to permanently prohibit cloud seeding activities."

4. Page 2.

Following: line 20

Insert: " NEW SECTION. Section 2. Moratorium on issuance of licenses and permits. After [the effective date of this section], licenses or permits may not be issued under Title 85, chapter 3, part 2, until the department of natural resources and conservation has prepared an environmental impact statement, in accordance with Title 75, chapter 1, part 2, and presented the statement to the 1995 legislature for consideration. In order for the legislature to adequately consider whether the permanent prohibition of cloud seeding should take effect, the environmental impact statement must address all aspects of weather modification and control. The moratorium imposed under this section is not intended to affect any bona fide research and development activities exempted from license and permit requirements under 85-3-201." 202

Renumber: subsequent sections

5. Page 3, line 3.

Strike: "date. [This act]"

Insert: "dates. (1) Except as provided in subsection (2), [this
act]"

Following: line 4

Insert: "(2) [Section 3] is effective June 1, 1995."

Amendments to Senate Bill No. 72
First Reading Copy

Requested by DNRC
For the Committee on Natural Resources

Prepared by Paul Sihler
January 19, 1993

SENATE NATURAL RESOURCES

EXHIBIT NO. 72

DATE 1/29

BILL NO. SB 72

1. Title, line 10.
Following: "PUBLIC GOOD"
Insert: "AND"
2. Title, lines 10 and 11.
Following: "PROCEDURES"
Strike: ", AND A PUBLIC VOTE IN AFFECTED COUNTIES"
Following: ";" on line 11
Insert: "PROVIDING FOR LEGISLATIVE APPROVAL FOR PERMITS TO ENGAGE
IN WEATHER MODIFICATION ACTIVITIES THAT INVOLVE THE USE OF
ATMOSPHERIC WATERS OUTSIDE THE STATE;"
3. Title, line 13.
Strike: "AN"
Insert: "A RETROACTIVE"
4. Page 1, line 21.
Page 2, line 4.
Strike: "impact statement"
Insert: "review"
5. Page 2, lines 18 and 19.
Strike: "-- public vote"
6. Page 4, lines 15 and 16.
Following: "report"
Strike: remainder of line 15 through "met" on line 16
7. Page 4, line 17 through page 5, line 2.
Strike: subsection 4 in its entirety
Renummer: subsequent subsection
8. Page 5, lines 4 and 5.
Following: "(2)" on line 4
Strike: remainder of line 4 through "1" on line 5.
9. Page 5, line 7.
Strike: Section 3 in its entirety
Insert:

"NEW SECTION. Section 4. Legislative approval. The board may not issue a permit for a proposed weather modification activity for use of atmospheric water outside Montana until the department petitions the legislature and the legislature affirms the decision of the board to grant the permit.

NEW SECTION. Section 5. {standard} Codification instruction. [Section 4] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 4].

NEW SECTION. Section 6. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. {standard} Retroactive applicability. [This act] applies retroactively within the meaning of 1-2-109, to applications currently pending with the department of natural resources and conservation on or after [the effective date of this act] and to applications currently pending with the department for which a funding agreement exists for the preparation of an environmental impact statement.

NEW SECTION. Section 8. {standard} Effective date. [This act] is effective on passage and approval."

Amendments to Senate Bill No. 72
First Reading Copy

Requested by DNRC
For the Committee on Natural Resources

Prepared by Paul Sihler
January 19, 1993

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 1/29

BILL NO. 5372

1. Title, line 10.
Following: "PUBLIC GOOD"
Insert: "AND"
2. Title, lines 10 and 11.
Following: "PROCEDURES" on line 11
Strike: ", AND A PUBLIC VOTE IN AFFECTED COUNTIES"
3. Page 1, line 21.
Page 2, line 4.
Strike: "impact statement"
Insert: "review"
4. Page 2, lines 18 and 19.
Strike: "-- public vote"
5. Page 4, lines 15 and 16.
Following: "report"
Strike: remainder of line 15 through "met" on line 16
6. Page 4, line 17 through page 5, line 2.
Strike: subsection 4 in its entirety
Renumber: subsequent section
7. Page 5, lines 4 and 5.
Following: "(2)" on line 4
Strike: remainder of line 4 through "1" on line 5.
8. Page 5, line 10.
Strike: "submitted to"
Insert: "pending with"
9. Page 5, line 12.
Following: "conservation"
Strike: "after"
Insert: "on"
10. Page 5, lines 14 and 15.
Strike: entirety of line 14 through "and" on line 15
11. Page 5, line 15.
Following: "thereafter"
Insert: "or for which a funding agreement exists for the
preparation of an environmental impact statement"

over

12. Page 5.
Following: line 15
Insert:

"NEW SECTION. Section 4. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Amendments to Senate Bill No. 128
First Reading Copy

Requested by Sen. Weeding
For the Committee on Natural Resources

Prepared by Paul Sihler
January 20, 1993

1. Title, lines 5 and 6.
Following: "FEE" on line 5
Strike: "NOT" through "\$15" on line 6
2. Page 1, lines 21 and 22.
Following: "." on line 21
Strike: "Fees" through "\$15." on line 22
3. Page 4, line 4.
Strike: "September 30"
Insert: "July 31"

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 1/29/93
BILL NO. SB 128

Amendments to Senate Bill No. 128
First Reading Copy

Requested by Senator Burnett
For the Committee on Natural Resources

Prepared by Paul Sihler
January 22, 1993

1. Page 1, line 10.
Insert:

"STATEMENT OF INTENT

A statement of intent is desirable for this bill in order to provide direction to the board of natural resources and conservation in adopting a fee for objections to permits. It is the intent of the legislature that the board have the authority to adopt fees for permit objections and that the fees be kept as low as possible. Initially, the fee must be set no higher than \$15."

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 1/29/93

BILL NO. SB 128