

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By DICK KNOX, CHAIRMAN, on February 5, 1993, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

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

Committee Business Summary:

Hearing: HB 365, HB 393, HB 417
Executive Action: HB 288, HB 393, HB 263-Discussion only

HEARING ON HB 365

Opening Statement by Sponsor:

REP. JOHN "SAM" ROSE, HD 11, Chouteau, noted he was carrying the bill for the closure of the Teton River Basin to further consumptive appropriations except for appropriations for ground

uses, and nullifying certain water reservations in the Teton River Basin.

Proponents' Testimony:

Leonard Blixrud, rancher, Choteau, Secretary-Treasurer of the Teton River Water Users' Association, Manager of the Farmers Coop Canal Company, and the substitute Water Commissioner for the Teton River, testified he utilized irrigation water from the Teton River. He supported the bill stating there wasn't enough water in the river to meet current appropriations. He added there were no objections to the bill from the Teton River Water Users' Association.

Charles Green, farmer, Choteau, spoke in support of the legislation, also elaborating that there was not enough water to meet current appropriations. He noted current rights needed to be protected.

REP. ROGER DEBRUYCKER, HD 13, Floweree, also supported current testimony concerning the lack of water to meet current appropriations. He added the river had stopped flowing 30 miles below Fort Benton on several occasions in the last two years.

Jim Richard, Montana Wildlife Federation, testified in support of the legislation and proposed an amendment deleting Section 3.

Bill Rachel, rancher, Choteau, addressed the committee and stated he and his neighbors have been chronically short of water on the Teton River. He stated there are 17 water rights holders in Choteau County and all are in agreement to close the entire basin.

Jo Brunner, Executive Director, Montana Water Resources Association, expressed the Association's support for the HB 365. The Association does not support the deletion of Section 3 of the bill.

Gary Fritz, Department of Natural Resources and Conservation, presented testimony in support of the legislation with the exception of Section 3. EXHIBIT 1

Opponents' Testimony:

Bob Lane, Department of Fish, Wildlife & Parks, testified in support of the concept of the legislation, but expressed the department's concerns with the procedure for considering basin closures and Section 3 of the bill which would eliminate the water reservations recently granted to DFWP and DHES. EXHIBIT 2

Bob Thompson, Attorney, Department of Health and Environmental Sciences, Water Quality Bureau, reiterated testimony on the

elimination of water reservations recently granted to DHES in Section 3. He stated the Department opposes the bill as currently written. EXHIBIT 3

Questions From Committee Members and Responses:

REP. BOB RANEY asked REP. ROSE to respond to the opponents testimony, especially testimony referring to Section 3 of the bill. REP. ROSE stated it would be possible to work something out on this section of the legislation.

REP. MIKE FOSTER directed the same question to Ms. Brunner, who responded that the section should remain in the legislation.

Closing by Sponsor:

REP. ROSE closed with two comments: he questioned the length of time and expertise put into the basin study and noted a 20 year study of stream flow in the Deep Creek Ranch area that had not been utilized. He added some valid testimony can be conditional. He noted he had questions on the reservations, but stated he would work with the departments.

HEARING ON HOUSE BILL 393

Opening Statement by Sponsor:

REP. DOUG WAGNER, HD 8, Flathead, introduced HB 393 and a proposed amendment for page 3, line 2. EXHIBIT 4 The bill allows the Department of State Lands to more efficiently manage its brush disposal and Timber Stand Improvement (TSI) accounts and allows for more effective management of the state's resources. He noted the bill would eliminate needless paperwork and bookkeeping. He stated there is no cost to the state associated with this legislation, which is reflected in the accompanying fiscal note.

Proponents' Testimony:

Jeff Jahnke, Department of State Lands, Missoula, presented written testimony in support of the legislation delineating the benefits of the proposed change: combining the separate brush and TSI fees and associated accounts into a single forest development fee and account; and the addition of road acquisition and maintenance as a use of the forest development funds.

EXHIBIT 5

Don Allen, Montana Wood Products Association, concurred with the intent of the legislation, but expressed concern with fee

intent of the legislation, but expressed concern with fee increases.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. JODY BIRD, questioned the language in the fiscal note. Mr Jahnke stated there was no hidden meaning in the language, stating the fees have increased in the last 20 years as the cost of brush and TSI have increased. Fees changed in 1985 and in June of 1992. He did not expect fees to change any more frequently as a result of this legislation.

Closing by Sponsor:

REP. WAGNER thanked the committee for their time and urged favorable consideration of HB 393.

HEARING ON HOUSE BILL 417

Opening Statement by Sponsor:

REP ROLPH TUNBY, HD 24, Plevna, stated HB 417 seeks to address the problem the Department of Health and Environmental Sciences (DHES) is experiencing with individuals in violation of the underground storage tank laws. He stated the only method currently available to the Department to force compliance is through letters and phones calls asking for compliance or taking the individual to court. This legislation would allow DHES to write field citations in accordance with recommendations from the Environmental Protection Agency. The maximum fine would be \$500, with a rebate for compliance within a reasonable period of time.

Proponents' Testimony:

Casandra Noble, Attorney, Department of Health and Environmental Sciences, spoke in support of the testimony on behalf of the Department. EXHIBIT 6 She explained the enforcement problems with the current system and the ramifications of non-compliance.

Brian McNitt, Montana Environmental Information Center, expressed the Centers strong support for this legislation and its enforcement component.

Leo Berry, Attorney, representing Burlington Northern Railroad, spoke in favor of the adoption of HB 417. He stated administrative penalties are useful tools that can be utilized to

of going to court. He noted one public policy concern with the bill on Page 12, Section 5, which authorizes the agency to issue tickets and assess a penalty. He expressed concern with the accumulation of the fines into a special revenue account which will be utilized to administer the program. He questioned utilizing fines for administrative purposes, especially when the agency sets the fines. He recommended the fines, not fees, be placed into the general fund.

David Ross, Audubon Legislative Fund, stressed the need for compliance with the current laws and spoke in support of the legislation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. GARY FELAND questioned Ms. Noble on the intent of the legislation and procedure for issuing citations to individuals who are not in compliance. He further questioned if DHES would object to depositing the fines into the state general fund. Ms. Noble stated DHES would not object.

REP. SCOTT ORR also questioned Ms. Noble concerning the number of individuals who do not comply with the current law. She responded that 20 to 25 percent of the operators are not in compliance.

REP. JAY STOVALL asked for further clarification on the level of fines for non-compliance. Ms. Noble responded that the legislation, on page 11, delineates the fine penalty schedule.

Closing by Sponsor:

REP TUNBY stated he had the same question on the disposition of fines and asked that this issue be reviewed during Executive Action on the bill. EXHIBIT 7

EXECUTIVE ACTION ON HB 288

Motion: REP. FELAND MOVED HB 288 DO PASS AS AMENDED.

Discussion: The committee discussed EXHIBIT 8, which contains three (3) amendments. Discussion included clarification of amendments and ramifications of amended language.

1. Amending the bill title, line 9, following: "REPORTS", striking: "PROVIDING FOR AN IDLE WELL FEE IN LIEU OF A BOND"

2. Page 3, line 4, following: "~~ex~~", insert: "or".
3. Page 3, line 5, following: "or", strike: "(iii) as provided under rules adopted by the board, an annual idle well fee in lieu of a bond has been paid; or"

Motion/Vote: Motion to accept amendment number 1:

Amending the bill title, line 9, following: "REPORTS", striking: "PROVIDING FOR AN IDLE WELL FEE IN LIEU OF A BOND". Motion carried.

Motion/Vote: Motion to adopt amendments number 2 and 3:

Page 3, line 4, following: "~~ex~~", insert: "or".

Page 3, line 5, following: "or", strike: "(iii) as provided under rules adopted by the board, an annual idle well fee in lieu of a bond has been paid; or"

Vote: TO ADOPT AMENDMENTS 1, 2, AND 3 ON EXHIBIT 8. Motions carried, with REPS. FAGG, TOOLE, and SCHWINDEN opposing the amendments.

Motion/Vote: THE MOTION WAS MADE THAT HB 288 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 263

Motion: REP. RANEY moved the adoption of EXHIBIT 9 amending House Bill 263 for committee discussion.

Discussion: The committee discussed the amendment as submitted: Page 6, line 15, Following "is", Strike "to minimize the effects of water degradation on other uses of the water resource."; Insert "to protect, maintain, and improve the quality and potability of water for all beneficial uses of the water resource". Dan Fraser, Water Quality Bureau, explained the intent of the proposed amendment.

Vote: None. Committee consensus was to defer executive action on HB 263.

EXECUTIVE ACTION ON HB 393

Motion: REP. WAGNER MOVED HB 393 DO PASS.

Motion/Vote: Motion was made to adopt the amendments in

HOUSE NATURAL RESOURCES COMMITTEE

February 5, 1993

Page 7 of 7

Motion/Vote: Motion was made to adopt the amendments in
EXHIBIT 4. Motion carried unanimously.

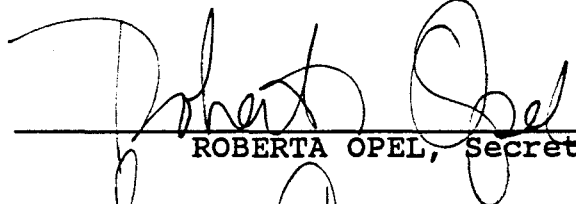
Motion/Vote: THE MOTION WAS MADE THAT HB 393 DO PASS AS AMENDED.
Motion carried unanimously.

ADJOURNMENT

Adjournment: The meeting was adjourned at 7:30 pm.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary



GAYLE CARPENTER, Transcriber

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-5-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE	✓		
REP. DOUG WAGNER	✓		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

February 8, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 288 (first reading copy -- white) do pass as amended .

Signed: Dick Knox Dick Knox, Chair

And, that such amendments read:

1. Title, line 9.

Following: "REPORTS"

Insert: ",IF ANY ARE MADE"

2. Title, lines 9 and 10.

Following: ";" on line 9

Strike: "PROVIDING FOR AN IDLE WELL FEE IN LIEU OF A BOND;"

3. Page 3, line 4.

Following: "~~er~~"

Insert: "or"

4. Page 3, lines 6 and 7.

Following: line 5


Strike: "(iii) as provided under rules adopted by the board, an annual idle well fee in lieu of a bond has been paid; or"

HOUSE STANDING COMMITTEE REPORT

February 8, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 393 (first reading copy -- white) do pass as amended .

Signed: 

Dick Knox, Chair

And, that such amendments read:

1. Page 3, line 2.
Following: "for"
Strike: "timber stand"
Insert: "forest"

-END-

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 365, FIRST READING

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

FEBRUARY 5, 1993

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; NULLIFYING CERTAIN WATER RESERVATIONS IN THE TETON RIVER BASIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE."

The Department of Natural Resources and Conservation supports this proposed legislation which closes the Teton River Basin to applications to appropriate surface water supplies for consumptive uses. The Department does, however, suggest deleting the section of the bill nullifying reservations of water for instream flow purposes.

The department estimates that the Teton River Basin is capable of producing 250,000 feet of water in an average year. At the same time, 2,305 pre-1973 surface and ground water rights have been filed for the Teton River Basin. The amount of flow involved with these claims is 78,000 cubic feet per second or 2,300,000 acre-feet per year. Much of the claimed water diverted in the basin eventually returns to the system and is re-used. Yet the large discrepancy between the claimed rights and the available water supply cannot be ignored. In the face of this extensive level of claimed water use it is not surprising that the department has issued only 28 permits for surface water appropriation in the basin since the passage of the Water Use Act in 1973. Only one permit has been issued in the past nine years. Based on this past record and findings of recent water availability studies of the department, it is unlikely that any applicants for future surface water appropriations can demonstrate they will not adversely affect the existing water right holders.

The Department is concerned with the need and appropriateness of Section 3 of this legislation which refers to the June 30, 1992 Order of the Board of Natural Resources and Conservation establishing water reservations in the basin. The proposed legislation states that Section 3 is in accordance with the conditions of the Board's Order. However, provisions of Section 3 are not in accordance with the Board Order in that some of the granted and conditioned reservations are included and others are not specifically mentioned. Furthermore, Section 3 goes beyond the Board's Order for defining when the reservations are of no force and effect. Interpreting this provision would be confusing.

with the discrepancies which exist between this Section and the Board's Order. The conditions in the Board's Order concerning basin closure are clear and provide consistent management direction for the entire Upper Missouri River Basin.

In summary, and with the exception of Section 3, the department supports House Bill 365. Coupled with the comprehensive management program inherent in Board Order establishing water reservations in the basin, it provides assurances that the best interests of all water users in the basin can be protected.

HB 365
February 5, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the House Natural Resources Committee**

The Department of Fish, Wildlife & Parks believes that basin closures, in the proper circumstances and under the appropriate procedures, are a desirable, effective and even necessary water management tool. The department understands that the Teton River Basin is a prime candidate for consideration of a basin closure.

The Teton River and its tributaries also contain significant fisheries, including some tributaries which may contain pure strains of Westslope cutthroat trout, a "species of special concern" in Montana.

We recognize potentially significant problems of water shortages and availability within the basin. However, for two reasons the department cannot support the bill as presently written:

There is a better procedure available for considering basin closures. This is a process established by the legislature. The Department of Natural Resources and Conservation has authority to close basins to new water uses when there is no unappropriated water available or present water right holders will be adversely affected.

This process has the advantages of greater time and public involvement to consider all the facts before a decision is made. There would be a public hearing, with full opportunity for the involvement of water users and other affected parties, and a public agency with the expertise to consider and study all the facts. This procedure was tailored by the legislature to deal with the complexities of water management so that any closure could be crafted to the specific and unique character of each basin. The department recommends that the legislature, in its wisdom, defer to this process.

The department's other concern is with the fundamental ^{UN} fairness of Section 3 of the bill that would completely take away the water reservations recently granted to this department and the Department of Health and Environmental Sciences. This proposal flies in the face of the June 30, 1992, decision of the Board of Natural Resources and Conservation. The Board determined that junior instream flow reservations were in the public interest. The Board's determination was made after a three year process that followed the submittal of reservation applications. This included an EIS, an extensive record based on written testimony of experts and the public, and an administrative hearing lasting over four weeks, as well as exhaustive legal and policy arguments. The Board concluded that instream flow reservations were needed and in the public interest. The department spent the better part of 10 years in this process.

Now this bill would negate that whole effort for instream flows. This is not fair and it would frustrate the public's reliance and faith in a valid public process initiated by the legislature. During the administrative hearing, holders of existing rights were concerned that their existing rights be protected, and they were. The department holds instream flow reservations on behalf of the public and asks that the public's rights be given this same recognition and protection. The department is entitled to play a role in future water use and management issues in the basin that would affect the fisheries resource. However, instream rights will be treated in a way that no one would consider treating any other vested water rights. They have no protection under this bill.

It is true that there is a condition in the Board's order that partly nullifies instream reservations upon a closure, but it is fundamentally different. The condition states that instream reservations have no force and effect "for any class of uses for which permit applications are precluded." Under the Board's condition, the instream reservations would be nullified only for all surface water uses and ground water uses directly connected to surface water. Under the bill, instream values would be denied any protection, even against the exceptions to the closure. Instream reservations would be protected against the exceptions under the Board's order.

The department understood that the Board's condition may be

difficult and, in fact, may prove to be unworkable. The department resolved to work with the Board's order granting reservations with the idea that, if the condition proved to be unwise, the same Board would be in the best position to resolve the difficulties. The department choose not to appeal any of the conditions. Other parties opposing the instream flow reservations have appealed the Board's order in other basins.

The no force and effect condition is now proving in HB 365 that it has severe drawbacks. It prevents all of the parties with a legitimate interest from being free to consider basin closures on the merits of the closures themselves. If the Board's condition was removed, then the department could support the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department opposes the bill but not the concept of a closure for the Teton River Basin.

SENATE 2
DATE 2-5-93
HL HO 365

PROPOSED AMENDMENT TO HB 365
FIRST (WHITE) COPY

1. Page 2, line 22 through page 3, line 3.
Strike: section 3 in its entirety
Insert: "NEW SECTION. Section 3. Validity of
Reservations. The closure in [section 2]
shall not render any instream reservation
granted by the Board of Natural Resources and
Conservation in its June 30, 1992, order of no
force and effect, notwithstanding any
condition to the contrary in that order."

Testimony on House Bill 365

Presented by

Montana Department of Health
and Environmental Sciences

Because HB 365 would dramatically alter the effect of the Final Order of the Board of Natural Resources and Conservation in the Teton River Basin, the Department of Health and Environmental Sciences recommends a "DO NOT PASS" on House Bill 365. This recommendation is made for the following reasons:

1. The Board of Natural Resources and Conservation (BNRC) conducted an extensive administrative contested case to implement the water reservation laws for the upper Missouri River basin. The BNRC issued findings and reservations implementing these statutes. Change now would preempt this exercise of public policy established through the water reservation laws.

2. HB 365 limits the Department's water reservation in the Teton River Basin in a manner that is inconsistent with the BNRC's Order. The BNRC expressly provided that reservations are only of no force and effect during periods of basin closure. If a basin is opened, the BNRC reinstates the reservations. With this bill, the Legislature would close the Teton basin now and eliminate DHES' reservation. If the basin was ever reopened, the DHES would have no reservation.

3. Section 3 of the bill terminates the reservations of the DHES and the Department of Fish, Wildlife, and Parks but allows other reservations in the Teton Basin to remain in effect. This section is also inconsistent with the BNRC's Order and raises questions of equity.

EXHIBIT 4
DATE 2-5-93
HB 393

DEPARTMENT OF STATE LANDS

PROPOSED AMENDMENT TO

HOUSE BILL 393

(Introduced Bill)

1. Page 3, line 2.

Following "for"

Strike: "timber stand"

Insert: "forest"

- END -

TESTIMONY OF JEFF JAHNKE
DIVISION OF FORESTRY, DEPARTMENT OF STATE LANDS
ON HB353
HOUSE NATURAL RESOURCES COMMITTEE

FEBRUARY 5, 1993

PROPOSED FOREST DEVELOPMENT LAW CHANGE

OVERVIEW:

The proposed legislation would change the law authorizing collection of brush disposal and timber stand improvement (TSI) fees, in order to improve the efficiency and effectiveness of State programs, and to protect and enhance the environment.

The existing law is found in 77-5-204 MCA (paragraph 4), and reads as follows:

The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the state special revenue fund to the credit of the department.

PURPOSE:

The proposed change in the law would have several benefits:

1. It would combine the separate brush and TSI fees and associated accounts, into a single forest development fee and account. Two control variables would be combined into a single variable. This would enhance the efficiency and effectiveness of the budget process as well as program management.

The two current accounts do serve somewhat different objectives. However, a single activity will often accomplish both brush and TSI objectives at the same time. For example, mechanical piling or prescribed burning of logging slash (a brush objective) also prepares the site for reforestation (a TSI objective). Thus, it serves little purpose to have duplicate budgeting and accounting procedures for two separate accounts that provide for overlapping services.

2. It would add road acquisition and maintenance as a use of the forest development funds. This would legally permit DSL to use a portion of the forest development funds for critical road maintenance. Such maintenance is necessary to protect and enhance water quality while providing for sustained trust revenue production from State lands.

The recent Legislative Auditor's report on management of forested trust land identified the current lack of funding for road maintenance as potentially costly to the state. Lack of maintenance may result in a need to rebuild roads entirely the next time DSL enters the area. It may also impede access for fire suppression, resulting in larger, more costly fires.

The audit report also identifies the importance of obtaining permanent access to State parcels. With increasing rural development and subdivision, it is becoming more difficult to acquire temporary access to State parcels for timber sales. Having a funding source for acquiring permanent easements will help help maintain the State's ability to produce income from these lands.

3. The uses of the funds would be defined clearly. The proposed change replaces "brush disposal" and "timber stand improvement" with language that explains the nature and goals of these activities. This would help ensure that the funds are used for their intended purposes, while providing DSL the flexibility to use the funds for activities that would provide the greatest benefits.

FISCAL IMPACT:

The proposed legislation would have no General Fund fiscal impact.

The proposed legislation would not have any direct impact on appropriation or expenditure of revenue funds. However, it would add road maintenance to the existing authorized uses of these funds. Any change in the fee level, along with associated impacts on trust income, would remain subject to approval by the Board of Land Commissioners. Any increase in spending authorization to accommodate road acquisition and maintenance would have to be approved separately by the Legislature.

DHES SUPPORTIVE TESTIMONY FOR HB417
ADMINISTRATIVE PENALTIES FOR UST VIOLATIONS

The Underground Storage Tank Program is the largest environmental regulatory program in the Department of Health and Environmental Sciences. It is responsible for the regulation of over 21,000 active underground storage tank (UST) systems at 12,000 locations or facilities. State and federal regulations are designed to provide protection for human health, the environment, and the state's groundwater supplies from leaking underground storage tank systems.

The rules for USTs are designed to prevent releases of highly toxic petroleum and hazardous chemicals into Montana's environment, particularly releases which might move into the groundwater. Gasoline contains at least 1% benzene, a known carcinogen. One gallon of gasoline will contaminate one million gallons of water 20 times over EPA drinking water standard for benzene.

At this time, Program statistics indicate that between 20 and 25% of Montana's UST facilities are not in compliance with current regulations. State rules require existing UST systems to implement leak detection monitoring programs by no later than December, 1993. Systems must be upgraded with corrosion protection and spill/overfill prevention systems by no later than December 22, 1998. It is predictable that these additional requirements will increase the level of noncompliance simply because of the financial and operational commitments these involve. Inevitably some owner/operators will elect to operate in violation of state law.

Each day an UST system is in violation of leak prevention requirements, each time a tank is removed from the ground without

a site assessment, and each time a release goes unreported, there is a significant risk that severe contamination will occur. Petroleum will move in the ground. It will move toward neighboring property, and wells, and into public water supplies. Once petroleum gets into the ground, it's very expensive to clean up. The State of Montana picks up the largest share of the bill, sometimes all of it. Regardless of the size of the tank, a leak can have a major impact on groundwater. Obviously, it's critical to prevent releases with precautionary measures. Montana's UST regulations embody known precautionary measures.

The majority of Montana's UST owners comply with the rules. It's unfair to that majority to allow others to ignore the rules that are designed to protect everybody. On the other hand, these non-compliant individuals are not criminals. Most are small business people, homeowners, farmers and ranchers. The Program does not seek to be so heavy-handed that these people are put out of business or caused to lose their life savings. In fact, the Program believes that most noncompliant owner/operators will come around if they are nudged into it by some reasonable enforcement action.

The problem is that the Department's existing mechanisms are not realistic enforcement options. They are heavy-handed, and they are slow. The options currently available to the Department include formal administrative orders, injunctions, and civil lawsuits. Right now, the UST Program's administrative orders carry no penalties. They are essentially just more formal orders to do what an owner/operator has been asked to do - typically over and

over, in numerous letters and site visits from Program inspectors. Even though UST administrative orders carry no penalties, owner/operators have full rights to appeal. This, of course, delays actual compliance still further.

Ultimately, the Program has the option of seeking a remedy in District Court via a full-blown lawsuit or a petition for injunctive relief. These options are procedurally slow and extremely costly for the Department. Furthermore, only a very few sites can be addressed via a lawsuit in any given year. Thousands of non-compliant facilities have to remain so while the few selected ones are pursued in courts throughout the state at a grindingly slow pace by a single attorney. This poses an unacceptable risk.

Another aspect of going into court is that the Program must then ask for very large penalties, calculated according to an EPA penalty formula. In contrast, this bill's modest administrative penalties are low. Its enforcement approach is efficient. And it is responsive. The UST Program intends that no one will be cited without prior warning and also the prior approval of the Department Director. HB 417 bill has been designed to allow for a range of penalties, set in accordance with the relative seriousness of the infractions without forgetting the circumstances of the regulated individuals.

Broad compliance with the law is the Department's goal. So the major feature of this bill is that a portion of the penalty can be suspended upon the condition that the owner/operator comes into compliance within a specified - short - period of time. Finally,

if an owner comes into timely compliance as directed, and needs further relief from the remaining penalty, that is available as well. If the owner/operator then fails to make efforts to correct the violation, normal administrative or judicial enforcement action could still be taken.

For the Department, this unique type of administrative penalties approach is needed because of the large number of facilities that the UST Program is responsible for. It has the significant incentive feature of the penalty suspension. It would offer the State an effective yet sensible enforcement tool which would enable the UST Program to bring around many more owners than is presently feasible. And in a far shorter time. And for a fraction of the drain on the state's financial resources. It's really the difference between effective, fair enforcement, and official helplessness in the face of intentional noncompliance.

For owner/operators, once they come into compliance, they would be again eligible for Petroleum Release Compensation Fund reimbursement should they later experience a release. Compliance with state and federal regulations would also put them in a better position with future mortgage lenders when it comes time to sell the property.

And for the people of this state, there would be increased safety from catastrophic releases into the environment and toxic water contamination.

The Department urges your favorable consideration of this bill.

EXHIBIT 7
DATE 2-5-93
HB 417

Amendments to House Bill No. 417
1st Reading Copy

Requested by Rep. Tunby
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 6, 1993

1. Title, lines 12 and 13.
Following: "THE" on line 12
Strike: "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'
UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT"
Insert: "STATE GENERAL FUND;"
2. Title, line 14.
Following: "AND"
Insert: "PROVIDING"
Following: "FROM"
Strike: "THAT"
Insert: "THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'
UNDERGROUND STORAGE TANK SPECIAL REVENUE"
3. Title, line 16.
Strike: "75-10-417,"
4. Page 8, line 6, through page 9, line 3.
Strike: section 3 in its entirety
Renumber: subsequent sections
5. Page 12, lines 2 and 3.
Following: "the" on line 2
Strike: "underground storage tank special revenue account
established in 75-10-477"
Insert: "state general fund"
6. Page 12, line 10.
Following: "and"
Insert: "and"
7. Page 12, lines 13 through 16.
Following: "amended" on line 13
Strike: "; and"
(c) civil penalties collected for underground storage tank
violations under 75-10-417 and administrative penalties collected
under [section 4]"

EXHIBIT 7
DATE 2-5-93
HB 417

8. Page 2, line 10.
Page 5, line 7.
Page 7, line 12.
Page 13, lines 1, 3, and 7.
Strike: "4" or "4"
Insert: "3"

Amendments to House Bill No. 288
First Reading Copy

Requested by Rep. Feland
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
January 28, 1993

1. Title, line 9.

Following: "REPORTS;"

Strike: "PROVIDING FOR AN IDLE WELL FEE IN LIEU OF A BOND;"

2. Page 3, line 4.

Following: "or"

Insert: "or"

3. Page 3, line 5.

Following: "or"

Strike: "(iii) as provided under rules adopted by the board, an
annual idle well fee in lieu of a bond has been paid; or"

EXHIBIT

DATE

HB

9

2-5-93

263

Amendments to House Bill No. 263
1st Reading Copy

For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 5, 1993

1. Page 6, line 15.

Following: "is"

Strike: "to minimize the effects of water degradation on other
uses of the water resource."

Insert: "to protect, maintain, and improve the quality and
potability of water for all beneficial uses of the water
resource."

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Natural Resources

COMMITTEE

BILL NO. 365 393, 417

DATE 2/5/93 SPONSOR(S) REPS ROSE (365), WAGNER (393), TUNBY (417)

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
WILLIAM E. REICHELT	SELF HB 365	X	
Jo Brunner	MCURR 365	X	
Charles Danreuther	Self HB 365	X	
Kirk Reichert	HB 365	X	
Kevin Rubens	HB 365	X	
Leonard Blixrud	HB 365	X	
Charles Crane	HB 365	X	
John Kelly	HB 365	X	
Bob Larp	FWP HB 365		X
John Geach	DHES 115T Program	X	
Ted Dove	Tetrah Water User Assn.	365 X	
CASSANDRA NOBLE	HB DHES re HB417	X	
Vicki A. Baker	HB 365	X	
Clark L. Campbell	HB 365	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.