

MINUTES

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

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 9, 1993, at 5:05 p.m.

ROLL CALL

Members Present:

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

Members Excused: Sen. Steve Doherty (D)
Sen. Henry McClernan (D)

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 158, SB 172, SB 196, SB 253, SB 275,
SB 311

EXECUTIVE ACTION ON SB 158

Discussion:

Claudia Clifford, Secretary of the Senate, informed the Committee that indefinitely postponing a bill was not a proper motion in committee. She discussed the purpose of indefinitely postponing a bill, and suggested the Committee consider a different motion.

Motion/Vote:

Senator Weeding moved the Committee RECONSIDER its action to INDEFINITELY POSTPONE SB 158. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Weeding moved to TABLE SB 158. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 172**Motion:**

Senator Grosfield moved to AMEND SB 172 (Exhibit #1).

Discussion:

Senator Grosfield said there had been corrections to amendment #3. He said the language: "Outside the boundaries of a controlled groundwater area," should be inserted before the last sentence which begins with "A permit".

Senator Grosfield noted a well or a developed spring would constitute "other groundwater development."

Senator Keating asked if a person needs a permit to drill a well producing more than 35 gallons per minute (gpm). Senator Grosfield stated that is current law and the amendments restore the bill to current law. Senator Keating asked if doing so would defeat the purpose of the bill. Senator Grosfield said the manifold problem still needs to be addressed. Senator Keating asked if 100 gpm wells could be developed without a permit in certain areas. Senator Grosfield said yes, if the wells are not manifolded and if they meet the minimum distance established in the bill.

Senator Weeding asked that the question be divided so the Committee could vote on the last sentence of amendment #3 separately from the rest of the amendments. He said he thinks the last sentence is "outside the tenor of the law." He said there are cases where 100 gpm wells are detrimental and should be reviewed.

Senator Bianchi asked what the reasoning is for the "1,000 feet from a stream, lake or other groundwater development" language. Senator Grosfield stated 1,000 feet seemed reasonable, adding if 1,000 feet is not enough, he would not have a problem with increasing the distance.

Senator Keating said for 20 years, 100 gpm wells could be drilled without a permit, and there appeared to be no excessive drainage or misuse of water. He stated 2 years ago, a permit requirement was implemented. Senator Keating said the permitting process got so backlogged that people were not able to drill. He added the well drillers testified that the law worked fine for 20 years, and said he favors allowing 100 gpm wells without a permit. Senator Keating stated Senator Grosfield is rectifying some concerns, particularly the draining of surface water. He noted 90% of Montana's surface water flows out of the state.

Senator Bianchi stated the last sentence of amendment #3 would be segregated and voted on separately.

Senator Weeding said manifolding is the real essence of SB 172.

Vote:

The motion to AMEND SB 172, with the last sentence of amendment #3 stricken, CARRIED with Senators Swift and Keating voting NO.

Discussion:

Senator Swysgood stated a 35 gpm well will irrigate 40 acres. He added a 100 gpm well may be a problem in an area with many wells in close proximity to one another. Senator Swysgood said he opposes including the last sentence in amendment #3.

Substitute Motion:

Senator Tveit made a substitute motion that the last sentence of amendment #3 read "...up to 70 gallons per minute..." instead of "...up to 100 gallons per minute..."

Discussion:

Senator Weeding asked Gary Fritz, Department of Natural Resources and Conservation (DNRC), how many permits DNRC processed for wells over 35 gpm. Senator Weeding observed that many places in Montana are not capable of producing over 35 gpm.

Mr. Fritz said in 1992, DNRC received 38 applications for permits for 35 gpm to 100 gpm wells. He said during that same time period, DNRC processed 2,570 "notices of completions" for groundwater wells less than 35 gpm. He said DNRC has worked hard to reduce the permit processing time.

Vote:

The substitute motion FAILED, roll call vote, with Senators Bianchi, Hockett, Kennedy, Swysgood, Weeding, and Weldon voting NO.

Discussion:

Senator Bianchi clarified that the Committee would now be voting on incorporating the last sentence of amendment #3 into the amendments.

Vote:

The motion to accept the last sentence of amendment #3 FAILED 4 to 7, roll call vote, with Senators Bianchi, Hockett, Bartlett, Kennedy, Swysgood, Weeding, and Weldon voting NO.

Motion/Vote:

Senator Grosfield moved SB 172 DO PASS AS AMENDED. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 196

Motion:

Senator Weeding moved to AMEND SB 196 (Exhibit #2).

Discussion:

Paul Sihler explained the amendments requested by Senator Devlin, noting the intent is to "allow for tanks that are 1,100 gallons or less, that are farm or residential tanks, and that are used for non-commercial purposes, to be closed," while leaving the rest of the requirements in place. He noted that the conditions in amendment #6 are necessary in order for a tank owner to be covered by the petroleum tank fund for any clean-up. Mr. Sihler said the window of opportunity to remove the tanks would be from whenever Governor Racicot signed the bill until January 1, 1994.

Senator Swysgood asked if all tank registrations are due on the same date. Mr. Sihler referred the question to the Department of Health and Environmental Sciences (DHES). John Geach, DHES, said registration on all tanks is due January 1st of each year.

Senator Keating said homeowners with heating oil tanks are exempt in New Section 1. He asked if title insurance would be

jeopardized if that tank leaks. Mr. Sihler said SB 172 would only apply if a tank is removed. He clarified that the owner of the tank to which Senator Keating referred would not have to apply for a permit for removal during the window of opportunity provided in SB 172.

Senator Bianchi asked if an owner/operator would have to notify anyone upon removal of a tank. Mr. Sihler directed Senator Bianchi to Subsection 2(a).

Senator Kennedy asked Frank Gessaman, DHES leak prevention program manager, stated soil testing under the tank is part of the permitting process. He said tanks usually require a "hazardous substance certificate", where the owner indicates whether tanks were present on the property.

Senator Hockett said he interprets SB 172 as trying to relieve the small tank owners of having to pay for clean-up if a leakage problem occurred. He said currently potential liability exists with a registered tank of any size until a certified inspector says state clean-up standards have been met. Senator Bianchi said he thinks Senator Hockett's interpretation is correct.

Senator Tveit asked Senator Devlin to comment. Senator Devlin said many surrounding states do not deal at all with non-commercial tanks 1,100 gallons or less "because the EPA did not demand it."

Senator Bartlett stated in Lewis and Clark County, 63% of the tanks found to have leaked are less than or equal to 1,100 gallons. She said those tanks should be regulated.

Senator Grosfield said the purpose of the bill is to accommodate tank owners and facilitate removal of the tanks. He added SB 196 would give owners 8 months to remove the tanks on their own, rather than having to pay licensed personnel to do it.

Vote:

The motion to AMEND CARRIED 9 to 2, roll call vote, with Senators Bianchi and Hockett voting NO.

Motion/Vote:

Senator Weeding moved SB 196 DO PASS AS AMENDED. The motion CARRIED 8 to 5, roll call vote, with Senators Bianchi, Bartlett, McClernan, Doherty, and Weldon voting NO.

EXECUTIVE ACTION ON SB 253

Motion:

Senator Weeding moved SB 253 DO NOT PASS.

Substitute Motion/Vote:

Senator Swysgood made a substitute motion to TABLE SB 253. The motion CARRIED with Senators Bianchi, Hockett and Keating voting NO.

EXECUTIVE ACTION ON SB 275

Motion:

Senator Weldon moved SB 235 DO PASS.

Discussion:

Senator Grosfield said SB 275 would create a civil penalty for violations of the 310 Act and earmarks the proceeds for conservation districts. He said he has an amendment (Exhibit #3) which would send the civil penalties to the individual county's general fund.

Motion:

Senator Grosfield moved to AMEND SB 275.

Discussion:

Senator Grosfield said the conservation districts are not a policing entity, adding he is concerned about the fallout to conservation districts if the civil penalty goes directly to them. He stated the conservation districts could be accused of assessing penalties for 310 violations simply for their own benefit.

Senator Hockett said conservation districts are funded by tax revenue and the bill without the amendments would be a departure from the current structure.

Senator Bianchi stated fines assessed by Fish and Game wardens and highway patrolmen go into their retirement funds. He added it is not a new idea for the conservation districts to benefit from the 310 fines.

Vote:

The motion to AMEND SB 275 CARRIED, with Senators Bianchi and Weldon voting NO, and Senator Bartlett absent at the time of the vote.

Motion:

Senator Weldon moved SB 275 DO PASS AS AMENDED.

Discussion:

Senator Grosfield noted that whether a penalty is civil or criminal depends on how an action is brought, and the difference is the level of proof that is needed to establish that a 310 violation occurred.

Vote:

The motion CARRIED UNANIMOUSLY.

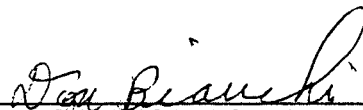
EXECUTIVE ACTION ON SB 311

Motion/Vote:

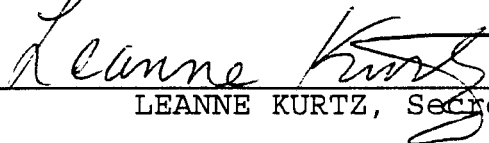
Senator Grosfield moved SB 311 DO PASS. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 7:00 p.m.



SENATOR DON BIANCHI, Chair



LEANNE KURTZ, Secretary

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/9/93

NAME	PRESENT	ABSENT	EXCUSED
Bianchi	✓		
Hockett	✓		
Bartlett	✓		
Doherty			✓
Grosfield	✓		
Keating	✓		
Kennedy	✓		
McClerman			✓
Swift	✓		
Swysgood	✓		
Weeding	✓		
Weldon	✓		
Treit	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 172 (first reading copy -- white), respectfully report that Senate Bill No. 172 be amended as follows and as so amended do pass.

Signed: 
Senator Don Bianchi, Chair

That such amendments read:

1. Page 1.
Following: Line 8
Insert:

"STATEMENT OF INTENT

It is the intent of the legislature that the department of natural resources and conservation streamline the ground water permitting process, particularly for ground water development from 35 gallons up to 100 gallons per minute, in order to reduce the length of time required to receive a permit."


2. Page 5, line 14.
Strike: "less than 100"
Insert: "35"

3. Page 5, line 18.
Following: "permit"
Insert: "or less, not to exceed 10 acre feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Two or more ground water developments constitute a combined appropriation if the developments are from the same-source aquifer and are physically manifolded to a common system."

4. Page 7, lines 7 and 8.
Strike: "less" on line 7 through "100" on line 8
Insert: "35"

5. Page 7, line 9.
Following: "year"
Insert: "or less, not to exceed 10 acre feet per year"

-END-

 Amd. Coord.
Sec. of Senate

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SENATE STANDING COMMITTEE REPORT

Page 1 of 3
February 10, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 196 (first reading copy -- white), respectfully report that Senate Bill No. 196 be amended as follows and as so amended do pass.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 4.

Following: "NONCOMMERCIAL"

Insert: "FARM AND RESIDENTIAL"

2. Title, line 6.

Following: "THE"

Insert: "CLOSURE REQUIREMENTS OF THE"

3. Title, line 7.

Strike: "AND"

4. Title, lines 7 and 8.

Strike: "75-10-403" on line 7 through "75-11-217" on line 8

Insert: "75-11-209 AND 75-11-212"

5. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
TERMINATION DATE"

6. Pages 1 through 9.

Strike: everything after the enacting clause and insert:

"NEW SECTION. Section 1. Exemptions -- tank closure. (1)
For the purposes of this section, a tank is a farm or residential underground storage tank with a capacity of 1,100 gallons or less that is used either for storing motor fuel for noncommercial purposes or for storing heating oil for consumptive use on the premises where stored.

(2) An owner or operator may close a tank without a license required under 75-11-212 or without the services of a licensed installer, provided that:

(a) on or before the date of the next tank registration period, the owner or operator notifies the department of the date of the tank's removal; and

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Amd. Coord.
Sec. of Senate

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(b) when closing a tank, if the owner or operator discovers or suspects that there has been a leak, the owner or operator notifies the department immediately and performs initial response and abatement procedures.

Section 2. Section 75-11-209, MCA, is amended to read:

"75-11-209. Permits -- requirement for licensed installer.

(1) Except as provided in [section 1], an owner or operator of an underground storage tank may not install or close, or cause to be installed or closed, an underground storage tank without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217."

Section 3. Section 75-11-212, MCA, is amended to read:

"75-11-212. Permits -- application procedure -- issuance.

(1) Before Except as provided in [section 1], before the installation or closure of an underground storage tank, the owner or operator shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the tank installation or closure;

(b) the location of the tank installation or closure;

(c) the type of construction of the tank;

(d) the contents of the tank being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank or, if the owner or operator is not going to have the underground storage tank installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit."

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 1].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 6. Termination. [This act] terminated January 1, 1994."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 275 (first reading copy -- white), respectfully report that Senate Bill No. 275 be amended as follows and as so amended do pass.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 7.

Following: "PENALTY;"

Strike: remainder of line 7

2. Page 1, lines 15 and 16.

Strike: "-- disposition of penalty proceeds"

3. Page 2, lines 1 through 6.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

-END-

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Sec. of Senate

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 311 (first reading copy -- white), respectfully report that Senate Bill No. 311 do pass.

Signed: Don Bianchi
Senator Don Bianchi, Chair

AW Amd. Coord.
Sec. of Senate

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ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. SB 172

DATE 2/9 TIME _____ A.M. P.M.

NAME	YES	NO
Chairman Bianchi		X
Vice Chairman Hockett		X
Sen. Bartlett	X	
Sen. Doherty	—	—
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Kennedy		X
Sen. McClellan	—	—
Sen. Swift	X	
Sen. Swysgood		X
Sen. Treit	X	
Sen. Weeding		X
Sen. Weldon		X
	5	6

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: To reduce "100 gallons per minute" to "70 gallons per minute" in the last sentence of # 3 - SB 017201.PCS

ROLL CALL VOTE - to segregate

SENATE COMMITTEE NATURAL RESOURCES BILL NO. _____

DATE 2/9 TIME _____ A.M. P.M.

NAME	YES	NO
Chairman Bianchi		X
Vice Chairman Hockett		X
Sen. Bartlett		X
Sen. Doherty	—	
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Kennedy		X
Sen. McClellan	—	
Sen. Swift	X	
Sen. Swysgood		X
Sen. Treit	X	
Sen. Weeding		X
Sen. Weldon		X
	4	7

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: to accept last sentence of #3 for
SB 017201.. PCS

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 196

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

NAME	YES	NO
Chairman Bianchi		X
Vice Chairman Hockett	X	
Sen. Bartlett		X
Sen. Doherty		
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Kennedy	X	
Sen. McClellan		
Sen. Swift	X	
Sen. Suysgood	X	
Sen. Treit	X	
Sen. Weeding	X	
Sen. Weldon	X	
	9	2

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Accept SB 019602-PCS (Amendments)

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 196
As Amended

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

NAME	YES	NO
Chairman Bianchi		X
Vice Chairman Hockett	X	
Sen. Bartlett		X
Sen. Doherty		X
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Kennedy	X	
Sen. McClellan		X
Sen. Swift	X	
Sen. Swysgood	X	
Sen. Treit	X	
Sen. Weeding	X	
Sen. Weldon		X
	8	5

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: SB 196 DPAA

Amendments to Senate Bill No. 172
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Paul Sihler
February 8, 1993

1. Page 1.
Following: Line 8
Insert:

"STATEMENT OF INTENT

It is the intent of the legislature that the department of natural resources and conservation streamline the ground water permitting process, particularly for ground water development from 35 gallons up to 100 gallons per minute, in order to reduce the length of time required to receive a permit."

2. Page 5, line 14.
Strike: "less than 100"
Insert: "35"

3. Page 5, line 18.
Following: "permit"
Insert: "or less, not to exceed 10 acre feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Two or more ground water developments constitute a combined appropriation if the developments are from the same-source aquifer and are physically manifolded to a common system. ~~A permit is not required before appropriating ground water by means of a well or developed spring with an appropriation from 35 gallons up to 100 gallons per minute if the ground water development is at least 1000 feet from a stream, lake, or other ground water development.~~"

4. Page 7, lines 7 and 8.
Strike: "less" on line 7 through "100" on line 8
Insert: "35"

5. Page 7, line 9.
Following: "year"
Insert: "or less, not to exceed 10 acre feet per year"

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2/9/93
BILL NO. SB 172

Amendments to Senate Bill No. 196
First Reading Copy

Requested by Senator Devlin
For the Committee on Natural Resources

Prepared by Paul Sihler
February 9, 1993

1. Title, line 4.
Following: "NONCOMMERCIAL"
Insert: "FARM AND RESIDENTIAL"

2. Title, line 6.
Following: "THE"
Insert: "CLOSURE REQUIREMENTS OF THE"

3. Title, line 7.
Strike: "AND"

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2/9/93
BILL NO. SB 196

4. Title, lines 7 and 8.
Strike: "75-10-403" on line 7 through "75-11-217" on line 8
Insert: "75-11-209 AND 75-11-212"

5. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
TERMINATION DATE"

6. Pages 1 through 9.
Strike: everything after the enacting clause and insert:

"NEW SECTION. Section 1. Exemptions -- tank closure. (1)
For the purposes of this section, a tank is a farm or residential underground storage tank with a capacity of 1,100 gallons or less that is used either for storing motor fuel for noncommercial purposes or for storing heating oil for consumptive use on the premises where stored.

(2) An owner or operator may close a tank without a license required under 75-11-212 or without the services of a licensed installer, provided that:

(a) on or before the date of the next tank registration period, the owner or operator notifies the department of the date of the tank's removal; and

(b) when closing a tank, if the owner or operator discovers or suspects that there has been a leak, the owner or operator notifies the department immediately and performs initial response and abatement procedures.

Section 2. Section 75-11-209, MCA, is amended to read:

"75-11-209. Permits -- requirement for licensed installer.

(1) ~~An Except as provided in [section 1], an~~ owner or operator of an underground storage tank may not install or close, or cause to be installed or closed, an underground storage tank without a

Amendments to Senate Bill No. 275
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Paul Sihler
February 8, 1993

1. Title, line 7.
Following: "PENALTY;"
Strike: remainder of line 7

2. Page 1, lines 15 and 16.
Strike: "-- disposition of penalty proceeds"

3. Page 2, lines 1 through 6.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/9/93
BILL NO. SB 275

DATE _____

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY:

Representing

Bill

Support Oppose

[illegible]

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY