

MINUTES

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

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 23, 1993, at 5:15 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: HB 488, HB 503, HB 30, HB 365,
HB 395, HB 64, HB 102

EXECUTIVE ACTION ON HB 488

Motion/Vote:

Senator Swift moved HB 488 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Swift will carry HB 488 on the Senate floor.

EXECUTIVE ACTION ON HB 503Motion/Vote:

Senator Grosfield moved HB 503 BE CONCURRED IN. Motion CARRIED with Senators Swift and Swysgood voting NO. Senator Grosfield will carry HB 503 on the Senate floor.

EXECUTIVE ACTION ON HB 30Motion:

Senator Keating moved HB 30 BE TABLED.

Discussion:

Senator McClernan stated he had some concerns as to whether HB 30 would apply to Georgetown Lake. He said he was told it would not because it was classified as a reservoir. He said it appeared the lakeshore protection zone was an afterthought to the interim study. Senator McClernan noted that residents of Georgetown Lake had solved their problems through local zoning ordinances. He said construction on lakeshore properties should be regulated at the local level.

Senator Doherty stated he had participated in the interim study on lakeshore regulations and recalled that residents of the Flathead Lake area supported a 100 foot mandatory "set back" from lakeshore property for construction. He said the 50 foot "set back" represented a compromise from the position of these individuals. He noted residents want the ability to regulate water quality in their area. Senator Doherty said Speaker Mercer's amendment for a "local option resolution" greatly improved HB 30.

Senator Keating asked Senator Doherty to define "local option". Senator Bartlett replied page 3, line 12 provided that a measure can be decided locally if a petition is signed by 15 percent of the lakeshore property owners. Paul Sihler stated the language cited by Senator Bartlett provided for the requirements to change the definition of a reservoir. He said the relevant section pertaining to the local option resolution was on page 7, line 17 through page 8, line 4.

Senator McClernan stated Georgetown Lake is situated in both Deer Lodge and Granite counties. He said the Deer Lodge County Planner resolved property owner conflicts on their half of Georgetown Lake by passing local zoning ordinances. He said the lakeshore owners on the Granite County side have petitioned their county commissioners to come up with a similar solution. Senator

McClernan noted this solution worked well for Deer Lodge County residents of Georgetown Lake and added he thought residents of Flathead Lake could solve their problem by taking similar action.

Senator Keating noted that while the 50 ft mandatory "set back" was proposed to reduce the amount of pollution to Flathead Lake, testimony showed that the majority of lake pollution came from sources other than the shoreline. He said he did not think HB 30 would solve the problem of lakeshore pollution. Senator Keating concluded HB 30 would impose a hardship on lakeshore property owners.

Senator Bianchi asked Paul Sihler how lakeshore construction regulations are currently addressed. Mr. Sihler replied existing statute requires a 20 feet mandatory "set back" from the horizontal high water mark. He said if HB 30 were passed, local governments would have the opportunity to extend the mandatory "set back" from 20 to 50 feet provided they give public notice, hold a public meeting and complete the ordinance adoption process.

Senator Bianchi asked Paul Sihler how Georgetown Lake residents were able to adopt a 100 feet mandatory "set back" if no local option to do so currently exists. Mr. Sihler replied the Georgetown Lake residents used zoning regulations to address their problem.

Senator McClernan asked Mr. Sihler if Georgetown Lake residents would have been able to solve their problem through zoning regulations had HB 30 already been in existence. Mr. Sihler replied yes.

Senator Keating stated he did not understand why the Committee should set a state standard for all lakeshore development when all lakes are unique. He said local residents should resolve this issue for their particular area.

Senator Grosfield asked Mr. Sihler if local governing bodies could adopt local zoning ordinances to limit or prohibit certain kinds of development within a given area. Mr. Sihler replied he believed such action was possible. He said the difference between the lakeshore statute and zoning ordinances was that the lakeshore statute pertained primarily to docks, breakwaters or other items used in the water or along the shore. Mr. Sihler added he did not believe these items were addressed in the Georgetown Lake zoning ordinances. He said the lakeshore statute would pertain to "things that alter the course, current and flow of the water".

Senator Grosfield asked Mr. Sihler if property owners' concerns regarding lakeshore development could be addressed through adoption of local zoning ordinances. Mr. Sihler replied yes.

Senator Doherty asked Mr. Sihler if, under current law, a local

governing body may regulate development of lakeshores at less than 20 feet. Mr. Sihler replied no and added the lakeshore statute requires local governing bodies to adopt regulations up to 20 feet for natural lakeshores. He said he did not think that authority was discretionary.

Senator Doherty asked Mr. Sihler if local governing bodies would be able to adopt regulations up to 50 feet if HB 30 were passed. Mr. Sihler replied Senator Doherty was correct.

Senator Tveit stated it appeared that HB 30 did not address whether the regulations would apply to renovation of existing dwellings. Senator Bianchi replied that under Senator Kennedy's amendment, remodeling and expansion of existing homes would be exempted from HB 30.

Senator McClernan asked for a definition "lake" as it pertained to HB 30. He asked if Kerr Dam would be subject to the provisions of HB 30. Senator Doherty replied Flathead Lake existed before Kerr Dam was built; the dam simply raised the water level on the lake.

Vote:

Senator Keating's motion to TABLE HB 30 CARRIED eight votes to five by roll call vote.

EXECUTIVE ACTION ON HB 365

Motion:

Senator Doherty moved to amend HB 365 (Exhibit #1).

Discussion:

Senator Doherty stated the amendment would remove Section 3 from HB 365.

Senator Swysgood stated the language in HB 365 merely codified the Board of Natural Resource's (Board) decision.

Senator Grosfield stated the amendments would do more harm than good. He said Section 3 states "water reservations have no force and effect for any class of uses precluded under Section 2". He added Section 2 states "the provisions do not apply to ground water, non-consumptive, domestic, municipal or stock water or water used in emergencies". Senator Grosfield stated Section 3 would not affect in-stream water reservations because they are non-consumptive. He concluded Section 3 would only affect diversionary reservations.

Senator Bianchi asked Mr. Sihler if Senator Grosfield was correct. Mr. Sihler replied he was unsure but added Senator Grosfield's comments "seemed like a compelling argument".

Senator Keating stated in-stream flow would be protected by retaining the language in Section 3.

Senator Bianchi asked Ms. Holly Franz from Montana Power Company to comment. Ms. Franz replied she interpreted the language to state that any one with a reservation could object to any use exempted. She said she agreed with Senator Swysgood's comments.

Senator McClernan asked Ms. Franz if the Committee should retain Section 3 to protect in-stream flow. Ms. Franz suggested the Committee delete Section 3.

Senator Weeding asked Ms. Franz if the Board would have to go to the Legislature to change an order if Section 3 were retained. She replied Senator Weeding was correct. She concluded "the Teton River Basin condition was statutory but the condition of the rest of the basin could be changed by the Board".

Senator Bianchi asked Ms. Franz if the Board was required to review water reservations every ten years. Ms. Franz replied the Board would not have the authority to change the statute.

Vote:

Senator Doherty's motion to amend CARRIED eight votes to five by roll call vote.

Motion/Vote:

Senator Keating moved HB 365 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Hockett will carry HB 365 on the Senate floor.

EXECUTIVE ACTION ON HB 395

Motion:

Senator Kennedy moved HB 395 BE CONCURRED IN.

Motion:

Senator Swysgood made a substitute motion to amend HB 395 to exempt domestic and stock water use from the bill.

Discussion:

Senator Swysgood stated he had not talked to Ms. Franz about this amendment but added the same exemption was present in the other two bills pertaining to basin closures. He said he offered the amendment for the "sake of consistency". Senator Swysgood asked Ms. Franz to comment on the proposed amendment.

Paul Sihler asked Senator Swysgood to specifically identify the kinds of water uses he wanted to exempt from HB 395. Senator Swysgood replied he wanted to incorporate the language on page 2, lines 18-19, of HB 365 into HB 395.

Ms. Franz replied she preferred that the amendment be not adopted because MPC currently objects to all those uses and deems them "consumptive". She said adoption of the amendment would not have much of a "practical effect". Ms. Franz suggested the Committee insert a coordinating instruction so that if both HB 365 and HB 395 were passed, Senator Swysgood's exemptions would apply.

Senator Swysgood stated Ms. Franz's amendment would be "selfish" and added the exemptions should be consistent throughout the basin closure bills. He noted HB 395 would close the Missouri River Basin temporarily while HB 365 and his bill would permanently close basins in their areas.

Vote:

Senator Swysgood's motion to amend HB 395 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Kennedy moved HB 395 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY. Senator Grosfield will carry HB 395 on the Senate floor.

EXECUTIVE ACTION ON HB 64**Motion:**

Senator Keating moved HB 64 BE CONCURRED IN.

Discussion:

Senator Bianchi asked Paul Sihler to explain the intent of HB 64. Mr. Sihler replied the 52nd Legislature established a \$5 per ton fee on all out-of-state waste. He said that fee becomes effective on 1 July 1993. He noted HB 64 would extend that effective date through 1 July 1995 and would require the

Department of Health and Environmental Sciences (DHES) to establish a discretionary fee between 31 cents and \$5 per ton to cover costs to DHES for regulating out-of state-waste. Mr. Sihler noted the discretionary fee would become effective 1 August 1993. He said as of 1 July 1995, the \$5 per ton fee would apply to all incinerators and landfills in the state receiving more than 25,000 tons of solid waste per year. Mr. Sihler added that the discretionary fee would apply to landfills receiving less than 25,000 tons of solid waste per year. He said the discretionary fee would allow small communities to contract with other areas to decrease their disposal costs.

Vote:

THE BE CONCURRED IN MOTION CARRIED UNANIMOUSLY. Senator Doherty will carry HB 64 on the Senate floor.

Discussion:

Senator Keating asked if the Committee could open executive action on HB 532 which related to HB 64. Senator Bianchi replied it was his understanding that additional amendments would be offered to HB 532 and asked Senator Keating to withdraw his request.

EXECUTIVE ACTION ON HB 102

Motion:

Senator Weeding moved HB 102 be amended.

Discussion:

Senator Bianchi asked someone from the Department of Natural Resources and Conservation (DNRC) to comment on HB 102.

Senator Weeding withdrew his motion to amend HB 102.

Mr. Steve Schmitz, DNRC Water Conservation Bureau Chief, stated conservation districts in the lower Missouri River area have requested that the reservation deadline be extended to 31 December 1995. He said these conservation districts asked for this extension because they were unsure if they would receive funding from HB 6. He said the amendment to HB 102 would give these conservation districts enough time to determine if they would receive funding from HB 6. Mr. Schmitz noted that HB 608, a bill pertaining to conservation districts, passed second reading with an amendment which would cut out "lower districts" from funding.

Senator Bianchi asked Mr. Schmitz to clarify his statement. Mr. Schmitz replied if HB 608, in its original form, had passed, conservation districts would have received funding.

Senator Bianchi asked Mr. Schmitz how much it would cost DNRC to extend the reservation deadline by one year. Mr. Schmitz estimated it would cost DNRC \$52,000.

Senator Tveit asked Mr. Schmitz why DNRC put conservation districts in the "position to be cut out from funding". Mr. Schmitz replied he was not involved in the ranking of projects. He said conservation districts have worked with the Long Range Planning Subcommittee in an attempt to "move their project up on the list".

Senator McClernan asked Mr. Schmitz why it would cost DNRC \$52,000 to extend the reservation deadline by one year. Mr. Schmitz replied the figure was based on the annual salaries of DNRC workers who deal with conservation districts.

Senator Weeding asked Mr. Schmitz if conservation districts could obtain money from another source. Mr. Schmitz suggested the Committee extend the deadline by one year to give conservation districts the opportunity to look into alternate funding sources.

Senator Swysgood stated he did not believe conservation districts had a chance in obtaining funding because the present funding mechanism was so "iffy". He said an extension would not remedy this problem.

Senator Bianchi stated he agreed with Senator Swysgood.

Motion:

Senator Tveit moved HB 102 be amended to extend the reservation deadline by one year.

Discussion:

Senator Weeding stated he supported the motion to amend HB 102 and hoped the conservation districts would receive funding.

Senator Grosfield stated it was possible the House would accept the one year extension. He said he agreed with Senator Swysgood that funding for the conservation districts was questionable. He said he would prefer to "kill the bill and hope the conservation districts can do the best they can with what they have got".

Senator Bianchi asked Senator Grosfield if he wanted to kill the bill or the amendment. Senator Grosfield stated he preferred to kill the amendment.

SENATE NATURAL RESOURCES COMMITTEE

March 23, 1993

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Vote:

Senator Tveit's motion to amend HB 102 FAILED with Senators Doherty, Tveit, Weeding and Weldon voting YES.

Motion/Vote:

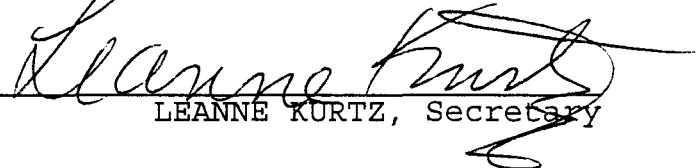
Senator Weeding moved HB 102 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Weeding will carry HB 102 on the Senate floor.

ADJOURNMENT

Adjournment: 6:30 p.m.



SENATOR DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/rc

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES

DATE 3-23-93

NAME	PRESENT	ABSENT	EXCUSED
CHAIR BIANCHI	✓		
VICE-CHAIR HOCKETT	✓		
SEN. BARTLETT	✓		
SEN. DOHERTY	✓		
SEN. BROGFIELD	✓		
SEN. KEATING	✓		
SEN. KENNEDY	✓		
SEN. MCCLENNAN	✓		
SEN. SWIFT	✓		
SEN. SNYDER	✓		
SEN. TVEIT	✓		
SEN. WEDDING	✓		
SEN. WELDON	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 64 (first reading copy -- blue), respectfully report that House Bill No. 64 be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

AM Amd. Coord.

Daherty

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 102 (first reading copy -- blue), respectfully report that House Bill No. 102 be concurred in.

Signed: _____

Don Bianchi
Senator Don Bianchi, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 365 (first reading copy -- blue), respectfully report that House Bill No. 365 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 8 and 9.

Strike: "NULLIFYING" on line 8 through ";" on line 9

2. Page 3, lines 6 through 12.

Strike: section 3 in its entirety

Renumber: subsequent sections

3. Page 3, lines 14 and 17.

Strike: "THROUGH 3"

Insert: "and 2"

-END-

AM Amd. Coord.

Hockett

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 395 (first reading copy -- blue), respectfully report that House Bill No. 395 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 6.

Following: "WATER USE,"

Insert: "DOMESTIC, MUNICIPAL, OR STOCK USE,"

2. Page 2.

Following: line 17

Insert: "(c) an application for a permit to appropriate water for domestic, municipal, or stock use;"

Renumber: subsequent subsections

-END-

AM Amd. Coord.

Grosfield

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 488 (first reading copy -- blue), respectfully report that House Bill No. 488 be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

Swift
Amd. Coord.

Swift

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 503 (first reading copy -- blue), respectfully report that House Bill No. 503 be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

AM Amd. Coord.

Grosfield

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 30

DATE 3-23-93 TIME 5:40 A.M. P.M.

NAME	YES	NO
CHAIR BIANCHI		X
VICE-CHAIR HOCKETT	X	
SEN. BARTLETT		X
SEN. DOHERTY		X
SEN. GROSFIELD	X	
SEN. KEATING	X	
SEN. KENNEDY	X	
SEN. MCCLENNAN	X	
SEN. SWIFT	X	
SEN. SNYGGOOD	X	
SEN. TWEIT	X	
SEN. WEDDING		X
SEN. WILDON		X

LEANNE WETZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR KEATING MOVED HB 30 BE TABLED.

MOTION CARRIED EIGHT VOTES TO FIVE.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 305

DATE 3-23-93 TIME _____ A.M. P.M.

NAME	YES	NO
CHAIR BIANCHI	X	
VICE-CHAIR HOCKETT	X	
SEN. BARTLETT	X	
SEN. DOHERTY	X	
SEN. GROSFIELD		X
SEN. KEATING		X
SEN. KENNEDY	X	
SEN. MCCLENNAN	X	
SEN. SWIFT		X
SEN. SWYGGOOD		X
SEN. TWEIT		X
SEN. WEDDING	X	
SEN. WELDON	X	

JEANNE KURTZ

SECRETARY

SENATOR BIANCHI

CHAIR

MOTION: SENATOR DOHERTY MOVED HB 305 BE AMENDED. MOTION
CARRIED EIGHT VOTES TO FIVE.

Amendments to House Bill No. 365
Third Reading Copy

Requested by Senator Doherty
For the Committee on Natural Resources

Prepared by Paul Sihler
March 23, 1993

1. Title, lines 8 and 9.

Strike: "NULLIFYING" on line 8 through ";" on line 9

2. Page 3, lines 6 through 12.

Strike: section 3 in its entirety

Renumber: subsequent sections

3. Page 3, lines 14 and 17.

Strike: "THROUGH 3"

Insert: "and 2"