

## **MINUTES**

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

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on March 25, 1993, at 12:05 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 401

#### **EXECUTIVE ACTION ON SB 401**

**Discussion:**

Senator Doherty, SB 401 subcommittee chair, stated members of the subcommittee had reached consensus on a number of issues pertaining to SB 401 and had drafted amendments to that effect. He noted, however, that the subcommittee had not reached a consensus on defining "nonsignificant degradation" or "mixing zones" and had not agreed upon a change to existing policy language.

Senator Bianchi reminded the Committee that Senators Doherty, Swift, Tveit and Weeding comprised the subcommittee on SB 401.

**Motion:**

Senator Weeding moved the Committee adopt the consensus amendments to SB 401 (Exhibit #1).

**Discussion:**

Paul Sihler stated the consensus amendments clarified existing language.

Senator Bianchi asked Senator Weeding if the subcommittee had decided to address mixing zones as provided in the fourth amendment. Senator Weeding replied the amendment pertaining to mixing zones had not been changed from the time it was initially introduced. Senator Doherty stated all subcommittee members agreed that the language in the consensus amendment was preferable to current language.

Senator Bianchi asked if the fourth amendment should be deleted from the consensus amendments until an appropriate definition for mixing zones could be agreed upon. Senator Weeding replied the language should be retained because he expected an amendment would be offered at a later date to strike that language.

**Vote:**

Motion to accept the consensus amendments (Exhibit #1) CARRIED UNANIMOUSLY.

**Motion:**

Senator Doherty moved the Committee amend SB 401 (Exhibit #2).

**Discussion:**

Senator Keating stated he interpreted the amendment to read that a company could not reapply for a permit until the initial permitting period of five years had expired. He asked Senator Doherty if his amendment would require a company to shut down its operations until a new permit was granted. Senator Doherty replied no and added the intent of the amendment was to clarify that the permit would last for five years. He said he would be receptive to any suggestions to clarify this intent.

Senator Bianchi asked Paul Sihler if there was a "cleaner way" to state Senator Doherty's intent. Mr. Sihler replied the Air

Quality Bureau had devised similar language for SB 318 which would allow companies to reapply for a permit.

Senator Grosfield stated it might be best to retain the current language pertaining to reapplication for permits unless Senator Doherty did not agree with existing language. Senator Doherty replied it was his understanding that some permits granted would extend five years beyond the end of the life of a mine. He said any special permit to be exempted from nondegradation should not last for more than five years.

Senator Grosfield stated current language requires the Department of Health and Environmental Sciences (DHES) to review and/or modify permits every five years. Senator Doherty replied the language in Section 6 does not require permit reapplication. He said it only requires DHES to review the permit authorizations. Senator Doherty added he did not trust DHES and would prefer an "automatic trigger" to ensure review of the application.

Senator Swysgood asked Senator Doherty if an amendment pertaining to this review process had been discussed and agreed upon during the subcommittee meeting. Senator Doherty stated he did not remember any such amendment. Senator Weeding stated he agreed with Senator Doherty but asked Dennis Olsen from Northern Plains Resource Council (NPRC) to comment. Mr. Olsen stated NPRC objected to the current language regarding review of the permitting process.

Senator Bartlett asked Senator Doherty if the five year time period identified on page eleven would conflict with the three year time period specified on page eight. Senator Doherty replied he did not think so, but added the subcommittee had not specifically examined the language to which Senator Bartlett had referred. Senator Keating noted that the time period specified in Section 3 might not apply to the time period in Section 4.

Senator Keating asked how much a permit application cost. He said constant review of the application was acceptable but added that mandatory reapplication every five years would be expensive for companies. Senator Weeding replied reapplication for permits was necessary so DHES would have the authority to require that mining companies keep up with the latest technology in combatting degradation. He said a review every five years was not unreasonable.

Senator Swysgood stated there was a concern that current language gave DHES the authority to revoke or suspend a permit at any time if the permittee was determined to be in noncompliance.

Senator Bianchi asked if DHES could require companies to adopt the newest technology to combat degradation. Senator Swysgood replied he was not sure but added he assumed so.

Senator Keating noted line 10, page 11 states that DHES may revoke a permit if the objectives of the policy, not the objectives of the permit, were being violated. He said the objectives of the policy are established by the State Board of Health.

Senator Hockett asked Senator Doherty if DHES had issued a permit to extend five years beyond the life of a particular project. Senator Doherty replied yes.

Senator Doherty asked a DHES representative to confirm or deny Senator Doherty's statement. Mr. Dan Fraser, DHES, stated the first hard rock mining degradation authorization was given to an East Boulder mine and did extend five years past the life of the mine.

Senator Hockett asked if any other projects in the state had a permit similar to the one issued to East Boulder. Mr. Fraser replied permits issued for public treatment works have no limit but added he thought the permit issued to the East Boulder mine was the only one of its kind.

Senator Hockett asked Mr. Fraser if there would be any opportunity to review the East Boulder operation before the five year period after which the mine had closed. Mr. Fraser replied the mine would be reviewed on an ongoing basis to make sure it was in compliance with the permit authorization.

Senator Hockett asked Mr. Fraser if the East Boulder mine would be required to constantly upgrade their operations as a condition of their permit. Mr. Fraser replied no.

Senator Hockett asked Mr. Olsen to comment. Mr. Olsen replied the Niranda project was granted a permit to extend five years beyond the life of the mine.

Senator Weeding asked Mr. Fraser how many "perpetual permits" had been issued by DHES. Mr. Fraser replied he was unsure but added he did not think there were many.

Senator Doherty stated he had revised his amendment so it would read, "the holder of the authorization may apply for reauthorization under the provisions of subsection 2". He said this would allow companies to apply for reauthorization without interrupting their operations.

Senator Keating asked if companies would be required to go through the authorization process every five years to obtain an extension on their permit. Senator Doherty replied companies would be required to go through the entire process. He reminded the Committee that these operators have been given special exemption to degrade water in their area.

Senator Kennedy asked how much a permit application would cost if

it had to be renewed every five years. Mr. Fraser replied he did not know an exact figure but estimated the cost for an environmental impact statement (EIS) assessing the petition and permit could run as high as \$1 million. He said Senator Doherty's suggestion for reapplication every five years would probably not be as inclusive as the initial permitting review process.

Senator Doherty asked Mr. Fraser how much it would cost to apply for a discharge permit. Mr. Fraser replied he did not think it would cost much.

Senator Weeding asked Ms. Jamison to comment. Ms. Jamison stated the \$1 million EIS cost would help cover the expense associated with processing the mining permit. She said the fee required for subsequent review could be lessened but reminded the Committee that these permits grant mining operations exemption from nondegradation regulations.

Mr. Sihler stated there appeared to be some confusion regarding subsection 2. He suggested the Committee strike the provisions of subsection 2 so the second sentence of Senator Doherty's amendment would read "the holder of the authorization may apply for reauthorization under this section".

**Vote:**

Senator Doherty's motion to amend SB 401 CARRIED with Senators Grosfield, Keating, Kennedy and Tveit voting NO.

**Motion:**

Senator Swift moved to amend SB 401 (Exhibit #3).

**Discussion:**

Senator Swift explained the amendments. He said the amendments "expanded on the idea of water quality".

Senator Bartlett asked Mr. Fraser if current water quality standards would be affected by Senator Swift's amendments. Mr. Fraser replied DHES supported amendment #2 which would clarify the definition of water quality as it applied to current law. He said the other amendments "seemed to change the way DHES looks at degradation". Mr. Fraser said DHES wanted to retain the authority to examine degradation on a "parameter by parameter basis".

Senator Bianchi asked Mr. Fraser if DHES opposed amendment #1. Mr. Fraser replied yes.

Senator Doherty asked Mr. Fraser what bodies of water would be

excluded in Senator Swift's definition of "water quality". Mr. Fraser replied all high quality waters would be excluded. He said the policy would apply to "anything drinkable".

**Motion/Vote:**

Senator Weeding made a substitute motion to segregate amendment #2 from Senator Swift's set of amendments. MOTION CARRIED UNANIMOUSLY.

**Motion/Vote:**

Senator Swift moved the Committee adopt amendments #1, #3 and #4. Motion FAILED six votes to seven by roll call vote.

**Motion/Vote:**

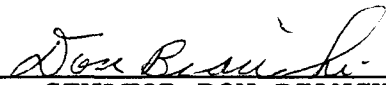
Senator Swift moved the Committee adopt amendment #2. Motion FAILED six votes to seven by roll call vote.

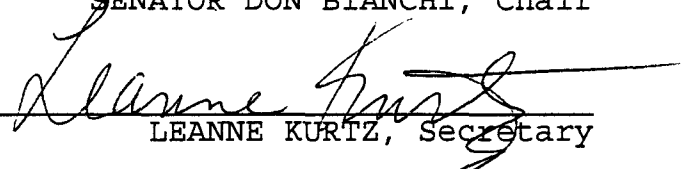
**Discussion:**

Senator Bianchi stated the Committee would continue executive action on SB 401 at its next meeting.

**ADJOURNMENT**

Adjournment: 1:05 p.m.

  
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SENATOR DON BIANCHI, Chair

  
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LEANNE KURTZ, Secretary

DB/rc

# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 3-25-93

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

## ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. SB 401

DATE 3-25-93 TIME 1:00 A.M. (P.M.)

NAME

YES NO

[illegible]

LEANNE KURTZ

**SECRETARY**

SENATOR BIANCHI

## CHAIR

**MOTION:** SENATOR SWIFT MOVED THE COMMITTEE ADOPT AMENDMENTS  
#1, #3 and #4. MOTION FAILED SIX VOTES TO SEVEN.



# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. SB 401

DATE 3-25-93 TIME 1:00 A.M. P.M.

NAME	YES	NO
CHAIR BIANCHI		X
VICE-CHAIR HOCKETT		X
SEN. BARTLETT		X
SEN. DOHERTY		X
SEN. GROSSFIELD	X	
SEN. KEATING	X	
SEN. KENNEDY		X
SEN. MCCLERNAN	X	
SEN. SWIFT	X	
SEN. SWYSGOOD	X	
SEN. TVEIT	X	
SEN. WEEDING		X
SEN. WELDON		X

LEANNE KURTZ  
SECRETARY

SENATOR BIANCHI  
CHAIR

MOTION: SENATOR SWIFT MOVED THE COMMITTEE ADOPT  
AMENDMENT #2. MOTION FAILED SIX VOTES TO SEVEN.

Amendments to Senate Bill No. 401  
First Reading Copy

Requested by Senator Weeding  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 25, 1993

SENATE NATURAL RESOURCES  
EXHIBIT NO. 1  
DATE 3/25/93  
BILL NO. SB 401

1. Page 1, lines 19 and 20.

Strike: "gives" on line 19

Insert: "requires"

Strike: "authority" on line 20

2. Page 4, line 18.

Following: "submitted"

Insert: "oral or written"

3. Page 8, line 16.

Following: "the"

Strike: "use"

Insert: "granting"

4. Page 8, lines 16 and 17.

Following: "zones" on line 16

Strike: the remainder of line 16 and line 17 in their entirety

Insert: "requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:"

5. Page 10, line 12.

Page 10, line 20

Following: "economically"

Insert: ", environmentally,"

6. Page 10, line 16.

Following: "waters"

Insert: "and exceeds the costs to society of allowing degradation of high-quality waters"

7. Page 11, line 1.

Following: ".\_"

Insert: "The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation."

OVER

Amendments to Senate Bill No. 401  
First Reading Copy

Requested by Sen. Doherty  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 23, 1993

1. Page 11, lines 7 through 11.

Strike: "Every" on line 7 through "authorization" on line 11

Insert: "The department may issue an authorization to degrade high-quality waters under the provisions of this section for a period not to exceed 5 years. When the authorization expires, the holder of the authorization may reapply for an authorization under the provisions of subsection (2)"

Amendments to Senate Bill No. 401  
First Reading Copy

Requested by Senator Swift  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 25, 1993

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 3/25/93

BILL NO. SB 401

1. Page 3, line 19.  
Following: "waters"  
Strike: "for a parameter"

2. Page 4, lines 10 through 12.  
Following: "state waters" on line 10  
Strike: the remainder of lines 10 through 12 in their entirety  
Insert: "in which water quality exceeds the level necessary for recreation or necessary to support the propagation of fish, shellfish, and wildlife or waters that are suitable for human consumption. All state waters are high-quality waters unless classified by the board as a class that does not support these uses."

3. Page 5, lines 14 through 16.  
Strike: subsection (16) in its entirety  
Re-number: subsequent subsections

4. Page 9, line 9.  
Following: "quality"  
Strike: "for any parameter"