

## **MINUTES**

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

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

**Call to Order:** By Chair Bianchi, on March 29, 1993, at 1:50 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 442, HB 454, HB 567

#### **EXECUTIVE ACTION ON HB 442**

##### **Motion:**

Senator Doherty moved HB 442 be amended (Exhibit #1).

##### **Discussion:**

Senator Doherty stated the amendment he offered contained a coordination instruction which would nullify Section 3 of SB 320

if both HB 442 and HB 320 were passed.

Paul Sihler stated the House had passed HB 320. He distributed copies of SB 320 Section 3 (Exhibit #2) so Committee members could reference both bills.

**Motion:**

Senator Grosfield made a substitute motion to amend HB 442 (Exhibit #3).

**Discussion:**

Senator Grosfield stated his amendment would do the opposite of Senator Doherty's amendment. He said his amendment contained a coordination instruction which would make Section 5 of HB 442 null and void if both HB 442 and SB 320 were passed. He said this amendment was offered by the bill's sponsor, Representative Knox, and added the Committee should "go with the wishes of the sponsor".

Senator Doherty stated he found the language added by the House Committee on Business and Economic Development to be "totally unacceptable, vague and extreme". He said the language adopted by the House amounted to "an invitation to more litigation". Senator Doherty concluded the language in HB 442 would give the Department of State Lands (DSL) greater discretion.

**Vote:**

Senator Grosfield's substitute motion to amend HB 442 FAILED by roll call vote six votes to seven.

**Discussion:**

Senator Grosfield stated he would support Senator Doherty's motion to amend HB 442 because the two bills had to be coordinated. He suggested the Committee examine both SB 320 and HB 442 in anticipation of a conference committee to resolve differences in philosophy regarding a coordination instruction.

**Vote:**

Senator Doherty's motion to amend HB 442 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Doherty moved HB 442 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 454

Motion:

Senator Doherty moved to amend HB 454 (Exhibit #4).

Discussion:

Senator Doherty reminded the Committee that HB 454 would allow the Billings landfill to raise their annual tonnage limit for solid waste from 200,000 to 300,000 without being designated as a megalandfill. He said his amendment would decrease the annual tonnage limit from 300,000 to 250,000. He said his amendment would act as an incentive for Billings to initiate waste recycling and reduction programs.

Senator Bianchi stated he had worked at length on HB 442 to come up with a viable solution. He said the statutes, as written, were for a new landfill, not an existing one. He said he supported Senator Doherty's amendment, but added the Committee should consider reviewing existing statutes.

Senator Keating stated the 300,000 tonnage limit was a figure calculated by the Billings landfill operators. He said Senator Doherty's figure of 250,000 was an arbitrary compromise. He added that accepting the 300,000 tonnage limit would not lead to "a proliferation of megadumps as they are not economically feasible at present". Senator Keating noted that the Billings landfill contracts with a number of surrounding counties to accept their solid waste. He said the Billings landfill would be forced to cancel these contracts if the tonnage limit was not increased. He concluded the Committee should "let the Billings landfill do its job in providing an important service to the Billings community".

Senator Weldon asked Senator Keating how many tons per year the Billings landfill currently received. Senator Keating replied he thought it received close to 200,000 tons of solid waste per year.

Senator Weldon asked Senator Keating when the Billings landfill anticipated it would reach the 300,000 tonnage limit. Senator Keating replied he was not present during the hearing on HB 454 but added the 300,000 tonnage limit was designated so the Billings landfill "would not run up against a lid".

Senator Weldon stated Senator Doherty's amendment would give the Billings landfill some "breathing room while also encouraging it to examine recycling and reduction options".

Senator Keating stated "it is up to the people who dump garbage to do the recycling". He said two or three recycling centers already exist in Billings. He added that the Billings landfill provided an important service to communities outside of Billings and said he "did not understand why the Legislature would want to put pressure on the Billings landfill when it is doing something beneficial for the state".

Senator Keating asked why the 300,000 tonnage limit was unacceptable to Committee members. Senator Weeding replied he was uncomfortable with lowering the standards set during the last legislative session for designating megalandfills.

Senator Keating stated there was a "very reasonable purpose" for increasing the Billings landfill tonnage limit. He said doing so would allow a metropolitan area to work within the statutes to "reasonably dispose of waste in a manner beneficial to the people of Montana".

Senator Grosfield recalled that the permitting process for becoming a megalandfill was lengthy and strenuous. He said there was "no mischief in raising the tonnage limit to 300,000". He concluded recycling programs should be promoted but added the Committee should not "put the squeeze on the Billings landfill".

Senator Tveit stated the start-up costs associated with opening a landfill was cost prohibitive for small towns. He said the Billings landfill is well-monitored and safe and should be given the tonnage limit increase to 300,000 tons.

Vote:

Senator Doherty's motion to amend HB 454 FAILED by roll call vote six votes to seven.

Motion:

Senator Keating moved HB 454 BE CONCURRED IN.

Discussion:

Senator Doherty stated he made the motion to amend HB 454 in order to encourage the City of Billings to "get serious" about recycling and waste reduction. He said representatives from the Billings landfill should "take a page from Stillwater County" in waste reduction programs.

Senator Keating stated if Senator Doherty would put that request

in writing, he would take it to the Yellowstone County and Billings City Commissioners.

**Vote:**

THE BE CONCURRED IN MOTION CARRIED UNANIMOUSLY.

**Discussion:**

Senate Majority Leader Jergeson entered the room and requested all Finance and Claims Committee members be excused so the Committee could open executive action on two bills. Senator Bianchi called a short recess.

**EXECUTIVE ACTION ON HB 567**

**Discussion:**

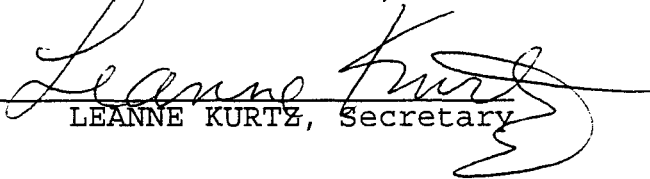
Senator Grosfield stated he intended to offer a number of amendments to HB 567 and added he did not want to miss any of the day's floor session as he had two bills up for second reading.

Senator Keating stated he agreed with Senator Grosfield and requested the Committee be given "some time" to think about HB 567.

**ADJOURNMENT**

**Adjournment:** 2:35 p.m.

  
\_\_\_\_\_  
SENATOR DON BIANCHI, Chair

  
\_\_\_\_\_  
LEANNE KURTZ, Secretary

DB/rc

# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 3/29

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

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 29, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 442 (third reading copy -- blue), respectfully report that House Bill No. 442 be amended as follows and as so amended be concurred in.

Signed: *Don Bianchi*  
Senator Don Bianchi, Chair

That such amendments read:

1. Page 21.  
Following: line 19  
Insert:

"NEW SECTION. Section 9. Coordination instruction. If [this act] is passed and if it includes [section 5] that affects the amendment or revision of operating permits, then [section 3 of Senate Bill No. 320] is void."

-END-

*AW* Amd. Coord.  
*W* Sec. of Senate

*Bianchi*  
Senator Carrying Bill

701524SC.SAN

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 29, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 454 (third reading copy -- blue), respectfully report that House Bill No. 454 be concurred in.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

AN Amd. Coord.  
ON Sec. of Senate

Forester  
Senator Carrying Bill

701527SC.San



# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 442

DATE 3-29-93 TIME 1:57 A.M. P.M.

NAME	YES	NO
CHAIR BIANCHI		✓
VICE-CHAIR HOCKETT		✓
SEN. BARTLETT		✓
SEN. DOHERTY		✓
SEN. GROSFIELD	✓	
SEN. KEATING	✓	
SEN. KENNEDY		✓
SEN. McCLENNAN	✓	
SEN. SWIFT	✓	
SEN. SWYSGOOD	✓	
SEN. TWEIT	✓	
SEN. WEDDING		✓
SEN. WELDON		✓

LEANNE KURTZ  
SECRETARY

SENATOR BIANCHI  
CHAIR

MOTION: SENATOR GROSFIELD MADE A SUBSTITUTE MOTION TO AMEND HB 442 (EXHIBIT #3). MOTION FAILED SIX VOTES TO SEVEN.

## ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 454

DATE 3-29-93 TIME 1:35 A.M. P.M.

[illegible]

LEANNIE KURTZ  
SECRETARY

SENATOR BIANCHI  
CHAIR

MOTION: SENATOR DOHERTY MOVED HB 424 BE AMENDED  
(EXHIBIT #4). MOTION FAILED SIX VOTES TO SEVEN.

Amendments to House Bill No. 442  
Third Reading Copy

Requested by Senator Doherty  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 29, 1993

1. Page 21.  
Following: line 19  
Insert:

"NEW SECTION. Section 9. Coordination instruction. If  
[this act] is passed and if it includes [section 5] that affects  
the amendment or revision of operating permits, then [section 3  
of Senate Bill No. 320] is void."

SENATE NATURAL RESOURCES  
EXHIBIT NO. 1  
DATE 3/29/93  
BILL NO. HB 442

EXHIBIT NO. 2DATE 3/29/93BILL NO. HB 442

SB 0320/04

1 COURT MAY AWARD COSTS OF LITIGATION, INCLUDING REASONABLE  
 2 ATTORNEY AND EXPERT WITNESS FEES, TO A PREVAILING OR  
 3 SUBSTANTIALLY PREVAILING PARTY WHENEVER, IN ITS DISCRETION,  
 4 THE COURT DETERMINES THAT THE UNSUCCESSFUL PARTY IS  
 5 ACTION WAS PRIVOLOS AND WITHOUT MERIT AN AWARD IS  
 6 APPROPRIATE.

7 NEW SECTION. Section 3. Amendment of revision of TO  
 8 operating permits. (1) During the term of an operating  
 9 permit issued under this part, an operator may apply for an  
 10 amendment or revision to the permit. The operator may not  
 11 apply for an amendment to delete disturbed acreage except  
 12 following reclamation, as required under 82-4-336, and bond  
 13 release for the disturbance, as required under 82-4-338.

14 (2) THE DEPARTMENT MAY BY RULE ESTABLISH CRITERIA FOR  
 15 THE CLASSIFICATION OF AMENDMENTS AS MAJOR OR MINOR. THE  
 16 DEPARTMENT SHALL ADOPT RULES ESTABLISHING REQUIREMENTS FOR  
 17 THE CONTENT OF APPLICATIONS FOR MAJOR AND MINOR AMENDMENTS  
 18 AND THE PROCEDURES FOR PROCESSING MINOR AMENDMENTS.

19 (a)(3) Applications for major amendments must be  
 20 processed pursuant to 82-4-335 82-4-337.

21 (b) For the purposes of this section, major amendments  
 22 are those amendments that significantly affect the human  
 23 environment. Minor amendments are those amendments that will  
 24 not significantly affect the human environment. THE  
 25 DEPARTMENT SHALL REVIEW AN APPLICATION FOR A MINOR AMENDMENT

1 AND PROVIDE A NOTICE OF REVISION ON THE ADEQUACY OF THE  
 2 APPLICATION WITHIN 45 DAYS OF RECEIPT OF THE APPLICATION.  
 3 (c) The department shall may by rule establish criteria  
 4 for classification of amendments as major and minor. The  
 5 rules must establish requirements for the content of  
 6 applications for amendments and revisions and procedures for  
 7 the processing of minor amendments.

8 (3) Revisions are categorically exempt from the  
 9 provisions of the Montana Environmental Policy Act unless  
 10 the department determines that the revision will result in a  
 11 significant environmental impact that was not previously  
 12 analyzed in an environmental review document. The department  
 13 determination required under this subsection must be in  
 14 writing and be based on substantial and credible evidence.  
 15 (a) AN APPLICATION FOR A MAJOR REVISION THAT MAY HAVE A  
 16 SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT  
 17 IS SUBJECT TO THE PROVISIONS OF 82-4-337.

18 (b) THE BOARD SHALL CAUSE AN APPLICATION FOR A MAJOR  
 19 REVISION THAT WOULD NOT RESULT IN A SIGNIFICANT IMPACT ON  
 20 THE QUALITY OF THE HUMAN ENVIRONMENT TO BE REVIEWED FOR  
 21 COMPLETENESS WITHIN 30 DAYS OF RECEIPT. AN APPLICATION IS  
 22 CONSIDERED COMPLETE UNLESS THE APPLICANT IS NOTIFIED OF A  
 23 DEFICIENCY WITHIN THE 30 DAY PERIOD. THE BOARD SHALL REVIEW  
 24 THE ADEQUACY OF THE PROPOSED MAJOR REVISION WITHIN 90 DAYS  
 25 OF THE DETERMINATION THAT THE APPLICATION IS COMPLETE OR

1 WITHIN 120 DAYS OF RECEIPT OF THE APPLICATION IF THE BOARD  
 2 DOES NOT NOTIFY THE APPLICANT OF A DEFICIENCY IN THE  
 3 APPLICATION;

4 (E)(4) THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A  
 5 MINOR REVISION AMENDMENT AND PROVIDE A NOTICE OF DECISION ON  
 6 THE ADEQUACY OF THE APPLICATION WITHIN 15 30 DAYS. IF THE  
 7 DEPARTMENT DOES NOT RESPOND WITHIN 15 30 DAYS, THEN THE  
 8 PERMIT IS REVISED IN ACCORDANCE WITH THE APPLICATION. WITHIN  
 9 THE 15-DAY PERIOD, THE DEPARTMENT MAY NOTIFY THE APPLICANT  
 10 THAT THE REVISION APPLIED FOR IS A MAJOR REVISION AND IS  
 11 SUBJECT TO THE PROVISIONS OF SUBSECTION (3)(A).

12 (5) THE DEPARTMENT IS NOT REQUIRED TO PREPARE AN  
 13 ENVIRONMENTAL ASSESSMENT OR AN ENVIRONMENTAL IMPACT  
 14 STATEMENT FOR THE FOLLOWING CATEGORIES OF ACTION:

15 (A) ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION AS  
 16 DEFINED BY RULE OR JUSTIFIED BY A PROGRAMMATIC REVIEW  
 17 PURSUANT TO TITLE 75, CHAPTER 1;

18 (B) ADMINISTRATIVE ACTIONS, SUCH AS ROUTINE, CLERICAL,  
 19 OR SIMILAR FUNCTIONS OF A DEPARTMENT, INCLUDING BUT NOT  
 20 LIMITED TO ADMINISTRATIVE PROCUREMENT, CONTRACTS FOR  
 21 CONSULTING SERVICES, AND PERSONNEL ACTIONS;

22 (C) REPAIR OR MAINTENANCE OF THE PERMITTEE'S EQUIPMENT  
 23 OR FACILITIES;

24 (D) INVESTIGATION AND ENFORCEMENT ACTIONS, SUCH AS DATA  
 25 COLLECTION, INSPECTION OF FACILITIES, OR ENFORCEMENT OF

1 ENVIRONMENTAL STANDARDS;

2 (E) MINISTERIAL ACTIONS, SUCH AS ACTIONS IN WHICH THE  
 3 AGENCY DOES NOT EXERCISE DISCRETION, BUT ACTS UPON A GIVEN  
 4 STATE OF FACTS IN A PRESCRIBED MANNER;

5 (F) APPROVAL OF ACTIONS THAT ARE PRIMARILY SOCIAL OR  
 6 ECONOMIC IN NATURE AND THAT DO NOT OTHERWISE AFFECT THE  
 7 HUMAN ENVIRONMENT;

8 (G) CHANGES IN A PERMIT BOUNDARY THAT INCREASE  
 9 DISTURBED ACRES THAT ARE INSIGNIFICANT IN IMPACT RELATIVE TO  
 10 THE ENTIRE OPERATION, PROVIDED THAT THE INCREASE IS LESS  
 11 THAN 10 ACRES OR 5% OF THE PERMITTED AREA, WHICHEVER IS  
 12 LESS; AND

13 (H) CHANGES IN AN APPROVED OPERATING PLAN OR  
 14 RECLAMATION PLAN FOR AN ACTIVITY THAT WAS PREVIOUSLY  
 15 PERMITTED, PROVIDED THAT THE IMPACTS OF THE CHANGE WILL BE  
 16 INSIGNIFICANT RELATIVE TO THE IMPACTS OF THE ENTIRE  
 17 OPERATION AND THERE IS LESS THAN 10 ACRES OF ADDITIONAL  
 18 DISTURBANCE.

19 **Section 4.** Section 82-4-303, MCA, is amended to read:

20 **"82-4-303.** Definitions. As used in this part, unless  
 21 the context indicates otherwise, the following definitions  
 22 apply:

23 (1) "Abandonment of surface or underground mining" may  
 24 be presumed when it is shown that continued operation will  
 25 not resume.

Amendments to House Bill No. 442  
Second Reading Copy

Requested by Rep. Knox  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 17, 1993

1. Page 21.

Following: following line 19

Insert:

"NEW SECTION. Section 9. Coordination instruction.

If Senate Bill No. 320 is passed and approved and if it  
- includes a section that affects the amendment or  
revision of operating permits, then [section 5 of this  
act] is void."

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 3/29/93

BILL NO. HB442

Amendments to House Bill No. 454  
Third Reading Copy

Requested by Sen. Doherty  
For the Committee on Natural Resources

Prepared by Todd Everts  
March 29, 1993

1. Page 4, line 2.  
Page 5, line 16.  
Page 8, line 17.  
Strike: "300,000"  
Insert: "250,000"

SENATE NATURAL RESOURCES  
EXHIBIT NO. 4  
DATE 3/29/93  
BILL NO. HB 454

SENATE NATURAL RESOURCES COMMITTEE

Schedule as of March 29, 1993

All Committee Hearings will be held at 3:00 p.m. in Room 405 unless otherwise noted.

support if amended, otherwise oppose

EXECUTIVE ACTION PLANNED FOR 1:00 ON 3/29

HB 442 Rep. Knox

GENERALLY REVISING THE METAL MINE RECLAMATION ACT support w or w/o amndts

HB 454 Rep. Vogel

AN ACT AMENDING THE MEGALANDFILL SITING ACT. support amdt 300,000 → 250,000

HB 567 Rep. Foster

COMMERCIAL MEDICAL WASTE INCINERATOR PERMITTING support, do pass

BILL TO BE HEARD 04/05/93

SJR 28 Sen. Doherty

LEGISLATIVE AUDIT REQUEST - HARD ROCK BUREAU support as amended w/ Bartlett amndts

BILLS WAITING FOR EXECUTIVE ACTION

HB 442 Rep. Knox

GENERALLY REVISING THE METAL MINE RECLAMATION ACT support even if Bartlett amndts are not adopted, still support

HB 454 Rep. Vogel

AN ACT AMENDING THE MEGALANDFILL SITING ACT

HB 567 Rep. Foster

COMMERCIAL MEDICAL WASTE INCINERATOR PERMITTING

HB 280 Rep. Gilbert

SUBDIVISION REVISION

i oppose the bill,  
i support a tabling motion or  
a do not pass motion.  
i oppose a do pass motion or to take it up.

3/29/93

Steve Doherty