

MINUTES

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

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 30, 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: HB 567, HB 280

EXECUTIVE ACTION ON HB 567

Motion:

Senator Grosfield moved HB 567 be amended (Exhibit #1).

Discussion:

Senator Grosfield stated his amendments would do a number of things including defining "best available control technology". He asked Paul Sihler to comment on the problems he experienced with the current definition.

Mr. Sihler stated the Department administrative rules currently defined "best available control technology" in accordance with the definition in the Code of Federal Regulations (CFR). He noted the administrative rules definition was not written in "plain English", so Legislative Council rewrote the definition. Mr. Sihler stated the rewritten definition did not meet with the Department of Health and Environmental Sciences (DHES) approval because, "while they did not completely understand the former definition, they knew how to interpret it". He said Legislative Council instead decided to cite the CFR reference only.

Senator Bianchi asked Mr. Sihler to read the CFR definition for "best available control technology". Mr. Sihler suggested someone from the Air Quality Bureau explain the definition. Ms. Jan Sensibaugh, DHES Air Quality Bureau, stated DHES had adopted the federal definition of "best available control technology". She said that to the layperson, the definition is "unintelligible because it is all encompassing". Ms. Sensibaugh noted, however, that air quality professionals and regulated industry have interpreted the federal definition for years. She concluded "best available control technology" is defined only in the administrative rules and added DHES would prefer that the Committee retain the CFR reference.

Senator Weeding asked Ms. Sensibaugh if the CFR definition of "best available control technology" cited specific levels of tolerable emissions. Ms. Sensibaugh replied no but added that regulated industries are required to use the best available control technology with regard to the control of emission standards for all pollutants.

Senator Weeding asked Ms. Sensibaugh if the Committee would be lowering air quality standards if it adopted the CFR definition. Ms. Sensibaugh replied no and added adoption of the CFR regulation would in no way affect the manner in which DHES currently operates.

Senator Grosfield stated two separate standards currently exist for regulating emissions; the lowest achievable emission rate (LURE) and the best available control technology (BACT). He said the third amendment would require commercial medical waste incinerators to achieve LURE "except when best available control technology is adequate to prevent exceeding the allowable daily intake standards, as determined pursuant to subsection (3), for dioxins, furans and heavy metals". He said this amendment would require commercial medical waste incinerators to use equipment to maintain the lowest achievable emission rate except when the best

available control technology is adequate. Senator Grosfield stated BACT is a less stringent but adequate standard.

Senator McClernan asked Senator Grosfield if LURE was a legally defined concept. Senator Grosfield replied LURE was defined on page 4, line 9 of HB 567. Mr. Sihler stated the LURE definition was similar to the CFR definition for BACT but less confusing.

Senator Weeding asked Senator Grosfield if his amendments would encourage the use of the "cheapest technology" available instead of the best technology available. Senator Grosfield stated that whatever language is adopted, it would still be required to meet the provisions of subsection 3.

Senator Weeding asked if the Montana Air Quality Act contained provisions that specified the number of violations acceptable in the course of one year. Ms. Sensibaugh replied the Montana Air Quality Act allows for 18 exceedences of sulfur dioxide standards within the course of a year.

Senator Bartlett stated the Committee should consider the concern expressed by opponents to SB 338 (Hazardous Waste Siting Act) regarding the safety of daily allowable intake standards. She said she was concerned about the amount of plastic burned during the medical waste incineration process and added she thought the intent of HB 567 was to make standards more stringent. Senator Bartlett stated she was not convinced the standards set for allowable daily intake were targeted accurately. She cited as an example the previous allowable daily intake levels for lead. According to Senator Bartlett, these once "acceptable" levels have been found to be "damaging". She concluded that meeting the standards of subsection 3 does not justify reducing the standard from LURE to BACT.

Senator Grosfield stated page 15, lines 10-14 would authorize the Board to limit the amount and type of plastic incinerated. He said he "was not trying to weaken this below any safety standards". He stated, however, he wanted to be realistic in case a commercial medical waste facility were built.

Senator Hockett asked Senator Grosfield if DHES requested the amendments he had offered. Senator Grosfield replied no but added his amendments dealt with DHES's concerns regarding HB 567. Ms. Sensibaugh stated some of the coordination language between the Air Quality Bureau and Solid and Hazardous Waste Bureau "was creating problems for DHES". She added that Senator Grosfield's amendments "seemed to solve that problem".

Senator Grosfield stated the remainder of the amendments he offered would address the "bad actor" provisions within the bill, Sections 5 and 6. He said subsection b on page 17 would require applicants to describe any civil or administrative complaint filed within 5 years and whether that complaint resulted in penalties. He said the language was vague and did not follow the

concept of "innocent until proven guilty". Senator Grosfield stated his amendments would delete this language plus subsection (3) beginning on page 18, line 15. He said subsection (3) was "counterproductive and unnecessary". He added the amendments would also delete subsection d in its entirety.

Senator Bianchi asked Paul Sihler how he interpreted the provisions in subsection d. Mr. Sihler replied the intent of the "bad actor" provisions and subsection d was to "avoid the shell game where it is unclear who runs the company or who is associated with the company". He said subsection d would provide that if an applicant had disassociated him/herself from a "bad actor", that action would be taken into consideration by DHES.

Senator Kennedy asked Senator Grosfield if he had discussed these amendments with Representative Foster, the bill's sponsor. Senator Grosfield stated he had discussed the amendments with him in concept. He added that Representative Foster said he would not object to Senator Grosfield's amendments.

Senator Bianchi suggested amendments 1 through 3 be separated from amendments 4 through 9. Senator Grosfield replied he would not object.

Senator Bianchi stated amendments 1 through 3 would lessen the air quality standards to which commercial medical waste incinerators would be required to meet. Senator Grosfield replied amendments 1 through 3 would change the technology to be used and would not change the standards to be met.

Vote:

Senator Grosfield motion to accept amendments 1 through 3 to HB 567 CARRIED seven votes to six by roll call vote.

Discussion:

Senator Bianchi asked Ms. Sensibaugh how Senator Grosfield's amendments 4 through 9 would address air quality violations which were paid but never contested. Ms. Sensibaugh replied DHES may issue citations to companies for violation of air quality standards. She said the company may sign and return the citation, but added a company may do so without admitting fault. She said DHES may not levy a fine without going through the entire enforcement process.

Senator Bianchi asked Ms. Sensibaugh if citations would be included under the "bad actor amendments". Ms. Sensibaugh replied yes, as HB 567 was originally introduced.

Senator Bianchi asked Ms. Sensibaugh if citations would be included under Senator Grosfield's amendments 4 through 9. Ms. Sensibaugh replied she did not know.

Senator Bianchi asked Paul Sihler to comment. Mr. Sihler stated he thought citations would be included in the Grosfield amendments but added he was not positive. Mr. Michael Kakuk, Environmental Quality Council, stated the intent of the bad actor language was to give DHES and other interested parties a mechanism to determine companies' previous records. He said without the "bad actor" language, there would be no requirement for the company to provide such information.

Senator Weeding stated Senator Grosfield's amendments would be beneficial to a company like Ross Electric that "has been kicked out of all of Montana's neighbor states but always manages to leave town before the marshall arrives". Senator Grosfield replied Ross Electric does not operate a commercial medical waste incinerator and added HB 567 would not apply to them. Mr. Sihler stated the "bad actor" provisions are specific to Montana laws only.

Vote:

Senator Grosfield's motion to accept amendments 4 through 9 FAILED seven votes to six by roll call vote.

Discussion:

Senator Grosfield stated he had some additional amendments to HB 567 (Exhibit #2) and asked Paul Sihler to explain them. Mr. Sihler stated Senator Grosfield's second set of amendments would coordinate and clarify language in existing law.

Motion/Vote:

Senator Grosfield moved HB 567 be amended (Exhibit #2). MOTION CARRIED UNANIMOUSLY with Senator Doherty absent from voting.

Discussion:

Senator Bartlett stated she had some amendments to HB 567 (Exhibit #3). She stated her amendments would broaden the coverage of HB 567 to include boilers and industrial furnaces plus hazardous waste incinerators.

Motion:

Senator Bartlett moved HB 567 be amended (Exhibit #3).

Discussion:

Senator Bartlett stated her amendments would pertain to any facilities that burn hazardous waste.

Senator Swysgood asked Senator Bartlett if her amendments would also include furnaces that burn fuel for heating purposes. Senator Bartlett replied she did not think so and added HB 567 specifically exempts those kind of uses from the bill.

Senator Grosfield asked Senator Bartlett if her amendments would address the facilities covered in SB 338. Senator Bartlett replied yes.

Senator Grosfield stated a few bills pertaining to hazardous waste provisions had already been heard and acted on by the Senate. He asked Paul Sihler how Senator Bartlett's amendments would "affect the current situation".

Senator Keating stated HB 567 pertained to commercial medical waste incinerators only. Senator Bartlett replied HB 567 pertained to the permitting process, not siting, for commercial medical waste incinerators. She said her amendments would address the standards to be met for hazardous waste incineration and would not address where these incinerators would be located.

Referring to Senator Grosfield's question, Mr. Sihler asked Ms. Sensibaugh to comment. Ms. Sensibaugh stated HB 380 pertained to the permitting of incinerators. She said if Senator Bartlett's amendments were adopted, HB 567 would require DHES to perform additional public notice and hearing, to work with the Solid and Hazardous Waste Bureau on the issuance of permits and to determine "bad actor" status of applicants.

Senator Bartlett asked Ms. Sensibaugh how broadly her amendments would apply, if adopted. Ms. Sensibaugh replied Senator Bartlett's amendments would pertain to all hazardous waste incinerators but would not apply to solid waste incinerators.

Senator McClernan asked Senator Bartlett if her amendments would exempt Newtech from HB 567. Ms. Sensibaugh stated she believed Newtech would not be exempted from Senator Bartlett's amendments. Senator Bartlett stated it was not her intent to include Newtech in her amendments and stated she would offer an amendment on the Senate floor to exclude them if the Committee accepted her amendments and passed the bill. Mr. Sihler stated it would be easy to exempt Newtech from the amendments by inserting a sentence to that effect.

Motion:

Senator McClernan made a substitute motion to exclude Newtech from Senator Bartlett's amendments. MOTION CARRIED UNANIMOUSLY.

Discussion:

Senator Bartlett asked Representative Foster, sponsor of HB 567, to comment on her amendments. Representative Foster, House District 32, stated the amendments offered by Senator Bartlett to HB 567 "came as a surprise". He said he was not opposed to her amendments, but stated he did not think there would be enough votes to "blast SB 338 out of Committee". He added that HB 567 enjoyed great support in the House and stated he feared the same thing that happened to SB 338 could happen to HB 567 if Senator Bartlett's amendments were adopted.

Senator Grosfield stated he agreed with Representative Foster. He said he supported HB 567 but stated he was uncomfortable with "dramatically expanding HB 567 without another public hearing on the matter".

Senator Weeding stated HB 567 might gain additional support if SB 338 were killed since people in areas with hazardous waste facilities "would have no protection against the incinerator's actions". He noted HB 567 does not address siting of these facilities which was a major source of opposition for SB 338.

Senator Weldon stated a conference committee could be convened to work out the differences between the House and Senate on HB 567. He said it would be possible that individuals who opposed SB 338 could support HB 567.

Senator Swift stated Senator Bartlett's amendments were "the wrong thing to do to a sound approach to medical waste incineration".

Senator Bartlett stated the eleventh amendment on her set of amendments should also be inserted on page 15, line 12 of HB 567. She said the amendment was technical, not substantive, in nature and asked it be considered along with the other amendments. Senator Bartlett stated she did not want to endanger HB 567. She said she "was not enamored of" SB 338 because it "missed the point". Senator Bartlett stated HB 567 "speaks to safety standards which should be the main concern". She concluded hazardous waste facilities should be included because of the safety considerations.

Vote:

Senator Bartlett's motion to amend HB 567 CARRIED seven votes to six by roll call vote.

Motion:

Senator Grosfield moved HB 567 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Keating asked if the fees associated with operation permits were such that it would preclude small incinerators from applying for a permit to commercially incinerate medical waste. Mr. Chuck Homer, DHES Air Quality Bureau, replied he was unsure.

Vote:

The BE CONCURRED IN MOTION CARRIED with Senators Keating, Swift, Swysgood and Tveit voting NO.

EXECUTIVE ACTION ON HB 280

Motion:

Senator Grosfield moved HB 280 be amended (Exhibit #4).

Discussion:

Senator Grosfield stated the amendments were primarily technical in nature.

Senator Swysgood stated the amendment pertaining to "family conveyance" would make HB 280 the same as HB 408.

Vote:

MOTION TO AMEND CARRIED UNANIMOUSLY.

Motion:

Senator Weldon moved HB 280 be amended.

Discussion:

Senator Weldon stated his amendments would address two major concerns he had with HB 280; local government involvement and public participation in the process. He submitted to the record a fact sheet entitled "Major Problems with HB 280" (Exhibit #5).

He said the first set of amendments would strike out actions against governing bodies, including the language on page 1, line 9 which reads "providing for actions against governing bodies". Second, the amendment would insert "unless the governing body determines that the use of the exemption is intended to evade subdivision review and approval under this act," to page 7, line 21, subparagraph (b). Third, the amendment would strike all of the new Section 4 language beginning on page 11, line 25. Fourth, the amendment would strike all of Section 6 language beginning on page 13, line 7. And, finally, the amendment would strike all of Section 12 language beginning on page 22, line 23. He said the intent of his amendment was to restore to local governing bodies the authority to make subdivision policy decisions.

Senator Bianchi asked Senator Weldon if he had any additional comment on his amendments. Senator Weldon replied HB 280, in its current form "guts local government authority" over subdivision review. He said his amendments would return this authority to local governments. Senator Weldon stated he had received calls from both Lake and Missoula County Planners who were concerned about the content of HB 280.

Senator Keating stated that Senator Weldon's suggestion to insert language "unless the governing body determines that the use of the exemption is intended to evade subdivision review and approval under this act" would require local government review of all exemptions before the exemption was to be taken. He said this would "add to the workload". Senator Weldon replied the purpose of that particular amendment was to "enable local governments to ensure that subdivision law cannot be abused".

Senator Bianchi asked how Senator Weldon's amendment would be enforced. Paul Sihler replied he was unsure how that particular amendment would be interpreted or enforced.

Senator Grosfield stated Section 21 contained a repealer which would address some of Senator Weldon's concerns. He said Senator Weldon's amendments addressed at least two different issues and suggested the amendments be divided between the first three and last two suggestions made. He said he would "resist junking Sections 6 and 12". Senator Grosfield noted HB 280 would override HB 408 if both were passed and added deleting Section 12 would reinsert the "applause meter". He said doing so would run contrary to the intent of both bills.

Motion:

Senator Grosfield made a substitute motion to divide Senator Weldon's amendments into two, with the first set being suggestions 1 through 3 and the second set being suggestions 4 and 5.

Discussion:

Senator Weldon reiterated that his amendments would insert language on page 7, line 21, and would strike Sections 4, 6 and 12. He said the suggestion to amend the title was implicit and could be taken care of without an amendment.

Senator Bianchi suggested Senator Weldon's amendments be voted on individually.

Senator McClernan asked how HB 280 would differ from existing law if Senator Weldon's amendments were adopted. Mr. Michael Kakuk, Environmental Quality Council (EQC), replied there would be a substantive difference between the two.

Motion:

Senator Weldon moved HB 280 be amended to insert "unless the governing body determines that the use of the exemption is intended to evade subdivision review and approval under this act" on page 7, line 21.

Discussion:

Senator Swysgood asked Senator Weldon if that language was currently under review by the Montana Supreme Court. Senator Weldon replied it was his understanding the language in question, the proper use of evasion criteria, had been upheld by the Montana Supreme Court.

Vote:

MOTION CARRIED with Senators Keating, Swift and Swysgood voting NO.

Motion/Vote:

Senator Weldon moved HB 280 be amended to strike the new Section 4 language. MOTION CARRIED with Senators Keating, Swift and Swysgood voting NO.

Motion:

Senator Weldon moved HB 280 be amended to strike the language contained in Section 6.

Discussion:

Senator Grosfield stated he believed Sections 6 and 12 were "extremely important" to Representative Gilbert's bill and added he would "strongly resist" both amendments.

Senator Bartlett stated the provisions in HB 280 to require local governments to rewrite regulations was not "cost free". She said she was concerned about the actions taken by the Legislature which result in serious fiscal impacts on local governments. She said the language contained in Section 6 would impose a significant cost on local governments to rewrite regulations but would not provide any resources for local governments to do so.

Senator Swysgood asked Senator Weldon if his amendment would strike all of the language contained in Section 6. Senator Weldon replied yes. Michael Kakuk noted that in striking Section 6 and reinserting current language, it would be necessary to reinsert other language currently repealed.

Senator Grosfield asked Senator Bartlett if local governments could recover costs associated with rewriting regulations. Senator Bartlett replied the cost of writing regulations is overhead and is not incorporated into the fee of reviewing individual subdivision requests.

Vote:

MOTION CARRIED eight votes to five by roll call vote.

Motion:

Senator Weldon moved HB 280 be amended to strike the language contained in Section 12.

Discussion:

Senator Weldon stated this amendment to strike Section 12 would reinsert existing language regarding public interest criteria, or the "applause meter" concept.

Senator McClernan stated he did not support the "applause meter" concept but added he thought there should be a better mechanism for gaining public input.

Senator Grosfield stated HB 280 in its current form does provide for a hearing process for those adversely affected by a subdivision request.

Senator Bianchi asked Michael Kakuk to comment on the motion to strike the language contained in Section 12. Mr. Kakuk replied

that eliminating Section 12 would indirectly affect public input as it was applied in Section 11. He said Section 11 of HB 280 contains provisions for public participation. Mr. Kakuk highlighted the differences in current law and HB 280 regarding public participation. He stated current law does not spell out public hearing rules while HB 280 does. Mr. Kakuk stated it would be possible, under HB 280, to have a major or minor subdivision approved by a local government without an informational hearing. He added that doing so would not eliminate the opportunity for public input or participation during the process.

Senator Swysgood asked Senator Weldon why the "applause meter" concern was of such importance. Senator Weldon replied his amendment would restore existing law regarding public participation.

Senator Swysgood noted HB 408 would also eliminate the "applause meter" concept. Senator Weldon stated HB 408 would clarify the "applause meter" concept.

Mr. Kakuk suggested Section 608 be made consistent with both HB 408 and HB 280. He said doing so would strike the "express public opinion and basis need" concepts.

Senator Doherty stated he supported Senator Weldon's amendment because it "sweetened the deal".

Vote:

MOTION CARRIED eight votes to five by roll call vote.

Motion:

Senator Weldon moved HB 280 be amended to strike the language contained in Section 11.

Discussion:

Senator Grosfield stated HB 280 as amended would not be acceptable to Representative Gilbert or many of the initial proponents. He said HB 280 as amended "would not go anywhere in the House".

Motion:

Senator Grosfield made a substitute motion to adjourn the Committee.

Discussion:

Senator Bianchi stated he did not support Senator Grosfield's substitute motion to adjourn and suggested HB 280 instead be tabled.

Vote:

MOTION TO ADJOURN FAILED eight votes to four by roll call vote with Senator Keating absent from voting.

Discussion:

Senator Swysgood stated "it was easy to see what was going on here". He said he "came in here in good faith to look at this bill and address some of the concerns heard during the hearing and not totally screw it up".

Senator Swift stated he agreed with Senator Swysgood's comments.

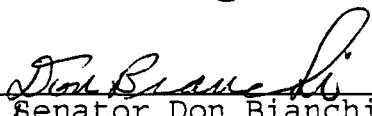
Senator Weeding stated he did not appreciate Senator Swysgood's comments since "this same thing happens both ways".

Motion:

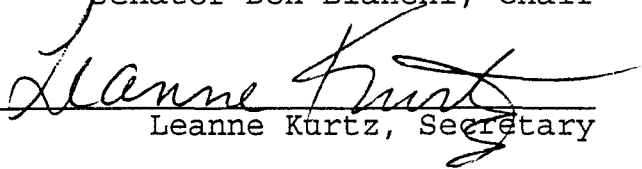
Senator Kennedy moved HB 280 BE TABLED. MOTION CARRIED UNANIMOUSLY with Senator Keating absent from voting.

ADJOURNMENT

Adjournment: 3:10 p.m.



Senator Don Bianchi, Chair



Leanne Kurtz, Secretary

DB/rc

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 3-30-93

NAME	PRESENT	ABSENT	EXCUSED
Bianchi	✓		
Hockett	✓		
Bartlett	✓		
Doherty	✓		
Grosfield	✓		
Keating	✓		
Kennedy	✓		
Swift	✓		
Sutsgood	✓		
McClernan	✓		
Tveit	✓		
Weeding	✓		
Weldon	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 30, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 567 (third reading copy -- blue), respectfully report that House Bill No. 567 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: "WASTE"
Insert: "AND COMMERCIAL HAZARDOUS WASTE"

2. Page 1, line 19.
Page 15, line 6.
Page 15, line 15.
Following: "waste"
Insert: "and commercial hazardous waste"

3. Page 1, line 22.
Page 15, line 3.
Following: "waste"
Insert: "and hazardous waste"

4. Page 2, line 3.
Following: "license"
Insert: "or a hazardous waste permit"

5. Page 3.
Following: line 10
Insert:

"(5) (a) "Commercial hazardous waste incinerator" means an incinerator that burns hazardous waste or a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies."

Renumber: subsequent subsections

M - Amd. Coord.
M Sec. of Senate

Woodruff
Senator Carrying Bill

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6. Page 3.

Following: line 18

Insert:

"(9) "Hazardous waste" means a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4."

Renumber: subsequent subsections

7. Page 3, line 23.

Following: "destruction,"

Insert: "disposal,"

8. Page 4, line 10.

Strike: "(9)(b)"

Insert: "(11)(b)"

9. Page 11, line 5.

Strike: "When"

Insert: "If"

10. Page 13, line 22.

Following: "75-10-221"

Insert: "or a permit is required pursuant to 75-10-406"

11. Page 13, line 25.

Following: "7-1-4128"

Insert: "(2)"

12. Page 14, line 13.

Following: "75-10-221"

Insert: "or a permit pursuant to 75-10-406"

Following: "license"

Insert: "or permit"

Following: "."

Insert: "The decision to issue, deny, alter, or revise a permit pursuant to 75-2-211 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406."

13. Page 14, line 25.

Following: "waste"

Insert: "and hazardous waste"

14. Page 15, line 12.

Page 15, line 23.

Following: "stream"

Insert: "and hazardous waste stream"

15. Page 16, line 6.

Page 17, line 5.

Page 17, line 10.

Page 18, line 14.

Following: "waste"

Insert: "or commercial hazardous waste"

-END-

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 967

DATE 3-30-93 TIME 12:35 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. SWYGGOOD	✓	
SEN. TWEIT	✓	
SEN. WEDDING		✓
SEN. WILDON		✓

LEANNIE KUTZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR GROSFIELD MOVED AMENDMENTS 1 THROUGH 3
BE ADOPTED (EXHIBIT #1). MOTION CARRIED SEVEN VOTES TO SIX.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 567

DATE 3-30-93 TIME 12:45 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 KUTZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR GROSFIELD MOVED AMENDMENTS 4 THROUGH 9
BE ADOPTED. MOTION FAILED SIX VOTES TO SEVEN.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 567

DATE 3-30-93 TIME 1:20 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. SWYGGOOD		✓
SEN. TWEET		✓
SEN. WEDDING	✓	
SEN. WELDON	✓	

LEANNE KUTZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR BARTLETT MOVED HB 567 BE AMENDED
(EXHIBIT #3). MOTION CARRIED SEVEN VOTES TO SIX.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 280

DATE 3-30-93 TIME 2:10 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. WEEDING	✓	
SEN. WELDON	✓	

LEANNE KURTZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR WELDON MOVED HB 280 BE AMENDED TO STRIKE
THE LANGUAGE CONTAINED IN SECTION 6. MOTION CARRIED EIGHT VOTES TO
FIVE.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 280

DATE 3-30-93 TIME 2:40 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. SNYSGOOD		✓
SEN. TWEIT	✓	
SEN. WEDDING		✓
SEN. WELDON	✓	

LEANNE KUTZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR WELDON MOVED HB 280 BE AMENDED TO STRIKE THE
LANGUAGE CONTAINED IN SECTION 12. MOTION CARRIED EIGHT VOTES TO FIVE.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. —

DATE 3-30-93 TIME 3:00 A.M. (P.M.)

NAME

YES NO

[illegible]

LEANNE KURTZ

SECRETARY

SENATOR BIANCHI

CHAIR

MOTION: SENATOR GROFFIELD MOVED ADJOURNMENT. MOTION
FAILED FOUR VOTES TO EIGHT.

Amendments to House Bill No. 567
Third Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Paul Sihler
March 30, 1993

1. Page 3.

Following: line 8

Insert:

- "(4) "Best available control technology" has the meaning defined in 40 CFR, part 51, 166(b)(12)."

Renumber: subsequent subsections

2. Page 4, line 10.

Strike: "(9)(b)"

Insert: "(10)(b)"

3. Page 15, line 16.

Following: "rate"

Insert: ", except when best available control technology is adequate to prevent exceeding the allowable daily intake standards, as determined pursuant to subsection (3), for dioxins, furans, and heavy metals"

4. Page 17, lines 19 and 20.

Following: "law" on line 19.

Strike: "and whether the complaint"

Insert: "which violation"

5. Page 18, lines 5 through 9.

Strike: subsection (3) in its entirety

6. Page 18, line 15.

Following: "(2)"

Insert: "of this section"

Following: "if"

Insert: "the applicant refuses to provide the disclosure statement required in [section 5] or if"

7. Page 19, line 12.

Following: ";

Insert: "and"

8. Page 19, line 15.

Strike: "; AND"

9. Page 19, lines 16 through 18.

Strike: subsection (d) in its entirety

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 3/30/93

BILL NO. HB 567

Amendments to House Bill No. 567
Third Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Paul Sihler
March 25, 1993

1. Page 3, line 23.
Following: "destruction,"
Insert: "disposal,"

2. Page 11, line 5.
Strike: "When"
Insert: "If"

3. Page 11, lines 20 and 21.
Strike: "if" on line 20 through "75-2-215" on line 21
Insert: "when a license is not required pursuant to 75-10-221"

4. Page 13, line 25.
Following: "7-1-4128"
Insert: "(2)"

5. Page 14, line 13.
Following: "."
Insert: "The decision to issue, deny, alter, or revise a permit pursuant to 75-2-211 must be made within 30 days from when the department issues a license pursuant to 75-10-221."

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 3/30/93

BILL NO. HB 567

Amendments to House Bill No. 567
Third Reading Copy

Requested by Senator Bartlett
For the Committee on Natural Resources

Prepared by Paul Sihler
March 29, 1993

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 3-30-93

BILL NO. HB 567

1. Title, line 6.

Following: "WASTE"

Insert: "AND COMMERCIAL HAZARDOUS WASTE"

2. Page 1, line 19.

Page 15, line 6.

Page 15, line 15.

Following: "waste"

Insert: "and commercial hazardous waste"

3. Page 1, line 22.

Page 15, line 3.

Following: "waste"

Insert: "and hazardous waste"

4. Page 2, line 3.

Following: "license"

Insert: "or a hazardous waste permit"

5. Page 3.

Following: line 10

Insert:

"(5) "Commercial hazardous waste incinerator" means an incinerator that burns hazardous waste or a boiler or industrial furnace subject to the provisions of 75-10-406."
Renumber: subsequent subsections

6. Page 3.

Following: line 18

Insert:

"(9) "Hazardous waste" means a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4."
Renumber: subsequent subsections

7. Page 11, line 5.

Strike: "When"

Insert: "If"

8. Page 13, line 22.

Following: "75-10-221"

Insert: "or a permit is required pursuant to 75-10-406"

9. Page 14, line 13.

Following: "75-10-221"

Insert: "or a permit pursuant to 75-10-406"

Following: "license"

Insert: "or permit"

Following: "."

Insert: "The decision to issue, deny, alter, or revise a permit pursuant to 75-2-211 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406."

10. Page 14, line 25.

Following: "waste"

Insert: "and hazardous waste"

11. Page 15, line 23.

Page 15, line 12.

Following: "stream"

Insert: "and hazardous waste stream"

12. Page 16, line 6.

Page 17, line 5.

Page 17, line 10.

Page 18, line 14.

Following: "waste"

Insert: "or commercial hazardous waste"

Amendments to House Bill No. 280
Third Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 11, 1993

1. Page 9, line 2.
Following: "sale"
Insert: ", gift,"
2. Page 9, line 18.
Strike: "(A)"
3. Page 9, line 21 through page 10, line 3.
Strike: "for" on page 9, line 21. through "producer" on page 10,
line 3
4. Page 10, line 22.
Strike: "OR"
5. Page 10, line 25.
Following: "SECTION"
Insert: "; or (xv) except for the survey requirements in 76-3-401 through 76-3-405 and the review requirements of Title 76, chapter 4, part 1, divisions made outside of platted subdivisions for the purpose of a single sale or gift in each county to each member of a landowner's immediate family"
6. Page 15, line 11.
Following: "that"
Insert: ": (a)"
7. Page 15, line 12.
Following: "values"
Insert: "; and (b) exempt certain minor subdivisions from the park dedication requirements of [section 14]"
8. Page 30, line 2
Strike: "or"
9. Page 30, line 4.
Following: "created"
Insert: "; or (e) those minor subdivisions, if any, identified as exempt from park dedications as provided for in 76-3-501(2)"
10. Page 38, line 19.
Strike: "76-3-209,"

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3/30/93
BILL NO. HB 280

MAJOR PROBLEMS WITH HB 280

- **HB 280 denies local governments the authority to prevent abuse of the exemptions.**

HB 280 deletes the current umbrella language "Unless the method of disposition is adopted for the purpose of evading the chapter...". This language has been absolutely essential over the past 20 years in allowing local government to determine whether an exemption was properly used. Proper use of evasion criteria has been upheld by the Montana Supreme Court.

Without this or similar language, the exemptions in HB 280 could be used to evade the purpose of the law, and local government would have no authority to prevent abuse. Exemptions such as "cemetery lots," "reservation of a life estate," and "construction liens" will become the new occasional sales.

- **Local governments will incur real costs in re-writing local subdivision regulations.**

HB 280 will require major re-writing of all local subdivision regulations by September 30, 1993 (page 39, lines 17-22). Unlike the situation in the 1970's, the Department of Commerce will not be able to provide financial or technical assistance. Small, rural towns and counties especially will be stressed to comply by the deadline.

- **HB 280 greatly restricts public participation in the review process.**

Section 11 (page 20, line 5) restricts the public's right and opportunity to become knowledgeable about a proposal and to participate in decision-making process. Public hearings would be replaced by "informational hearings" that would be held only upon request, and governing body decisions would be made in "executive proceedings." Over the years, public comment has been a vital asset in identifying issues and problems and the means of overcoming those problems, and HB 280 would significantly reduce this benefit. This limitation on public participation very likely conflicts with the Montana constitutional requirement for open public meetings.

- **HB 280 provides an open invitation for developers to sue local government.**

Section 4 (page 11, line 25) provides specific authority for developers to sue local governments, and collect monetary damages. Citizens now have the right to file a writ of mandamus if they feel aggrieved by a local government action. The explicit provision of Section 4 will greatly discourage cities and counties, especially small, rural jurisdictions, from taking action to ensure proper development.

- **Section 12 deletes the finding of public interest and the 8 criteria as part of the basis of approval.**

HB 280 deletes the 8 public interest criteria (page 23, lines 14-21), and provides 3 limited considerations (page 25, line 25, page 26, lines 1 and 2). With the threat of lawsuits provided under Section 4, it is doubtful that a governing body can specifically consider wildlife, habitat, and water quality in its decision to approve a subdivision.

- **HB 280 limits the scope of the local review.**

HB 280 repeals 76-3-504 which sets minimum requirements for local subdivision regulations, and Section 6 (page 13, line 7) replaces that language with a limited and exclusionary set of requirements for local regulations.

Section 9 (page 18, line 12) and Section 12 (page 22, line 23) limit the information that can be used in reviewing a proposed subdivision, which would lessen the accuracy and thoroughness of the review and approval decision.