

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - SPECIAL SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By REP. DICK SIMPKINS, CHAIRMAN, on Monday,  
December 6, 1993, at 10 a.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Dick Simpkins, Chairman (R)  
Rep. Wilbur Spring, Vice Chairman (R)  
Rep. Beverly Barnhart (D)  
Rep. Pat Galvin (D)  
Rep. Bob Gervais (D)  
Rep. Harriet Hayne (R)  
Rep. Gary Mason (R)  
Rep. Brad Molnar (R)  
Rep. Bill Rehbein (R)  
Rep. Sheila Rice (D)  
Rep. Sam Rose (R)  
Rep. Dore Schwinden (D)  
Rep. Carolyn Squires (D)  
Rep. Jay Stovall (R)  
Rep. Norm Wallin (R)

**Members Excused:** Rep. Ervin Davis, Vice Chairman (D)

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Council  
Pat Bennett, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: House Bill 38  
House Bill 43  
House Bill 40  
House Bill 49

**Executive Action:** House Bill 43

**HEARING ON HOUSE BILL 38**

**Opening Statement by Sponsor:** REP. HAL HARPER, HD 44, Helena, introduced HB 38 including a proposed amendment for HB 38.

**EXHIBIT 1** HB 38 promotes consolidation of central services which includes personnel, administration, accounting, purchasing and supplies, secretarial services and further coordination in information sharing among the legislative branch agencies. Rep. Harper said the system being proposed has been extensively studied by himself and Rep. Gilbert who have served on interim committees since the early '70s. There is a need to balance the coordinated decision making which comes from an umbrella type agency. HB 38 would establish a policy and planning process aimed at achieving these goals for the legislative branch. At the present time, the Legislative Council is appointed by the Speaker of the House with the advice of the minority. In order to give the Council the new powers through HB 38, irregardless of who is in control of the house or senate, there needs to be a certainty that politics will not assert an undue influence on the process. He stated his intent is for each of the appointed leaders of both the senate and the house to participate on the Legislative Council. If the elected leader can not attend, that person could appoint someone to attend in his or her place. HB 38 would not inhibit any study currently taking place, but would start the planning process immediately. In conclusion, Rep. Harper said his bill would allow legislative leadership to provide direction for the coordinated use of available resources and preserves the balance of the Legislative Council's integrity and authority. This proposal would rely on bipartisan leadership and agreement.

**Proponents' Testimony:** None.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions From Committee Members and Responses:** CHAIRMAN SIMPKINS informed the Committee that the Colorado House of Representatives has the majority leader lead the house during debate. He asked REP. HARPER if he would object to amending the bill so that either the speaker or the majority leader would serve on the Legislative Council.

REP. HARPER said a lot depends on personalities, therefore, the recommendation would make a good amendment to HB 38.

CHAIRMAN SIMPKINS asked if anyone present representing the legislative agencies had any objection to the recommended amendment. There were no objections.

**Closing by Sponsor:** REP. HARPER closed the hearing on HB 38.

**HEARING ON HOUSE BILL 43**

**Opening Statement by Sponsor:** REP. JIM RICE, HD 43, Helena, introduced HB 43, a bill which would change the state purchasing statute. It would reduce the cost of office material and supplies purchased by state agencies. The state currently has an internal agency called central stores which purchases office supplies and in turn sells the products to the state agencies. The profit from the sales is used to run the operation. During the 1987 and 1989 Legislatures, legislation was passed which allowed state agencies to purchase office supplies from the private vendors if their prices were less than the central stores'. Unfortunately, the law as passed, required that the prices be held at the standard catalog prices. The price was comparable to a person off the street purchasing only one item. The current law does not allow state agencies to purchase supplies from private vendors at any discount price. HB 43 would allow agencies to purchase supplies at a discount price that a vendor would offer, eliminating the requirement that a vendor can only offer the catalog price. The effect of the bill will open the purchasing process to full competition. REP. RICE said there is an interest by the vendors to offer a special discount price to state agencies.

**Proponents' Testimony:** Brad Griffin, Montana Retail Association, testified in support of HB 43. EXHIBIT 2

Bob Billings, CSI Office Products, testified in support of HB 43. HB 43 would provide the opportunity to compete with central stores. CSI purchased its products in March 1993, and in the ten months since that time no items have been sold at catalog price. He stated his business thrives on the ability to sell quality products at a competitive price.

Jim Tutwiler, Montana Chamber of Commerce, testified in support of HB 43. HB 43 would help to further the competition in the market place.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions From Committee Members and Responses:** REP. GALVIN asked if the state would also have the option of buying single items at the discounted price.

REP. RICE said the bill would allow agencies to shop for the best price whether they are buying single items or in volumes.

REP. SQUIRES asked if there will still be a monitoring system for

agency spending. There is a control factor with the central store in that an agency is buying only from that one entity.

REP. RICE said one of the changes in 1989 legislation, stated that going to a private vendor does not require the documentation that used to be required. At one time, in order to go to a private vendor a lot of documentation and agencies were avoiding the option. The monitoring is still done by each agency.

Marvin Eicholtz, Department of Administration, said he did not expect HB 43 to change anything more than what the 1989 legislation did. He said that if in the future, the competition gets more wide spread and the central store begins to lose business, than they may want to get out of it.

REP. SQUIRES asked if the purchase of computers are under the central stores' jurisdiction.

Mr. Eicholtz said computers are not purchased by the central store, only office supplies.

Ms. Heffelfinger informed the Committee that office supplies are specifically defined in the statutes. Mr. Eicholt has control of which office supplies are allowed to be purchased through this definition.

CHAIRMAN SIMPKINS noted that each agency, with their own controlling budget, submits requests to central stores who makes the purchases and in turn charges each account. Therefore, there would still be accountability because each agency would have to justify their own operating expenses.

Mr. Eicholtz agreed.

Closing by Sponsor: REP. RICE closed the hearing on HB 43.

#### EXECUTIVE ACTION ON HOUSE BILL 43

Motion/Vote: REP. SPRING moved HB 43 do pass. Motion passed unanimously with Rep. Gervais and Rep. Rose voting by proxy.

#### HEARING ON HOUSE BILL 40

Opening Statement by Sponsor: REP. DAVE WANZANRIED, HD 7, Kalispell, introduced HB 40 at the request of the Department of Health and Environmental Sciences (DHES), Office of Budget and Program Planning (OBPP) and the Human Services Subcommittee to eliminate statutory references to the Environmental Science Division within the DHES. Statutes created the Department of Health by defining the structure of the Department. DHES came

before the Appropriations Subcommittee last fall expressing its ideas for reorganization and this section of law creates a problem by limiting discretion.

**Proponents' Testimony:** Bob Robinson, Director, Department of Health and Environmental Sciences, (DHES), testified in support of HB 40. The most substantive section of HB 40 is section 3 on page 5, line 20. This section would repeal Section 2-15-2103, MCA. This section has resulted in all the environmental protection programs being assigned to the Environmental Science Division since the 1970's. The result is a division of 240 FTE who are assigned duties from air quality, water quality, underground storage tanks, hazardous waste, etc. He stated that the change the bill would provide would give DHES some latitude to restructure. Some options for restructuring may include a licensing and permitting division covering air quality, water quality, and underground storage, etc; DHES may have an enforcement unit for inspection and enforcement across the board; DHES may separate each of the programs individually to see if water quality, for instance, could stand on its own. Mr. Robinson said DHES would like to be positioned by 1995 when the Governor's study group and DHES would be required to report to the legislature their reorganization recommendations. These types of changes would help the department to be more responsive and better able to serve customers.

Jim Jensen, Executive Director, Montana Environmental Information Center, testified in support of HB 40. He stated they have been concerned about the current level of enforcement and compliance activity within the department. The EQC recently did an analysis of one of the bureaus. He stated that although reorganization needs to be done, the change could result in more bureau chiefs at a time when departments are supposed to be reducing. Mr. Jensen recommended that DHES offer a report of the proposed changes for community review.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions From Committee Members and Responses:** REP. REHBEIN asked what savings DHES would have as a result of this change.

Mr. Robinson said the change would involve the elimination of an administrator who is a grade 19 or 20 which is nearly \$40,000 along with the elimination of a secretary. The total savings would be approximately \$55-60,000. Some of the other options would be to take those positions and use them elsewhere within DHES. Responding to Mr. Jensen's comments about more bureau chiefs, Mr. Robinson clarified that those already in these positions would not change. Their titles may change but not their salaries because their salaries would be based on their duties.

**REP. SPRING** asked if there were a change in the salary would it go up or down.

**Mr. Robinson** said the change of a bureau chief to an administrator would result in an increase only if they were a grade 17 to begin with. He stated that their bureau chiefs are graded at an 18 or 19 because of the responsibilities they have, therefore, there would not be much change there.

**CHAIRMAN SIMPKINS** asked if this proposal is part of the Governor's reorganization plan.

**Mr. Robinson** said it was, the proposal has been reviewed by the Governor's office and has the Governor's approval.

**REP. WALLIN** asked if DHES was up to date on their underground storage tank hearings.

**Mr. Robinson** said there has not be a backlog on the hearings. The backlog relates to reimbursement to the individuals who have removed the tanks. The Petro Board has taken action recently to place clear guidelines in the reimbursement rules to speed up this process.

**REP. WALLIN** said there are those subdivisions in Gallatin County and Flathead County who are involved in hearings and are awaiting approval to sell their lots. **REP. WALLIN** asked how the proposal would affect those people.

**Mr. Robinson** said those two counties are the places they have the worst problems. The counties have the responsibilities dealing with sanitation. The Department has stayed current with any applications it has received but only through the use of private contractors. DHES, in its effort to reorganize, will look at how well DHES performs its job and at making sure the staff is focussed on providing service within a statutory time frame.

**REP. SCHWINDEN** said he did not have a problem with eliminating the statutory references. He requested to see a copy of DHES' reorganization plans before the Committee holds executive action.

**Mr. Robinson** said there are no concrete plans and offered a list of available options. **EXHIBIT 3**

**Closing by Sponsor:** **REP. WANZENRIED** closed the hearing on HB 40. He distributed copies of the study done by the Environmental Quality Council (EQC). **EXHIBIT 4**

#### HEARING ON HOUSE BILL 49

**Opening Statement by Sponsor:** **REP. SHEILA RICE, HD 36, Great Falls,** introduced HB 49, a bill which would combine the Department of Agriculture with the Department of Livestock. The

bill was not drafted to "pick" on either of the departments, but rather as an option to save money. REP. RICE said she looked at every department and other reduction options. After researching she discovered that these options were similar to proposals made by other colleagues. For instance, REP. RICE said she planned to propose a reduction similar to Senator Jergeson's proposal to cut the Department of Commerce and also to cut the Department of Social and Rehabilitative Services already being proposed by another member of the house. She said she believes it is time to reduce the number of agencies. This special session provided the opportunity to make some politically acceptable changes such as consolidating school districts and reducing the number of departments. She stated that so far she has seen the school reserve ripped off and money being taken from the counties and the medically needy, which is not what their constituents want. The people sent the legislators back to make government more efficient.

**Proponents' Testimony:** REP. DAVE WANZENRIED, H 7, Kalispell, testified in support of HB 49. Nine studies were conducted between 1912 and 1962, the result was the executive branch was never reorganized because no one was willing to merge until 1969 when 188 agencies were consolidated into to 20. This proposal would merge two departments into one. He stated HB 49 would provide a way to cut administrative costs by eliminating the duplication in administration for two departments.

**Opponents' Testimony:** REP. CHASE HIBBARD, H 7, Helena, testified in opposition of HB 49. He said he applauds the effort to streamline state government. This proposal is not a new idea. This option has been considered in past sessions. As a result of the interest created during the 1992 legislature, a committee was formed to study the feasibility of the merger of the two departments. He stated he steered that committee. The committee received criticism because it was made up of members from the industry: the Stock Growers Association, the Wool Growers Association, the Dairyman's Association, Grain Growers, Montana Farmer's Union, WIFE and the Montana ag and business groups. He said the committee looked as deeply as they could at those departments and did the best they could at taking an objective look at the proposal. Two things which guided their deliberations was whether they could save money and would the change provide better service than is provided with each department standing alone. Even though the two departments deal with agriculture, they are each two very distinct ends of agriculture - one is animal agriculture and the other being grains and horticulture. The Department of Agriculture is largely a regulatory agency that is responsible for registering pesticides, issues licenses, etc. and Department of Livestock deals exclusively with livestock insuring that animal diseases are not transmitted to humans. Other Department of Livestock functions are enforcement and investigation of stolen livestock. The committee considered everything from cross training the employees to combining both departments and concluded that there

were far more disadvantages. For instance, in combining some of the inner functions of inspections made by the Egg, Milk and Meat Bureau in the Department of Livestock with the Plant Industry Division in the Department of Agriculture, the committee discovered that the Department of Livestock would require an individual with a degree in microbiology whereas the Department of Agricultural employees were two grades lower and did not need the level of education and specialized skills which were needed by the Department of Livestock employee. **REP. HIBBARD** said it is true they could consolidate centralized services, however, it would be an insignificant amount of savings. The committee did consider a merger of the two departments and there would be a cost savings, however, the committee became convinced that both departments were 110% busy and eliminating one FTE would simply be diminishing the level of service which has been offered to both communities.

**Les Graham, Montana Association of Livestock Auction Markets,** testified in opposition of HB 49. **EXHIBIT 5** He stated the proposal would not save money, and as a past administrator he knows of the many things that can be done to a fiscal note to reflect a savings.

**Jim Haggbarth, Board of Livestock, Ranch Owner in SW Montana,** testified against HB 49. Since 1978 the Department of Livestock has voluntarily cut 21 FTE for a 23% reduction. In the last 24 months the Department of Livestock has replaced \$1.3 million of general fund money with state special revenue. He said when you consider House Bill 2 this amounts to \$1.74 million. Traditionally 20% of the Department's budget has been from the general fund; after House Bill 2 it will be 5%. He said the Department has been fiscally responsible and responsive to legislative concerns while still addressing the needs of an important industry. He said they welcome constructive reform, however, the recommendation to merge represents little benefit to the industry or to state government.

**Jim Peterson representing the Montana Stock Growers Association, Montana Public Lands Council, Montana Association of Grazing Districts and the Montana Wool Growers Association,** testified in opposition of HB 49 for four reasons: 1) it has been studied and there is no good logical reason to do it; 2) the word is to reinvent government and make it more efficient, this proposal would do just the opposite; 3) those in the industry are opposed to the proposal; and 4) this is not the right time to do this, the Governor has appointed a study commission to look at all aspects of government.

**Leo Giacometto, Director, Department of Agriculture,** testified in opposition to HB 49. He clarified that the savings for the Department is closer to \$40,000 in general fund money. This change could be made; however, there will be fewer employees resulting in less service. When this proposal was reviewed by the Governor he felt the savings was not sufficient enough. He



said he applauds the efforts made by the sponsor of the bill, however, the Governor is willing to study the reorganization of government and report back his recommendations.

**George Paul, Montana Farmer's Union**, testified against HB 49 saying the bill had no constituency. This bill addresses the two smallest agencies in Montana who have been responsible to two of the largest economic factors of the state. The general fund provides less than 10% to the Departments of Livestock and Agriculture. He said when those in the industry indicate a need to merge the two departments, it would be then that the Bureau would be happy to support the legislation.

**Lorna Frank, Montana Farm Bureau**, testified in opposition to HB 49. EXHIBIT 6

Informational Testimony: None.

Questions From Committee Members and Responses: **REP. GALVIN** asked Les Graham to explain his comments in paragraph 2 of his testimony (see Exhibit 5) and asked why we are holding the hearing.

**Mr. Graham** said MALAM is the Montana Association of Livestock Auction Markets and the reference made in paragraph 2 is that they are regulated by the Department of Livestock. He informed the committee that when an animal is taken to market its brand is inspected coming in and going out. Those going to market are not always on the best terms with the Board of Livestock, however they feel strongly that there is a need for the Board along with a great mutual respect.

**REP. GALVIN** asked if two departments would be lesser than one.

**Mr. Graham** answered that he did not believe that one department would be less expensive to operate or more efficient.

**REP. GALVIN** asked **Mr. Graham** to explain his references regarding fiscal notes. He also asked if there is something awry pertaining to who might produce a fiscal note and can a fiscal note be changed to make it appear different than what it actually is.

**Mr. Graham** said you can slant the facts and that fiscal notes do not always show the entire story.

**REP. GALVIN** asked **REP. RICE**, referring her to the last sentence of the third paragraph of **Mr. Graham's** testimony (Exhibit 5) about the Board of Livestock's influence and asked if that comment was true.

**REP. RICE** answered that the Board of Livestock actually runs the Department of Livestock. The intent behind that statement is

that the Board would have less power if the Department of Livestock was combined with the Department of Agriculture. Legislation states that the Board is attached to the Department of Livestock for administrative purposes only.

**REP. SPRING** asked **Mr. Giacometto** if those in the agricultural industry contribute the same as those in the livestock industry.

**Mr. Giacometto** said the funding is similar. The Department of Agriculture has health standards relating to pesticides which accounts for the 6% of the general fund.

**REP. SPRING** asked if the Montana Seed Growers and the Montana Potato Growers have a board of directors who support the program.

**Mr. Giacometto** said they are all different. There are some who are peer advisory boards or policy boards and there are those who only go through an administrative rules process.

**REP. ROSE** asked **REP. RICE**, referring to the testimony about one Department being regulatory and the other being enforcement and asked if she feels that a department dealing with enforcement should be place in a wide-political arena with a quasi-judicial board with no authority.

**REP. RICE** answered that it is another example of state government where there are departments who provide regulatory and administrative functions and she has no concern about combining the two departments in that direction. The legislation allows for the Board to act in an advisory capacity to the Department in all instances relating to livestock and also allows for all its functions to be carried out as provided by law. She stated that nothing is lost, but obviously the producers do not agree with her.

**REP. WALLIN** asked **Mr. Giacometto** what the Department's responsibilities are for out-of-state sales of grain and cattle and if there is duplication in marketing between the two departments.

**Mr. Giacometto** said there is a marketing program within the Department of Agriculture that promotes all Montana products whether it is meat, straw or grain. They work with the health aspect of the market and work on a national level. He said he did not feel there was a duplication at this time.

**Mr. Haggbarth** said the specific responsibility of the Department of Livestock is to promote and protect the producers in the state. Promotion is on a national level, whereas the protection part deals with health in insuring that any livestock coming into the state does not present a health problem for the livestock already here. He said they do not deal directly with the international market.

**REP. WALLIN** said that when the previous director, Everett Snortland went to Japan and other places, he represented both of the industries. If the two now have separate missions it is a waste of money.

**Mr. Haggenbarth** said that was true.

**REP. MOLNAR** asked **Mr. Giacometto** if there would be a major problem if the two were combined.

**Mr. Giacometto** said that whatever the legislature does, the industry will survive and go forward. He said he did not think that there was a question in anyone's mind that it would be detrimental. However, if the two are combined there will not be the funds to support the service that is currently provided. So while it may not be a problem or be detrimental, there will be a diminished responsiveness by the Department to the people.

**REP. BARNHART** asked **REP. RICE** if each department wants to hold on to their department, what process can the legislature go through to achieve efficiency.

**REP. RICE** said **REP. BARNHART** pinpointed the problem and that each of the opponents have had valid, honest concerns regarding this legislation and those concerns are generated by where they sit in the industry. The way to reduce state government would be to get Rep. Wanzenried's constitutional amendment to reduce the number of executive departments from 20 to 17 onto the ballot and force a reduction of state government. She stated it would have to be a forced change.

**CHAIRMAN SIMPKINS** informed **Mr. Giacometto** that the last legislature had a bill which directed the Governor to select two departments for reorganization and asked if any action has resulted from that force of action by the bill.

**Mr. Giacometto** said he did not recall the specifics of the bill. Within the administration, half of the departments have gone through some reorganization. The Department of Agriculture has met 35% of the demanded cuts because they could not get the job done and continue the same level of service. Many departments have done this type of reduction.

**CHAIRMAN SIMPKINS** asked **Mr. Giacometto** if he feels the Governor is making attempts to address reorganization.

**Mr. Giacometto** said the Governor has been vehement about departments reorganizing and has been pushing for it. The Governor has appointed a Renewing of State Government Committee, which will report its recommendations by next summer. There will be more substantial change and the Departments of Agriculture and Livestock may have to address these issues again before the Governor's committee. The Governor feels this Council will be a very fair, open process with representation from all over the

state including members of the legislature.


**REP. ROSE** asked **Mr. Giacometto** if the bill passed would his department have the level of personnel necessary to carry it out.

**Mr. Giacometto** said if the bill passed the Department would have to sit down and look at another reorganization. He stated some massive changes would need to be made. With less FTE, less will get done.

**Closing by Sponsor:** **REP. RICE** closed the hearing on HB 49. She said the Committee has heard there would only be \$183,000 in savings and that fiscal notes might be slanted and considering it was the Department of Agriculture who put the fiscal note figures together, then perhaps that figure could be a little higher. She said the Committee has also heard that they should wait and let the Governor's task force decide. She said this was the easy way out. She said she applauds the Director of Agriculture's efforts in reducing 23% and that HB 49 is the next logical step. The Committee also heard that there is no tax dollars involved, that it is all industry dollars. She said the people who she represents are not farmers and ranchers, she represents an urban district. Those people do not care whether it is tax dollars or industry dollars, it all goes to the government and they have the same concerns about all of it. Although the Committee heard there is no constituency, **REP. RICE** concluded that if you read Reinventing Government or Tom Peterson's book on management you will find that change comes from the top down. Upon researching other states who have combined departments, services did not diminish, the service got better. She said she would challenge the opponents of the bill, since the issue is about power not money, and requested that they poll their people in the industries and report back with a bill to combine the departments in the way they find would strengthen the areas of agriculture in Montana.

**ADJOURNMENT**

**Adjournment: 12:20 p.m.**

  
REP. DICK SIMPKINS, Chairman

  
PAT BENNETT, Secretary

DS/PB

HOUSE OF REPRESENTATIVES  
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 6 Dec. 93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK SIMPKINS, CHAIRMAN	✓		
REP. WILBUR SPRING, VICE CHAIRMAN	✓		
REP. BEVERLY BARNHART	✓		
REP. ERVIN DAVIS			✓
REP. PAT GALVIN	✓		
REP. BOB GERVAIS	✓		
REP. HARRIET HAYNE	✓		
REP. GARY MASON	✓		
REP. BRAD MOLNAR	✓		
REP. BILL REHBEIN	✓		
REP. SHEILA RICE	✓		
REP. SAM ROSE	✓		
REP. DORE SCHWINDEN	✓		
REP. CAROLYN SQUIRES	✓		
REP. JAY STOVALL	✓		
REP. NORM WALLIN	✓		

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CS-09

Rep. SAM Base  
Vice Chr. Wilbur Spring has my proxy  
for Monday.

12/6/93

I give my proxy vote to Rep Squire  
in State Admin. this date

- Rep. Gower -



## HOUSE STANDING COMMITTEE REPORT

December 6, 1993

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 43 (first reading copy -- white) do pass.

Signed: *Dick Simpkins*  
Dick Simpkins, Chair

Committee Vote:  
Yes 15, No 0.

071217SC.Hcr

*[Handwritten signature and date 12-6-93]*

Amendments to House Bill No. 38  
First Reading Copy

Prepared by Dave Bohyer  
December 2, 1993

1. Title, line 8.

Following: "COUNCIL;"

Insert: "PROVIDING FOR TRANSITION TO THE REVISED LEGISLATIVE  
COUNCIL COMPOSITION;"

2. Page 4, line 22.

Following: line 21

Insert: "NEW SECTION. Section 7. Transition. Members of the  
legislative council shall continue to serve until the  
appointments have been made under [section 4]."

Renumber: subsequent sections





Executive Office  
318 N. Last Chance Gulch  
Helena, MT 59601  
Phone (406) 442-3388

EXHIBIT 2  
DATE 12/6/93  
HB HB 43

December 6, 1993

For the record, my name is Brad Griffin with the Montana Retail Association. Part of the MRA is the Montana Office Machine Dealers, and this Bill seeks to remedy a problem concerning them. I support HB43, because I believe it serves the best interest of the taxpayers of Montana as well as office supply vendors. HB43 simply allows Montana's private office supply vendors to go after the state's supply needs in the same manner that they go after any other large account. That is, the Bill allows them to offer the state agency a published discounted price list based on their higher volume. Currently, vendors must give the agency established catalog price. This requirement flies in the face of current realities in the office supply business, because the catalog price is the manufacturer's suggested retail price(MSRP).

Ladies and Gentlemen, the MSRP is a price we only wish we could get. In fact, it is a common business practice to calculate discounts based on volume. To require private vendors to only give an agency the publicly available catalog simply does not allow Montana's vendors to offer a discounted price, saving the state money.

Please help us to put the state's business on the same playing field as all businesses.

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES

EXHIBIT  
DATE 12/6/93  
HB HB 40



1400 BROADWAY  
PO BOX 200901

STATE OF MONTANA

FAX (406) 444-1374

HELENA, MONTANA 59620-0901

MEMORANDUM

To: Rep. David Wanzenried

Date: 12/3/93

From: Bob Robinson, Director  
DRES

Subject: HB 40

Attached you will find information that I hope will be helpful in your understanding and presentation of House Bill 40. As you are already aware, the bill would remove the statutory requirement for an Environmental Sciences Division and specify the functions to be performed by that division. As you are also aware, we are seriously evaluating our existing organizational structure to ensure that it provides the most efficient delivery of services to the citizens of Montana. The existing statutory language very much limits our options for reorganization.

The information I have provided includes the following:

(1) The organizational chart as recorded in administrative rule. (This is technically incorrect in that the Food and Consumer Safety Bureau has been transferred to our Health Services Division.)

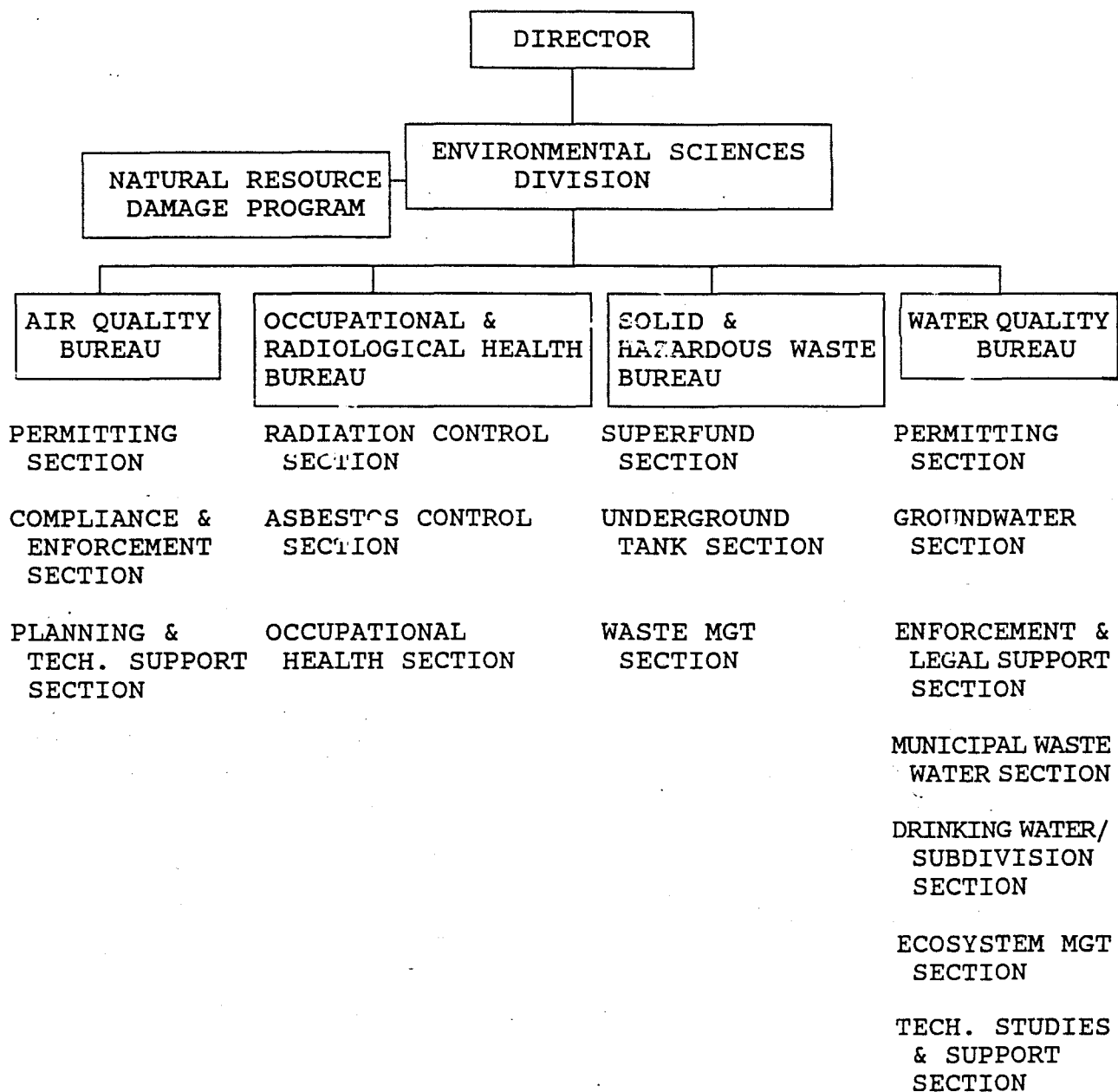
(2) The existing organizational structure for the Environmental Sciences Division

(3) Examples of two different options for reorganization which would not include an Environmental Sciences Division.

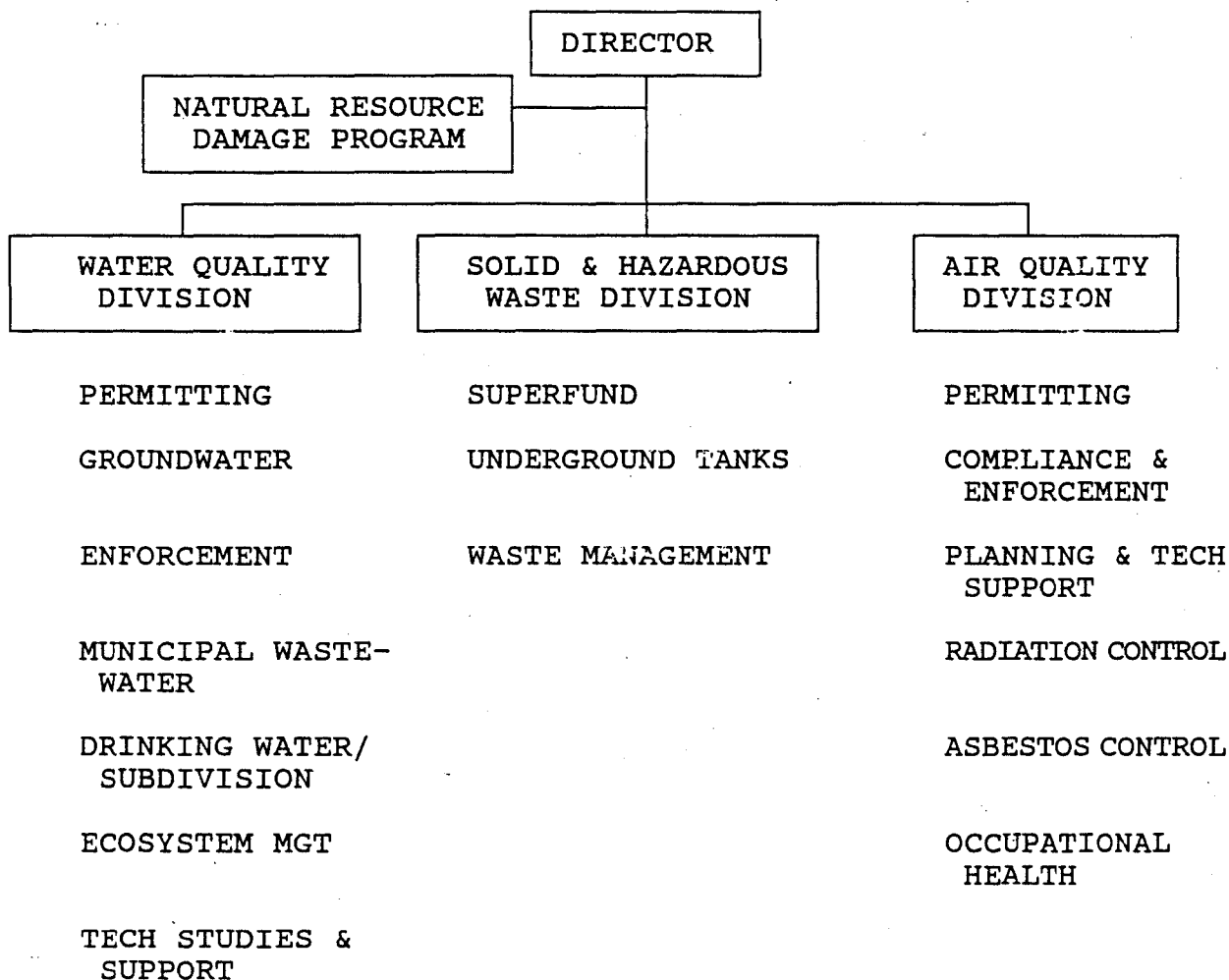
(4) Copies of organizational charts for each of the four bureaus in the division to give you an indication of the size of two of our bureaus.

If you have any questions regarding this proposal or the attached information, please feel free to contact me or Steve Pilcher, Administrator of the Environmental Sciences Division at 444-3948.

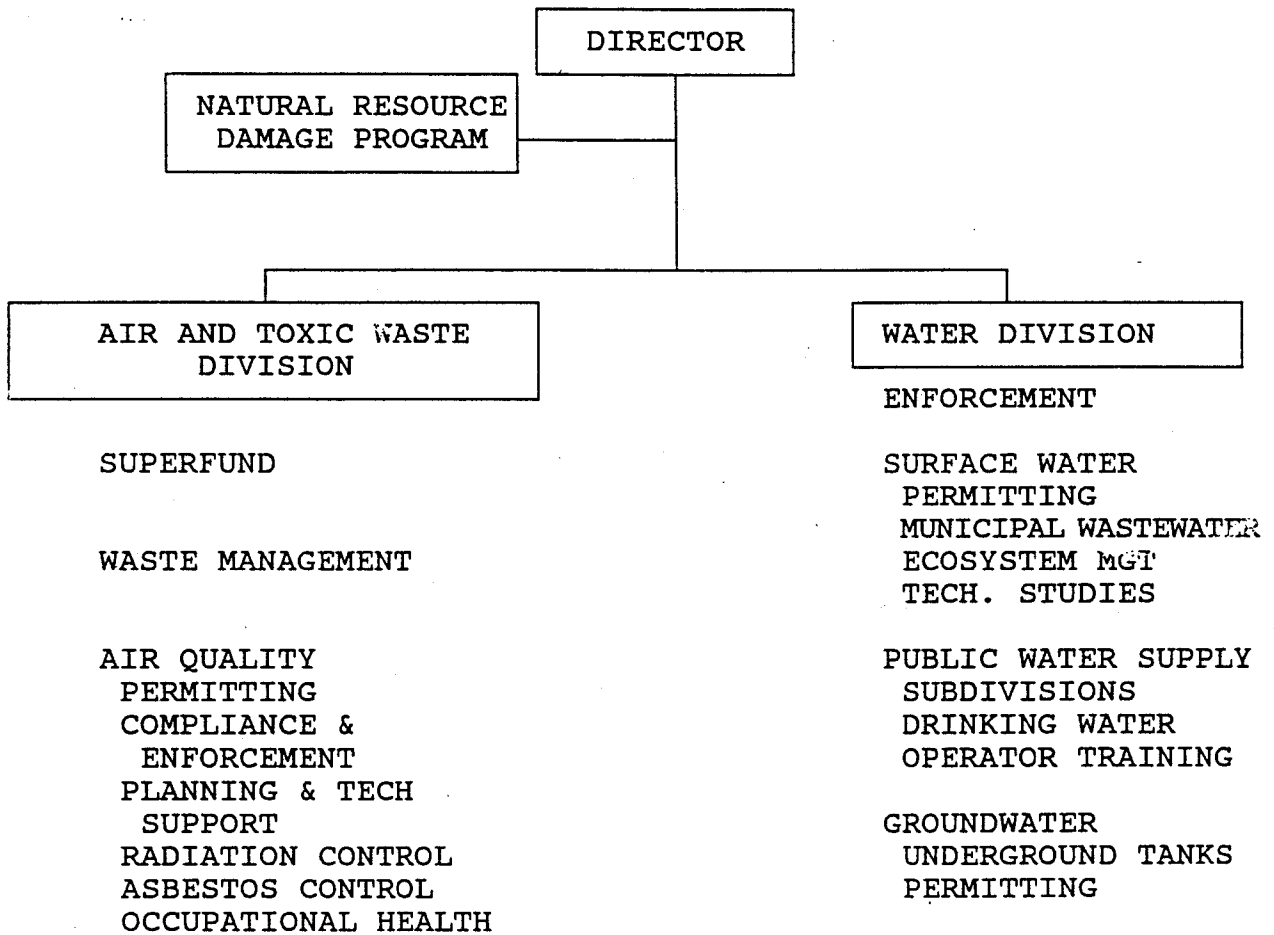
# CURRENT ORGANIZATIONAL STRUCTURE



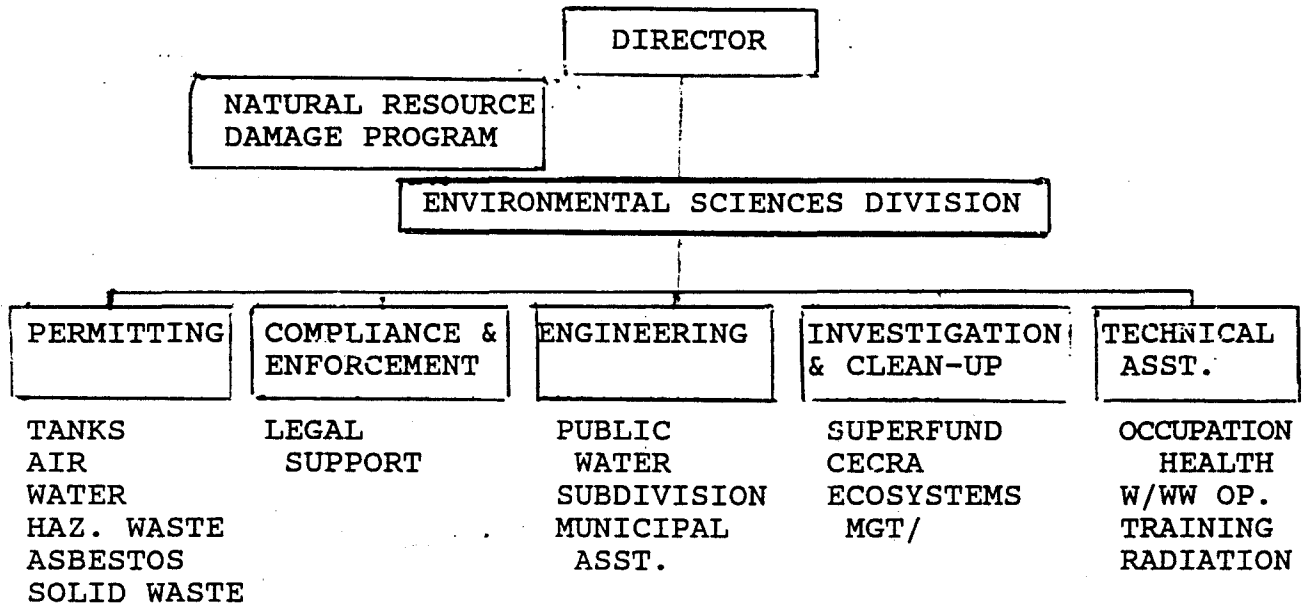
REORGANIZATION OPTION #1



REORGANIZATION OPTION #2



REORGANIZATION OPTION #3





# STATE OF MONTANA ENVIRONMENTAL QUALITY COUNCIL

STATE CAPITOL  
HELENA, MONTANA 59620  
(406) 444-3742

EXHIBIT 4  
DATE 12/6/93  
HB HB 40

Deborah B. Schmidt, Executive Director

GOV. MARC RACICOT  
Designated Representative  
Glenn Marx

HOUSE MEMBERS  
Joann T. "Jody" Bird  
Vicki Cocchiarella  
Dick Knox  
Scott Orr

SENATE MEMBERS  
Steve Doherty  
Lorents Grosfield  
Dave Rye  
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September 12, 1993

TO: Hazardous Waste Management Working Group  
FROM: Paul Sihler, Resource Scientist *PCS*  
RE: Status of the Montana Hazardous Waste Management  
Regulatory Program

At its August 16th meeting, the Hazardous Waste Management Working Group (HMMWG) assigned EQC staff the task of assessing the status of Montana's hazardous waste regulatory framework. Working Group members felt that information contained in such an assessment would aid them in deciding upon final recommendations to the EQC. The purpose of this memo is to respond to that request.

## I. Introduction

In order to assess the status of the state's hazardous waste regulatory framework, it is first necessary to define what is meant by the terms "hazardous waste" and "regulatory framework."

As the Working Group discussed at its last meeting, the term "hazardous waste" is often used interchangeably with the term "toxic waste" to broadly mean any substance that may pose a threat to human health or the environment. However, under federal law and the Montana Hazardous Waste and Underground Tank Storage Act, the term "hazardous waste" has a precise legal definition (which will be discussed in section II). The legal definition of "hazardous waste" is the definition that will be used in this memo.

Because most (but by no means all) substances that are commonly considered to be toxic or hazardous are regulated under the "regulatory framework" of the Montana Hazardous Waste and

Underground Tank Storage Act, that statute and its associated rules and program will be the focus of this assessment. If the HMMWG feels that it would be useful, an assessment of other regulatory programs (e.g., air quality, Toxic Substance Control Act, etc.) can be prepared at a later date.

For the purposes of the HMMWG, two questions about the hazardous waste regulatory framework seem most germane, and provide an organizational structure for the remainder of the memo:

- 1) What authority and responsibility does DHES have to regulate the management and disposal of hazardous waste; and
- 2) How does DHES regulate the management and disposal of hazardous waste?

## **II. What Authority and Responsibility Does DHES Have to Regulate the Management and Disposal of Hazardous Waste?**

### **A. Background and History**

Responsibility for development and operation of the Montana hazardous waste program is vested in DHES. The Montana Solid Waste Management Act enacted in 1977 first granted specific hazardous waste regulatory powers to DHES. This legislation was modeled after U.S. Congressional bills which were to become the federal Resource Conservation and Recovery Act of 1976. Later on, the decision was made to separate the state hazardous waste laws from solid waste laws. This decision resulted in the revision of the existing statute and its recodification into the Montana Hazardous Waste Management Act by the 1981 legislature. While the Act has been amended several times since 1981, most notably by the addition of authority to regulate underground storage tanks, much of the authority in the current Montana Hazardous Waste and Underground Tank Storage Act (75-10-401 et seq., MCA) and rules adopted pursuant to that Act stem from the original 1981 legislation.

As embodied by statute, Montana's policy on hazardous waste management has been to maintain a program equivalent to but not more restrictive than required by the federal Resource Conservation and Recovery Act (RCRA). With several exceptions (for example, the regulation of boilers and industrial furnaces), the department by statute may not adopt rules that are more restrictive than those promulgated by the federal government.



## B. General Statutory Authority and Responsibility

State statute provides the logical place to begin an assessment of DHES's authority and responsibility for hazardous waste management. The Montana Hazardous Waste and Underground Tank Storage Act provides general permissive powers to DHES, stating in 75-10-404(1) that the "department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance (emphasis added)."

Section 75-10-404(2) provides guidance to DHES on the relationship between the Montana Hazardous Waste and Underground Tank Storage Act and other related state statutes:

"The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. The integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

A great deal of the regulatory framework for hazardous waste is based upon administrative rules adopted by DHES rather than statute enacted by the legislature. The Montana Hazardous Waste and Underground Tank Storage Act grants DHES authority to adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage,

transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

(m) other rules which are necessary to obtain and maintain authorization under the federal program.

### C. What is Regulated By DHES?

What materials are regulated by DHES under the Montana Hazardous Waste and Underground Tank Storage Act? A three-part test provides a useful tool for answering this question. In order for a material to be regulated, each of the following questions must be answered affirmatively.

#### 1. Is it a "waste"?

A "waste" is any discarded material that is not excluded from regulation (see list of exclusions in Administrative Rules of Montana) or that, upon application to the department, is not

reclassified as nonhazardous (16.44.302, ARM). The definition of "waste" hinges upon the meaning of the term "discarded," which also is defined by rule. A waste is discarded when it is:

- 1) abandoned by being: a) disposed of; b) burned or incinerated; or, c) accumulated, stored, or treated (but not recycled) before being disposed of, burned or incinerated;
- 2) Recycled, or accumulated, stored or treated before recycling: a) in a manner constituting disposal; b) burned for energy recovery; c) reclaimed; or d) accumulated speculatively; or
- 3) considered inherently waste-like (see defined list and criteria in ARM's).

A material is not a waste when it can be shown to be recycled by being: 1) used or reused as an ingredient in an industrial process to make a product; 2) used or reused as an effective substitute for a commercial product; or 3) returned to the original process from which it was generated, without first being reclaimed. In addition, the following materials are wastes, even if the recycling involves use, reuse, or return to the original process: 1) materials used in a manner constituting disposal, or used to make products applied to the land; 2) materials burned for energy recovery, used to produce a fuel, or contained in fuels; 3) materials accumulated speculatively; or, 4) materials specifically listed as hazardous (see list).

Please note: These definitions have been simplified and condensed. For precise definitions, please see ARM, 16.44.302.

## 2. Is it hazardous?

A waste (as defined above) is hazardous if it is not excluded from regulation and it meets any of the following criteria:

- 1) exhibits any of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, toxicity), with some exceptions;
- 2) is listed in ARM 16.44.330 through 16.44.333 (which lists the wastes EPA has classified as hazardous); or
- 3) is a mixture of any waste and one or more hazardous wastes listed in ARM 16.44.330 through 16.44.333, unless the resulting mixture no longer exhibits characteristics of hazardous waste or it meets a list of exemptions.

Please note: These definitions have been simplified and

condensed. For precise definitions, please see ARM, 16.44.303.

### 3. Is it a regulated quantity?

Some establishments that generate material that meets both the definition of "waste" and the definition of "hazardous" remain largely unregulated because the material is not generated in a sufficient quantity to be regulated. DHES, through its administrative rules, recognizes three categories of generators based upon monthly rates of hazardous waste generation and on-site storage. (ARM, 16.44.401)

a. Conditionally Exempt Generator. A conditionally exempt generator is a generator of hazardous waste who generates in a calendar month no more than 100 kilograms of hazardous waste.

Of the three generator categories, conditionally exempt generators are subject to the least regulation. A conditionally exempt generator is required to make a determination that the waste is hazardous; may but is not required to register as a generator; and, must keep records of any test results or waste analyses for at least three years.

A conditionally exempt generator of hazardous waste is allowed to manage and dispose of waste in a manner that is not allowed of larger generators. For example, a conditionally exempt generator may dispose of hazardous waste in a licensed solid waste management facility or mix hazardous and non-hazardous waste.

b. Small Generator. A small generator of hazardous waste is a generator who generates in a calendar month between 100 kilograms and 1000 kilograms of hazardous waste.

The regulations that must be complied with increase as the amount of waste generated increases. A small generator is required to make a determination that the waste is hazardous and then register and obtain an EPA identification number. A small generator must comply with accumulation, recordkeeping and annual reporting requirements. Small generators are also subject to packaging, labeling and marking requirements if the waste is shipped off-site.

c. Large Generator. A large generator of hazardous waste is a generator who generates at any time in a calendar month, or accumulates at any time:

- o more than 1000 kilograms of hazardous waste;
- o more than 1 kilogram of acute hazardous waste (acute hazardous waste is hazardous because of its toxicity and is on the P-list of hazardous waste); or
- o more than 100 kilograms of any residue, contaminated soil, waste or debris resulting from a spill or release

of acute hazardous waste.

Large generators are subject to the same types of regulations as small generators, but have additional and more stringent requirements. For a list of specific requirements for each category of generator, see 16.44.402, ARM.

**D. Exclusions: What Is NOT Regulated By DHES?**

The administrative rules provide an extensive list of wastes and processes that produce waste that might otherwise be considered hazardous, but are excluded from regulation under the Montana Hazardous Waste and Underground Storage Tank Act and under the federal Resource Conservation and Recovery Act (RCRA).

Specifically, under 16.44.304, ARM, the following wastes and waste processes are excluded from regulation:

- (1) agricultural crops or animal manure returned to the soil as fertilizer;
- (2) irrigation return flows;
- (3) radioactive materials subject to regulation under Title 75, chapter 3;
- (4) in-situ mine wastes;
- (5) coal and uranium wastes subject to the Montana Strip and Underground Mine Reclamation Act;
- (6) domestic sewage that passes through a sewer system to a publicly owned treatment works for treatment;
- (7) industrial waste water subject to regulation under water quality laws;
- (8) hazardous waste that is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline ...;
- (9) pulping liquor that is reclaimed and reused;
- (10) spent sulfuric acid used to produce virgin sulfuric acid;
- (11) secondary materials that are reclaimed and returned to the original process in which they were generated where they are reused in the production process, provided that a series of conditions are met;
- (12) when used as fuel, coke and coal tar from the iron and steel industry that contains or is produced from decanter tank tar sludge;
- (13) spent wood preserving solutions that have been reclaimed and are used for their original intended purpose; and
- (14) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood (emphasis added).

NOTE: These rules have been paraphrased and the emphasis added. See ARM's for actual language of the rule.

Under ARM 16.44.304, the following wastes and waste processes are excluded from regulation under the Montana

Hazardous Waste and Underground Storage Tank Act, but may be regulated under solid waste statutes (again, these are paraphrased):

- (1) household hazardous waste;
- (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels (with some exceptions);
- (3) drilling fluids and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy;
- (4) wastes from the extraction, beneficiation or ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except for facilities that burn or process hazardous waste. (20 types of mining wastes are specifically mentioned under this exemption.);
- (5) cement kiln dust, with some exceptions for boilers and industrial furnaces;
- (6) waste which consists of discarded arsenical-treated wood or wood product which meets several tests and conditions;
- (7) wastes that fail the test for toxicity characteristics because chromium is present or are listed in ARM 16.44.330-16.44.333 due to the presence of chromium, which do not fail the test for toxicity characteristic for any other constituent;
- (8) buffing dust, sewer screenings, and waste water treatment sludges generated from several subcategories of the leather tanning and finishing industry;
- (9) waste scrap leather from the leather tanning industry, shoe manufacturing industry and other leather product manufacturing industries;
- (10) wastewater treatment sludges from the production of  $TiO_2$  pigment;
- (11) petroleum-contaminated media and debris that fail the test for certain toxicity characteristic constituents and are subject to corrective action under underground storage tank rules; and,
- (12) used chloroflourocarbon refrigerants from totally enclosed heat transfer systems, including air conditioners and refrigeration units.

The Administrative Rules also contain a series of conditions and exemptions for waste samples that are collected for the sole purpose of testing to determine the waste's characteristics or composition.

## **E. Questions for Discussion**

1. Are there materials that are not regulated by the Montana Hazardous Waste Management and Underground Storage Tank Act that should be? If so, what?
2. Are there quantities of hazardous waste that are not regulated that should be? If so, what?
3. Does DHES have adequate statutory authority to regulate the management and disposal of hazardous waste? If not, why not?
4. How will the waste stream that is considered hazardous change in the future?

## **III. How does DHES regulate the management and disposal of hazardous waste?**

Laws are not self-executing. Without effective implementation by the executive branch of government, the goals and objectives of policymakers will not be carried out successfully. Consequently, an analysis of the regulatory framework for hazardous waste must look not only at the authority provided in statutes and administrative rules, but also at how those laws are interpreted, implemented and enforced. That is the purpose of this section. Most of the data and information presented in this section is based upon DHES's FY 1993 Year End Report to the U.S. Environmental Protection Agency (EPA).

### **A. Hazardous Waste Program Resources**

While a number of factors influence the willingness and ability of an agency to implement a program, the need for resources to complete the task at hand is probably the most critical. Without an adequate staff and budget, a regulatory program cannot meet the expectations of the public, regulated community or legislature.

#### **1. Budget**

The hazardous waste program has no general fund money. The program is funded primarily through grants from the EPA that require a matching state contribution of 25%. For the last six years, the state match has come from the interest income from the Resource Indemnity Trust Fund (RIT). Table 1 outlines DHES's applications and awards from EPA since 1988. An examination of that data reveals two trends: 1) the amount requested and rewarded has increased every year except 1988-89; and, 2) since 1991, EPA has failed to award the amount requested. In 1993, the difference between the application and award was nearly \$100,000.

Table 1. Hazardous Waste Grant Applications and Awards, Fiscal Years 1988 to 1993

<u>Fiscal Year</u>	<u>Grant Application</u>	<u>Grant Award</u>
FY 88	510,585	510,585
EPA	382,939	382,939
RIT	127,646	127,646
FY 89	494,667	494,667
EPA	371,000	371,000
RIT	123,667	123,667
FY 90	506,392	506,392
EPA	379,794	379,794
RIT	126,598	126,598
FY 91	628,010	595,964
EPA	471,007	446,973
RIT	157,003	148,991
FY 92	840,096	693,833
EPA	630,072	520,375
RIT	210,024	173,485
FY 93	841,798	742,130
EPA	631,348	556,598
RIT	210,450	185,532

The 1993 Legislature provided a new mechanism for increasing funding for the hazardous waste program. As a result of HB 592, DHES is authorized to assess fees on the filing and review of hazardous waste management facility permits and permit modifications. According to the fiscal note accompanying the bill, as a result of the fees the Department anticipates additional new revenue of \$253,740 in FY 94 and \$43,740 in FY 95. Of the total for FY 94, \$200,000 is anticipated to come from permitting fees from Ash Grove and Holnam. The additional revenue has been appropriated to support two temporary environmental specialists and contracted services to process the Holnam and Ash Grove permit applications.

## 2. Staffing

The Hazardous Waste program currently has 16.97 positions authorized, of which 12.75 are filled. Of the four unfilled positions, two are vacant and two have yet to be classified (they are funded and authorized as a result of HB 592, discussed above). Table 2 summarizes the program's positions and the length of time each has been filled.



**Table 2. Hazardous Waste Program Position Summary.**

<u>Position</u>	<u>Time in Posit.</u>	<u>Time in Bureau</u>
SECT SUPRVS	19 years	19 years
PROG MNGR	3.6 years	7.4 years
ATTY	8 months	1.8 years
DATA TECH	3.9 years	3.9 years
PROG ASST	2.7 years	2.7 years
ADMIN AIDE	8 months	8 months
ENV SPEC 4-P	7 months	2.7 years
ENV ENG-P	2.4 yrs	2.4 yrs
ENV SPEC 3-H	8 months	8 months
ENV SPEC 3-P	Vacant since June 1993	
ENV SPEC 3-P	7 months	1.7 years
ENV SPEC 4-R	17.7 years	17.7 years
ENV SPEC 3-R	3.6 years	3.6 years
ENV SPEC 3-R	Vacant since Feb 1993	
ENV SPEC 3-R	7 months	1.2 years
ENV SPEC	Authorized to be filled July 1993	
ENV SPEC	but positions remain unclassified	

Code: P=Permitting R=Regulatory H=Hydrologist

Of the 16.97 positions authorized, 10 are either vacant or the occupant has been in the position less than one year (59%). The staff have a combined 56.68 years experience in their present positions, for an average of 4.36 years experience per present position. However, if the two people with the greatest longevity (36.7 years combined experience) are dropped from the analysis, the remaining 11 staff members have an average of 1.8 years experience in their present position.

**Table 3. Turnover and Retention in the Hazardous Waste Program**

<u>Position</u>	<u>Dates</u>	<u># Occupants</u>	<u>Months Vacant</u>
SECT SUPRVS	1974-93	1	0
PROG MNGR	1990-93	1	0
ATTY	1990-93	3	7
DATA TECH	1989-93	1	0
ENV SPEC 4-P	1987-93	5	6
ENV ENGN-P	1988-93	3	10
ENV SPEC 3-H	1987-93	4	24
ENV SPEC 3-P	1990-93	2	2
ENV SPEC 3-P	1991-93	2	0
ENV SPEC 4-R	1976-93	1	0
ENV SPEC 3-R	1987-93	2	6
ENV SPEC 3-R	1987-93	5	24
ENV SPEC 3-R	1987-93	4	6
ENV SPEC	New Position		
ENV SPEC	New Position		

Code: P=Permitting R=Regulatory H=Hydrologist

NOTE: Data not available for the Program Assistant and Administrative Aide positions.

Table 3 presents data on hazardous waste program staff turnover and retention. This data illustrates that staffing of the supervisory positions (section supervisor, program manager, lead regulatory position) has been fairly stable over the last six years. However, there is routine turnover among the environmental specialist positions within both the regulatory and permitting programs. It is particularly noteworthy that the lead permitting position has been filled by five different people over the last 6 years and 3 months.

**B. What Operational Demands are Placed on the Hazardous Waste Program?**

**1. Size of the Regulated Community**

The size of the regulated community has increased over the years as RCRA has been amended by Congress and EPA has promulgated new regulations. In 1986, RCRA amendments added

**Table 4. Summary of Hazardous Waste Regulated Community for FY 1993**

<u>Category</u>	<u>#</u>
Large Generator	69
Small Generator	160
Used Oil Burner/Blender	44
Hazardous Waste Burner/Blender	5
Transporter for Hire	38
Private Transporter	<u>13</u>
SUBTOTAL	329*
Registered Conditionally Exempt Generators	181
Non-registered Conditionally Exempt Generators, Non-notifiers and closed facilities	<u>689</u>
SUBTOTAL	870**

\* NOTE: This total is probably an overestimate because some categories may be double counted (e.g., a transporter is also counted as a generator).

\*\* NOTE: This total is an underestimate. It includes only the conditionally exempt generators and non-notifiers that have been identified by DHES.

A related factor that may influence an agency's ability to implement its statutory mandates is the amount of work there is to be done. How many discrete tasks are involved? How complex are these tasks? Several measures of the hazardous waste program's workload are presented in the following tables. small generators (>1000 kilograms/month) to the regulated community. In the last several years, the size of the regulated waste stream has expanded as a result of a new test for organic constituents known as the Toxicity Characteristic Leaching Procedure, and disposal options for certain wastes have become more limited as a result of an EPA ban on the land disposal.

Table 4 summarizes the numbers for each category of generator in Montana for FY 1993. This information provides a means for assessing the number of tasks the Hazardous Waste program must complete.

This information, when combined with the data on staffing and a few assumptions, allows one to make a crude assessment of the program's workload. For example, assume a goal that the Department inspects each of the 329 regulated generators in Table 4 on an annual basis (reminder: Table 4 probably double counts some generators, so the actual number of generators is less than 329). Further assume that excluding weekends, holidays, vacation and sick leave, there are 250 working days a year. Based upon an assumption of three staff members in the regulatory unit available to do inspections (per Table 2), the following calculations can be made:

$$\frac{329 \text{ inspections/year}}{3 \text{ persons}} = \frac{109.6 \text{ inspections/year}}{\text{person}}$$

$$\frac{109.6 \text{ inspections/person/year}}{250 \text{ workdays/year}} = \frac{.44 \text{ inspections/person}}{\text{workday}}$$

## 2. Permitting Activities

A major component of the hazardous waste program's responsibility is the permitting of hazardous waste management facilities. Table 5 provides a summary of permitting activities for FY 1993.

Table 5. Summary of DHES Permitting Activities for FY 1993

<u>Type of Permit</u>	<u>#</u>
Operating	2
Closure/Post-Closure	5
Minor Permit Modifications	11
Major Permit Modifications	7

NOTE: These totals represent the number of permits that were in various stages of permitting, not the

number of permits actually issued.

### 3. Compliance and Enforcement

The Hazardous Waste program conducted a total of 158 compliance inspections during FY 1993. Included in this figure are transportation, storage and disposal facilities; financial and non-financial record reviews; citizen complaint follow-up; and, all types of generators.

Table 6 summarizes the number of each type of enforcement action taken by the Hazardous Waste program during FY 1993. Of the enforcement actions taken, 77% (42 of 54) were informal actions or warning letters.

Table 6. Summary of Enforcement Actions for FY 1993

<u>Type of Action</u>	<u>#</u>
Informal/Warning Letters	42
Legal Referrals	5
Civil/Criminal Actions	4
Administrative Orders	3
EPA Referrals	0
TOTAL	54

### C. Questions for Discussion

1. Given the Hazardous Waste Program's tasks, are the number of staff and size of the budget adequate?
  2. Is DHES able to retain experienced staff?
  3. How is the workload likely to change in the future?
- Will the number of regulated generators change?

#### IV. Examples of How the Regulatory Framework Applies to Selected Situations

##### A. Ross Management, Inc.

Ross Management, Inc. has proposed to site a facility in Baker to burn used electrical transformers to recover the metals for recycling. The transformers contain mineral oil with PCB's up to 50 parts per million. How does the regulatory framework apply to this proposal?

Q: Is the waste hazardous?

A: No. In order to be regulated as a hazardous waste, a material must be: 1) a waste; 2) hazardous; and 3) of sufficient quantity to be regulated. Because PCB's do not meet the definition of hazardous, the Ross Management facility would not be regulated under the authority of the Montana Hazardous Waste and Underground Tank Storage Act.

Q: How would Ross Electric be regulated?

A: While PCB's are not a hazardous waste, they do meet the definition of "waste" under the Solid Waste Management Act (75-10-201, MCA), and would be regulated by DHES under the authority of solid waste statutes.

Also, because Ross's proposal involves incineration, an air quality permit from DHES would also be required.

Finally, the Ross proposal may be regulated by EPA under the Toxic Substances Control Act (TSCA). EPA's TSCA regulations provide an exclusion for PCB products that contain less than 50 ppm PCBs. However, in order to be eligible for this exclusion, fuel containing less than 50 ppm PCBs cannot be burned in nonindustrial boilers and furnaces. EPA currently is investigating whether Ross Management's proposal qualifies for this exemption or not.

##### B. Ash Grove Cement Kilns

The Ash Grove cement kiln in Montana City has proposed to replace up to 20% of its fossil fuels with hazardous waste-derived fuels (15,000 tons). How does the regulatory framework apply to this proposal?

Q: Is the hazardous waste-derived fuel that Ash Grove proposes to burn a regulated quantity of waste that is hazardous?

A: Yes. Because what Ash Grove proposes to burn meets both the definition of "waste" and the definition of "hazardous," and because it is of sufficient quantity to be regulated, the Ash Grove proposal triggers the regulatory framework of the Montana Hazardous Waste and Underground Tank Storage Act. Ash Grove will be required to obtain a hazardous waste permit to store and treat

hazardous waste, must comply with the regulations and permitting requirements for boilers and industrial furnaces, and must obtain an air quality permit to burn hazardous waste.

#### C. Crown Butte's New World Mine

Crown Butte has applied for an operating permit under the Montana Metal Mine Reclamation Act (82-4-301, MCA) to site and operate a mine near Cooke City. The project would mine gold, silver and copper reserves with an estimated average annual production rate of 540,000 tons of ore over a 10 to 15 year period. As a result, about 5.5 million tons of mine tailings that potentially contain dissolved heavy metals and acid leachate would be placed in a 72 acre impoundment. How does the regulatory framework apply to this proposal?

Q: Are the mine tailings a hazardous waste that would be regulated under the Montana Hazardous Waste and Underground Tank Storage Act?

A: No. ARM 16.44.304(2)(d) provides an exclusion from the requirements of the Montana Hazardous Waste and Underground Tank Storage Act for these mine wastes. The mine tailings and impoundment would be regulated under the Montana Metal Mine Reclamation Act.

#### D. Used Motor Oil

The local auto mechanic changes the oil in dozens of cars per week. How does the regulatory framework apply to used motor oil?

Q: Is used motor oil hazardous?

A: It depends. To determine whether used motor oil is hazardous or not because of heavy metals, it is necessary to test the oil using the Toxicity Characteristic Leaching Procedure. Generally, if the oil test is positive, then it is regulated as a hazardous waste and if the oil test is negative, then it is regulated as a solid waste. However, under the Montana Hazardous Waste and Underground Tank Storage Act, used oil that exhibits one or more characteristics of hazardous waste but is recycled is exempt from regulation, and used oil that is burned for energy recovery is regulated under different federal requirements in some instances.

HAZWASTE\REGPROG.STS

EXHIBIT 2  
DATE 12/6/93  
HB HB 49

MONTANA ASSOCIATION  
OF  
**LIVESTOCK AUCTION MARKETS**  
INC.

LES GRAHAM  
Executive Secretary

406/284-6933

P.O. Box 334  
Manhattan, Montana 59741

DECEMBER 5, 1993

TO: MONTANA STATE SENATE AND HOUSE MEMBERS

FROM: LES GRAHAM, EXECUTIVE SECRETARY  
MONTANA ASSOCIATION OF LIVESTOCK AUCTION MARKETS

RE: HOUSE BILL 49

*The Montana Association of Livestock Auction Markets would like to go on record as being solidly opposed to this legislation. Our association has consistently opposed the merger of the Departments of Livestock and Agriculture since the measure was first introduced in 1972 by Representative Wally Edlund of Scobey. We are joined in this opposition by the ranching and farming communities of Montana.*

*A long time lobbyist and friend of mine, Mr. Al Dougherty told me once that the Department of Livestock would be more vulnerable from those who envy it rather than from those whom it regulates. How true! MALAM is heavily regulated by the Department of Livestock.....isn't it interesting that not one single segment of the livestock or the agricultural industry is here in favor of this proposal. And yet here we are facing the issue without the consideration of having the proponents discuss the consequences with us.*

*Why then does this proposal continue to appear on busy legislative calendars? We feel it is more than the issues given by the proponents...such as budget savings and better service. Certainly government history shows that bigger is not better or*

SELL 'EM AT AUCTION

*necessarily less expensive. The very best lesson of all is in the history books as "Pay More--What For" and the subsequent re-organization of state government in the early 1970's. We feel it is more of a move to reduce The Board of Livestock to nothing more than another state board or commission that has a great time sitting around the table giving suggestions from the grass roots to agency employees, but with no authority to see that they are listened to--much less adhered to.*

*The Board of Livestock is the strength of The Department of Livestock, giving the administrative staff first hand directions about the effects of decisions on the industry they serve.*

*There is, and has been, continuity in staffing. It has been shown that this state agency can be run efficiently and conservatively and in a budget-wise manner.*

*As a former twenty-year administrator in state government it is most difficult to persuade me that this legislation will create efficiency and save money. If I were a betting man I would gladly wager with the proponents on what will take place down the road. Along these lines perhaps I would even give them a spread.*

*There have been numerous studies during the last twenty-five years all of which have shown that what is being proposed is not in the best interest of good government. We urge that you give HB49 a "do-not" pass.*





**MONTANA FARM BUREAU FEDERATION**

502 South 19th • Bozeman, Montana 59715  
Phone: (406) 587-3153

EXHIBIT 6  
DATE 12/6/93  
HB HB49

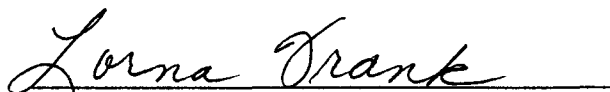
December 6, 1993

Mr. Chairman, members of the committee, for the record, I am Lorna Frank, Director of Information and editor of our monthly publication for the Montana Farm Bureau.

Farm Bureau opposes House Bill 49, we believe the Department of Livestock and the Department of Agriculture should remain separate entities. Agriculture is still the number 1 industry in the state and as such should be represented by these two departments who have completely separate functions.

What is the goal of combining the two departments? There are only two reasons for combining the two departments that I can think of and that is to save money or to make it more efficient. Where is the proof that it will do either one? The only purpose I can see for doing this is get the user fees in the Department of Livestock and put them into the general fund. The Department of Livestock arrives the majority of its money from users of the programs the department provides, as does the Department of Agriculture. That is the main reason why farmers and ranchers do not want the two departments combined.

I urge you to vote NO on House Bill 49.

  
Lorna Frank

## VISITOR'S REGISTER

VISITOR'S REGISTER

State Administration COMMITTEE Harper BILL NO. HB 38

DATE Dec 6, 1993 SPONSOR(S) H. Hayne B. Gilbert

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[illegible]

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

State Administration COMMITTEE BILL NO. HB 40  
DATE Dec. 6, 1993 SPONSOR(S) D. Wanzenried

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim Jensen	MEIC	HB 40		
Anne Hedgis	MEIC	HB 40		
Bob Johnson	DHES			X

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

*State Administration* COMMITTEE  
DATE *Dec 6, 1993* SPONSOR(S) *J. Rice*

BILL NO. *HB 43*

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Brad Griffin	MT Retail Assoc	43		✓
MARV EICHOITZ	DOA	43		
Bob Billings	CSI OFFICE PRO	43		✓
Jim Tutwiler	MT CHAMBER	43		✓

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

*State Administration* COMMITTEE

BILL NO. *HB 49*

DATE *Dec. 6, 1993*

SPONSOR(S) *J. Rice*

*Wangenried*

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Lorna Frank	MT. Farm Bureau		✓	
<i>mt Gene Breeder Assn</i> Les Graham	MT. Dairyman's Assn MT LIVESTOCK MKTS ASSO		✓	
<i>Dillon, mt</i> Jim Hagenbatt <del>BEH</del>	BOL		✓	
EE Mortensen	Dept. Bd. of CS		✓	
George Paul	Farmers Union		✓	
Jim Peterson	<i>Woolgrowers</i> Montana Sheepman, PLC, MAFD		✓	
Leo Giacometto	Dept. of Agriculture		✓	

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