

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on February 17, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: HJR 25
Executive Action: HB 430 Tabled as amended
HB 473 Do Pass
HJR 22 Do Pass as amended
HB 521 Suspended
HB 538 Tabled
HJR 25 Do Pass

EXECUTIVE ACTION ON HB 430

Tape 1, Side A.

Motion: REP. DANIEL FUCHS MOVED AMENDMENTS TO HB 430.

Discussion: REP. FUCHS explained the amendments. **Exhibit 1.** He said the amendments were an effort on his part to be responsive to House District 15; reach a compromise with the environmentalists and industry and eventually get back to the intent of the bill which is to re-establish a state-wide air quality standard.

REP. DAVID EWER asked REP. FUCHS what monitoring would be based on if it isn't based on computer modeling. REP. FUCHS said it would be based on individual situations.

REP. JON ELLINGSON asked REP. FUCHS if the amendments met with the sponsor's approval. REP. FUCHS replied yes.

REP. STORY said if an industry is going to be required to spend \$160,000 for monitoring, the monitors shouldn't be put where they won't be useful. REP. FUCHS said the requirements for the monitors were deleted from the amendments.

REP. EWER requested that amendment 7 be separated from the other amendments and voted on last.

Vote: Question was called. Voice vote was taken on amendments 1, 2, 3, 4, 5, 6, 8 and 9. **Motion carried unanimously.**

Motion/Vote: REP. FUCHS MOVED AMENDMENT 7. Question was called. Voice vote was taken. **Motion carried 16 to 2.** REP. ELLINGSON AND REP. EWER voted no.

Motion: REP. FUCHS MOVED HB 430 DO PASS AS AMENDED.

Motion: REP. ORR MADE A SUBSTITUTE MOTION HB 430 DO NOT PASS.

Discussion: REP. CARLEY TUSS said industry has done a lot to get their emissions down to 0.03 but would like to see them aim lower.

REP. EMILY SWANSON said it isn't fair to expect new businesses coming into Billings to comply with state standards when businesses that are already established can have lower standards when they are perfectly capable of coming up to the state standards. She said HB 430 is a good bill.

REP. FUCHS said he is against the substitute motion. The bill has really been watered down in an effort to reach a compromise. All the bill is doing right now is setting a time which is congruent with the state implementation plan that says at some

point Yellowstone County will be back on the same state standard as the rest of the state. There is nothing to prevent the next Legislature, that will be convening again before the bill takes affect, from addressing the need for exemptions in certain cases.

REP. HAL HARPER said all the bill does is establish a goal with the hope that someday there may be cleaner air in Billings and re-establish uniform state-wide standards. Both goals are laudable and make the bill worthy of support.

Vote: Question was called. Roll call vote was taken. **Substitute Do Not Pass** motion carried 11-7. **REP. RANEY, REP. ELLINGSON, REP. EWER, REP. FUCHS, REP. HARPER, REP. SWANSON** and **REP. STOVALL** voted no.

Motion/Vote: **REP. ORR** MOVED TO TABLE SB 430. SB 430 was Tabled as amended by same vote as DO Not Pass.

EXECUTIVE ACTION ON HB 473

CHAIRMAN KNOX turned the chair over to **VICE CHAIRMAN TASH** during executive action of HB 473.

Motion: **REP. DICK KNOX** MOVED HB 473 DO PASS.

Discussion: **REP. EMILY SWANSON** said she would like to separate the amendments to HB 473 into three parts, one through three, four through ten and eleven.

Motion: **REP. SWANSON** MOVED AMENDMENTS ONE THROUGH THREE TO HB 78 DO PASS.

Discussion: **REP. SWANSON** said the first three amendments explain the difference between a major subdivision and a minor subdivision. A minor subdivision is five lots or less. The bill eliminates a need for an environmental assessment for a minor subdivision. That isn't a good idea. The amendments put the need for an environmental assessment on a minor subdivision back into the bill.

REP. KNOX said he resisted the amendments. The bill has provisions that local governments can use to establish their own review criteria. The bill puts control into the hands of local governments and that is where it should be. The local governments can subject minor subdivisions to a very definite review process if they so choose.

REP. SWANSON said the bill puts the burden on the public instead of the subdivider having to show that the subdivision is not intruding on the public interest. The person that puts in a subdivision should be the one to try to fit with the community rather than the community trying to fit with the subdivider.

REP. KNOX said the governing bodies still have the preponderance of power. That section of the bill places a degree of credibility and accountability upon the governing bodies.

Vote: Question was called. Voice vote was taken. **Motion failed 12-6.**

Motion: REP. SWANSON MOVED AMENDMENTS FOUR THROUGH TEN DO PASS.

Discussion: REP. SWANSON said amendments four through ten change the way park dedication is calculated in a subdivision. Instead of doing it on fair market value it would be done on area.

REP. KNOX said he resisted amendments four through ten. The park dedication provision is fair and equitable. It is designed to meet specific needs in various types of subdivisions. When there are a greater amount of lots within a subdivision there is a maximum amount of park dedication. As more open space is created within a subdivision the park requirement drops. In the real world there are so-called parks all over Montana in subdivisions that are weed infested messes due to lack of maintenance. This bill provides for maintenance.

Tape 1, Side B.

Vote: Question was called. Voice vote was taken. **Motion failed 12-6.**

Motion: REP. SWANSON MOVED AMENDMENT 11 DO PASS.

Discussion: REP. SWANSON said Section 10 of the bill restricts the landowners who can appeal to landowners with a property boundary contiguous to the proposed subdivision. There are more people affected by a subdivision than the landowners adjacent to a particular piece of property. If there is a concern among the public they should have access to the appeal process without having to go to the government officials and convince them to do the appeal for them.

REP. KNOX said he resisted the amendment. He pointed out that currently people can sue if they suffer harm to their health, or if a subdivision obstructs free use of their property. Individuals have free access to their local governing bodies and they are very responsive to groups who have a legitimate cause.

REP. DANIEL FUCHS said he was against the amendment. He said it is important to recognize the way Section 10 is drafted because there are a lot of situations where there have been arbitrary and capricious actions on behalf of government.

REP. HARPER asked REP. KNOX if the wording in Section 10 meant that a person who owned property across the road from the subdivision wouldn't be able to appeal because their property

wouldn't be contiguous. REP. KNOX said that is his interpretation.

Vote: Question was called. Voice vote was taken. Motion failed 12-6.

Vote: Question was called. Voice vote was taken. Do Pass HB 473 motion carried 12-6. REP. HARPER, REP. SWANSON, REP. CARLEY TUSS, REP. BOB RANEY, REP. JON ELLINGSON AND REP. DAVID EWER voted no.

EXECUTIVE ACTION ON HJR 22

Motion: REP. BILL TASH MOVED HJR 22 DO PASS.

Motion: REP. TASH MOVED THE AMENDMENTS TO HJR 22

Discussion: REP. TASH explained that the amendments would adopt an administrative rule procedure to allow under the air quality statutes a minor change in the facility without a pre-construction permit.

REP. JON ELLINGSON asked if the current statutes permit the Department of Health and Environmental Sciences (DHES) to make these kinds of rules. Jan Sensibaugh, Air Quality Division, DHES, said the department does have the authority in the statute to develop the rules.

REP. ELLINGSON asked REP. TASH if the current rules of DHES require permitting now for the kind of minor modification that is being addressed in the resolution. REP. TASH replied yes.

REP. HAL HARPER asked Jan Sensibaugh if additional levels of the same type of pollutant were discharged would the plant be allowed to operate without an amended operating permit under the amendments. Ms. Sensibaugh said the department operates a pre-construction permit program and an operating permit program. The department would create a level in the rules allowing construction without getting a pre-construction permit as long as the level of pollutants stay below the level that is currently being emitted. The operating permit would have to be amended within a year to include the changes.

Vote: Question was called. Voice vote was taken. Motion Do Pass amendments carried 16 to 2. REP. ELLINGSON and REP. TUSS voted no.

Motion/Vote: REP. TASH MOVED HJR 22 DO PASS AS AMENDED. Question was called. Voice vote was taken. Motion carried 15 to 3. REP. RANEY, REP. ELLINGSON and REP. TUSS voted no.

Tape 2, Side A.

EXECUTIVE ACTION ON HJR 24

Motion: REP. HAL HARPER MOVED DO PASS HJR 24.

Discussion: REP. ROBERT STORY said he was concerned that there wouldn't be enough state-wide interest to get commitment from people to work together regarding common goals on land development in streamside corridors. HB 192 encourages local watershed councils to solve their own problems. If HB 192 passes it can be used to address the issues in HJR 24.

REP. LILA TAYLOR said she is concerned about the word "reasonable" in line 16 of the bill which refers to private property owners' rights to the use of their property.

REP. HARPER said he didn't want to have any words in the resolution that anyone has a problem with.

Motion/Vote: REP. HARPER MOVED TO AMEND HJR 24 BY STRIKING THE WORD "REASONABLE" FROM LINE 16. Question was called. Voice vote was taken. Motion carried unanimously.

Motion: REP. HARPER MOVED HJR DO PASS AS AMENDED.

Discussion: REP. BILL TASH said the groups that are having problems with access, water use, corridors, etc., have the authority now and have exercised it by requesting the Governor's Task Force Groups to act on them. He agreed with REP. STORY that HB 192 will address these issues better because it starts with grassroots groups and works up whereas, HJR 24 starts at the top and works down.

REP. HARPER said there is no way these kinds of issues can be decided at the top and mandated down. HJR 24 tries to raise these issues to the highest state-wide level of awareness.

REP. STORY said he agrees with the concept of HJR 24 but is concerned that another drought committee will come from it.

Vote: Question was called. Voice vote was taken. Motion carried 13-5. REP. TASH, REP. WAGNER, REP. CURTISS, REP. SLITER and REP. ORR voted no.

EXECUTIVE ACTION ON HB 521

Motion: REP. DOUG WAGNER MOVED HB 521 DO PASS.

Motion: REP. WAGNER MOVED DO PASS ON AMENDMENTS TO HB 521.

Discussion: Michael Kakuk, EQC, explained the amendments.

Tape 2, Side B.

REP. HARPER said at least one amendment should be acted on to put the money in the bill then have another hearing since local government interests have been included in the amendments.

Motion/Vote: REP. ROBERT STORY MOVED TO DIVIDE THE AMENDMENTS AND DO PASS ON AMENDMENTS 18, 24 AND 30. Motion carried unanimously.

Discussion: REP. WAGNER asked if the bill could be held in committee for further action at a later date. Mr. Kakuk said his understanding from Legislative Council is that HB 521 is not a revenue bill until it is reported out of committee as such. REP. HARPER said the bill becomes a revenue bill not subject to transmittal as soon as it is on one of the lists that is exchanged between the House and the Senate before transmittal date.

REP. AUBYN CURTISS asked if the title needed to be changed before fees could be collected. Mr. Kakuk said the title would have to be changed before the bill left the committee.

Motion: REP. CURTISS MOVED AN AMENDMENT TO CHANGE THE TITLE OF HB 521 TO INCLUDE THE OPTION OF THE FEE LANGUAGE.

Discussion: REP. HARPER said he didn't have any problem with the amendment but the title will probably end up being amended again. This amendment won't have any impact on whether it is considered a revenue bill or not.

REP. STORY said the section about local government should be included in the title.

Mr. Kakuk said to make sure everybody knows this now applies to local government the movement of amendments 31, 32, 33, 34, 35 and 36 through 39. In order to change the title to include local government it would require the movement of amendments 1 through 10.

REP. HARPER said if REP. CURTISS'S amendment would include 1 through 10 for the title it would serve the committee's purposes.

Mr. Kakuk said by only moving amendments 1 through 10 you would have a title that is inaccurate because the body of the bill doesn't include the local governments. REP. HARPER said that didn't bother him a bit.

Motion/Vote: REP. DANIEL FUCHS MOVED AMENDMENTS 1 THROUGH 10. Question was called. Voice vote was taken. Motion carried unanimously.

REP. CURTISS asked if her amendment had been acted on. CHAIRMAN KNOX said it had been acted on with the vote on amendments 1 through 10.

Motion: REP. WAGNER MOVED THAT THE COMMITTEE SUSPEND FURTHER EXECUTIVE ACTION ON HB 521.

CHAIRMAN KNOX ruled that HB 521 would stay in committee and further executive action would be suspended at this time.

EXECUTIVE ACTION ON HB 538

Motion: REP. HAL HARPER MOVED HB 538 DO PASS.

Discussion: REP. BILL TASH said HB 538 is very strict and would have a very damaging effect on property rights.

Discussion: REP. ROBERT STORY said HB 538 is not a very good bill because it requires the Department of Health and Environmental Sciences to enforce every action and it does not do that. For example, in agricultural and industrial areas the department mitigates to solve the problems. HB 538 doesn't allow the department that latitude.

Motion/Vote: REP. TASH MOVED TO TABLE HB 538. Question was called. Voice vote was taken. Motion carried 12-6. REP. HARPER, REP. CARLEY TUSS, REP. EMILY SWANSON, REP. DAVID EWER, REP. BOB RANEY AND REP. JON ELLINGSON voted no.

HEARING ON HJR 25

Opening Statement by Sponsor: REP. JOE QUILICI, House District 36, Butte, said HJR 25 asks that the continued development and demonstration of innovative technologies for the treatment of mine wastes and other types of cleanup be recognized in Butte, Montana. The Environmental Protection Agency spent \$40,000,000 of the superfund to move contaminated waste from Butte to Opportunity. Contaminated waste should be cleaned up rather than moving it from one site to another. REP. QUILICI asked the committee to support these endeavors.

Tape 3, Side A

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: REP. AUBYN CURTISS asked REP. QUILICI the name of the entity in Butte that has contributed to waste remediation technology. REP. QUILICI said Metanetix was one of the entities.

REP. EMILY SWANSON said she had been informed that Metanetix had just reached the production stage and shipped its first carload

of heavy metals which will enable it to recoup some of its investment.

REP. HAL HARPER said he was going to stand up as proponent of HJR 25 but didn't in the interest of time. With the proper nurturing these kinds of technologies can make Montana a world center. Montana has a lot of money available to cleanup damaged areas. Europe has centuries of damage and is hungry for these technologies. There is no reason Montana can't be a world leader by first cleaning up its own environment and then transferring that technology to everywhere else in the world. This bill is what Montana needs to improve its environment and establish high paying jobs.

Closing by Sponsor:

REP. QUILICI did not close.

EXECUTIVE ACTION ON HJR 25


Motion/Vote: REP. ROBERT STORY MOVED DO PASS HJR 25. Voice vote was taken. Motion carried unanimously.

ADJOURNMENT

Adjournment: 10:55 AM



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-17-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Joint Resolution 22 (first reading copy -- white) do pass as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

1. Title, line 6.
Strike: "LEGISLATION" through "LEGISLATURE"
Insert: "RULES"
2. Title, lines 7 and 8.
Strike: ", AS" on line 7 through "OBTAINED" on line 8
3. Page 1, line 11.
Following: "quality"
Insert: "operating"
4. Page 1, line 23.
Strike: "legislation"
Insert: "rules"
5. Page 1, line 24.
Strike: "55th Legislature"
Insert: "Board of Health and Environmental Sciences"
6. Page 1, line 26.
Strike: "costing" through "million"
7. Page 1, line 27.
Following: second "as"
Insert: "the size of the change is below a de minimis level
established by the Board through rulemaking and"

DS

Committee Vote:
Yes/5, No 3.

411129SC.Hbk

8. Page 1, lines 29 through 30. :
Strike: "and" on line 29 through "obtained" line 30.

-END-



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that **House Joint Resolution 25** (first reading copy -- white) do pass.

Signed: _____

Dick Knox
Dick Knox, Chair

PS.
Committee Vote:
Yes 18, No 0.

411131SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 473 (first reading copy -- white) do pass.

Signed: _____

Dick Knox

Dick Knox, Chair

PS
Committee Vote:

Yes 12, No 6.

411126SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 2-17-95 BILL NO. HB 430 NUMBER _____

MOTION: Table as Amended

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs		✓
Rep. Hal Harper		✓
Rep. Karl Ohs	✓	
Rep. Scott Orr	✓	
Rep. Paul Sliter	✓	
Rep. Robert Story	✓	
Rep. Jay Stovall		✓
Rep. Emily Swanson		✓
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss	✓	
Rep. Doug Wagner	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 2-17-95 BILL NO. HB 430 NUMBER _____

MOTION: Do NOT PASS

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs		✓
Rep. Hal Harper		✓
Rep. Karl Ohs	✓	
Rep. Scott Orr	✓	
Rep. Paul Sliter	✓	
Rep. Robert Story	✓	
Rep. Jay Stovall		✓
Rep. Emily Swanson		✓
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss	✓	
Rep. Doug Wagner	✓	

Amendments to House Bill No. 430
First Reading Copy

Requested by Rep. Fuchs
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 15, 1995

1. Title, line 5.
Strike: "AN IMMEDIATE"
Insert: "A DELAYED"
2. Page 1, lines 16 and 17.
Strike: subsection (1)(a) in its entirety
Renumber: subsequent subsections
3. Page 1, line 27.
Strike: "either"
4. Page 1, lines 28 and 29.
Strike: "or" on line 28 through "agency" on line 29
5. Page 2, line 11.
Strike: "on passage and approval"
Insert: "July 1, 1998"