

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 8, 1995,
at 4:15

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Jeff Weldon

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Committee Business Summary:

Hearing: HB 215, HB 461, HB 489.
Executive Action: HB 215, HB 461, HB 489, HB 274

HEARING ON HB 489

Opening Statement by Sponsor:

REP. ED GRADY, HD #55, CANYON CREEK, told the committee HB 489 would allow the sale or exchange of certain state lands (the Helena fairgrounds, some property near Lewistown and some near Boulder) to other public entities (counties). The bill originally called for transfer to nonprofit corporations, but that stipulation was removed in the House. The exchanges would be for community service or other public purposes.

REP. GRADY said he had been concerned that the state faced a liability while owning those properties. The Helena Fairgrounds were originally purchased as a state fairgrounds, but have not been used for that purpose for many years. Lewis and Clark County has offered to assume ownership and thereby be able to apply for grants to improve the property.

Proponents' Testimony:

Gib Goodman, President of Lewis and Clark County Fairgrounds Users Association, Helena, said his organization assumed management of the fairgrounds four years ago and has been operating without state funds. Improvements could only be made by soliciting private grants. His association leases the property from the state for \$1/year. He said a successful fair and stampede were being operated, as well as numerous youth activities, but improvements were badly needed and the association did not want to go to the taxpayers for assistance. He hoped for committee approval of the bill.

Wayne Roseman, Manager, Lewis and Clark County Fairgrounds, urged passage of the bill because operators of the fairgrounds were unable to seek grant money to bring the facilities up to standard as long as the property was owned by the state.

Candace Torgerson, Montana Stockgrowers and Montana Cattlewomen's Association, said the organizations she represented had worked with the sponsor on wording in the bill and strongly supported it.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. GRADY commented that the State Land Board approval would still be required for any of those exchanges or sales. He thanked the committee for a good hearing. He mentioned that SEN. BECK would carry the bill.

EXECUTIVE ACTION ON HB 489

Motion/Vote: SENATOR MIKE FOSTER MOVED TO CONCUR IN HB 489. MOTION CARRIED UNANIMOUSLY.

HEARING ON HB 215

Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, HD #64, MISSOULA, said HB 215 came from a consensus decision by the Environmental Quality Council's Hazardous Waste Study Group (HWSG) comprised of industry

representatives, environmentalists and legislators. She said when the bill came to the House, it was heard at four subcommittee meetings to be sure it would be something the state could live with. In its present form, the bill would ensure that anyone who made application for a new hazardous waste facility would have to provide records indicating any kind of conviction related to environmental laws to the DHES.

Proponents' Testimony:

Jerome Anderson, Helena attorney, representing the Cement Plant at Trident, said he had participated in the HWMG between the 1993 and 1995 sessions and HB 215 was the only consensus reached by that group. He also participated in the four subcommittee meetings that resulted in the bill. He strongly supported HB 215.

Anne Hedges, Montana Environmental Information Center (MEIC), Helena, also participated in the meetings that led to the bill. MEIC supported the bill and felt it was important that the state could look at the records of companies wishing to do business in Montana.

Paul Johnson, Montanans for a Healthy Future, a citizens' group that participated in the interim study process, said his organization thought the bill was a good idea and urged its support.

Bill Allen, Montana Audubon Legislative Fund, also supported the bill.

Wade Sikorski, Southeastern Montana Alliance, agreed that the bill was a good idea but asked that it be amended to protect his community in Fallon County from Ross Management (Ross Electric), a company attempting to obtain permits to incinerate transformers and transformer oil (**EXHIBIT #1**).

J. V. Bennett, Montana Public Interest Research Group, said his organization was also involved in the planning process for HB 215. He urged passage of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. COLE asked about the violations by Ross Management. **Mr. Sikorski** said all their violations were civil.

Michael Kakuk, Environmental Quality Council, explained that HB 215 states anyone convicted of a violation of an environmental law would be required to report it when coming into the state. When a permit came up for renewal, in-state civil convictions would also be considered.

SEN. VIVIAN BROOKE said Ross Electric had been in the news for several years, and asked what **REP. COCCHIARELLA** had heard about the company in subcommittee meetings.

REP. COCCHIARELLA replied that **SEN. BROOKE** probably knew more about the subject than she did, but Ross did not fit under the definition of hazardous waste management facilities. The bill would have nothing to do with Ross, although they had been a major topic of discussion.

CHAIR. GROSFIELD asked **Mr. Kakuk** how Ross Management would be classified - if not as a hazardous waste management facility, would it be a solid waste management facility? **Mr. Kakuk** said that was correct.

CHAIR. GROSFIELD asked if the bill could be amended to include Ross Electric. **Mr. Kakuk** responded that if this committee wanted to draft an amendment to include Ross under those provisions, it could do so. It would, however, be subject to a challenge in the Rules Committee.

SEN. MIKE FOSTER said a great deal of thought went into the bill and it was very clear that it related to hazardous waste facilities. If the bill were opened up to solid waste facilities, it could cause innumerable problems, and he urged that the bill not be amended.

Closing by Sponsor:

REP. COCCHIARELLA reminded the committee that HB 215 was the only consensus point reached after a great deal of discussion and she urged that the committee do concur. She also thanked the many people who took part in the study group.

EXECUTIVE ACTION ON HB 215

Motion/Vote: **SENATOR FOSTER MOVED HB 215 BE CONCURRED IN.**
MOTION CARRIED UNANIMOUSLY TO CONCUR IN HB 215.

CONTINUATION OF EXECUTIVE ACTION ON HB 274

CHAIRMAN GROSFIELD commented that the discussion on March 6th on the amendment to HB 274 was left on a tie vote (4 to 4) as three members were not present and able to vote on the amendment. It was his understanding that several senators would like to revisit that amendment, and he said he would therefore open Executive Action on HB 274 by moving the same amendment voted on previously.

Motion: **SENATOR GROSFIELD MOVED AMENDMENT hb27401. atē. SENATOR GROSFIELD** reminded committee members that his motion included only the amendment items 1, 3 and 4, not item 2.

Vote: A ROLL CALL VOTE OF SIX TO FIVE AGAINST THE AMENDMENT FOLLOWED AND THE MOTION FAILED.

SENATOR GROSFIELD said he had anticipated that the motion might fail and suggested instead amendment No. 27402. The amendment would say that the Department of State Lands would have to act within 30 days. He said he had not had an opportunity to discuss the amendment with the department.

Bud Clinch, Commissioner of State Lands, said his department had no objection to the amendment and thought it was a reasonable solution.

Discussion:

SEN. BROOKE asked if the time limit would have to be observed in all cases. **CHAIR. GROSFIELD** replied that it would apply only in cases where people would say they would sell timber if it could be taken immediately and would not grant access to it if there were a delay. In those cases, DSL would have to expedite the EA process.

SEN. KEATING commented that if there were public objections to the EA and to the permit, the process could be stopped, particularly if a complaint were filed in district court. There would be no way to make the court act within 30 days. The intent of the bill was to exempt emergency situations from the Montana Environmental Policy Act (MEPA).

SEN. GROSFIELD replied that if someone were serious enough to take the matter to court they might do it even if the bill passed as written.

John North, Chief Legal Counsel, DSL, agreed that under existing language DSL could be brought into court to show to what extent compliance was precluded by the time available. He thought it might also be possible under the proposed amendment, but it was less likely that the action would be successful.

SEN. KEN MILLER asked what would happen if the EA were not accomplished within 30 days - would a timber sale go ahead or would it be held up because an EA wasn't done. **CHAIR. GROSFIELD** responded that he didn't know.

Todd Everts, Environmental Quality Council, said the Cadillac case (litigated by John North) stated that when a time constraint was imposed by Statute that time constraint would supersede MEPA, so the sale would go.

SEN. COLE commented that seasons (bad weather or spring breakup) could cause a problem with the 30-day limit, also.

CHAIR. GROSFIELD said the bill covered a timber sale of up to 1 million board feet, and he didn't think there would be many that

large that could happen immediately. As he understood it, in the past there have been occasions where the EA had been delayed for several months and then a problem did result. Thirty days should be workable.

Mr. North commented that all timber sales are taken to the Land Board on a monthly basis. He said on the average there was about a two-week delay getting to the Land Board for a decision.

Mr. Clinch mentioned that the amendment stated that after permission was granted there would be 30 days before DSL could proceed. He asked if it were the intent that MEPA compliance had to be obtained before the timber sale could be processed.

Mr. Everts said the amendment was intended to target a certain date, and the amendment ties the date back to the time access permission was granted.

SEN. WILLIAM CRISMORE asked if the same regulations would be required on very small sales. **CHAIR. GROSFIELD** said the bill only applied to specific access situations.

Mr. Everts said through the planning process at DSL those situations were categorically excluded from MEPA. Salvage sales might or might not be excluded.

Mr. Clinch said that issue was being discussed in the department's programmatic EIS. The small sale program was somewhat different and was similar to the Forest Service's "Green Slip" sale permit. It would not be affected by the bill.

Motion: SENATOR GROSFIELD MOVED AMENDMENT NO. 27402.ate TO HB 274.

Vote: A ROLL CALL VOTE FOLLOWED, WITH FIVE VOTING AYE AND FIVE VOTING NAY AND THE MOTION FAILED.

Motion/Vote: SENATOR CRISMORE MOVED TO CONCUR IN HB 274 AS WRITTEN. MOTION WAS CONCURRED IN WITH SENATOR WELDON VOTING NO.

HEARING ON HB 461

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM RYAN, HD #44, GREAT FALLS, told the committee his bill would create the Montana Emergency Response to Hazardous Material Incidents Act (**EXHIBIT #2**). It was developed over a two-year period by the State Emergency Response Committee appointed by the Governor. The purpose of the bill was to allow all entities involved in response to a disaster to work together.

Proponents' Testimony:

Clark Johnson, State Emergency Response Commission, said his organization operates under a federal grant and does some training regarding hazardous materials to local governmental entities across the state. They helped in the planning of HB 461. The proposal would support local jurisdictions in their response to hazardous materials incidents. Under HB 461, existing resources throughout the state would be used to help each other in emergency situations without creating any new FTE's. The issue of liability was addressed in the bill, and would apply only to entities identified in the bill.

He said "threatened release" and "possible release" were defined in the bill. If responders were asked to stand by in an emergency situation to deal with a release that did not occur, under much federal legislation, they may not be entitled to reimbursement. Industry was concerned that someone might call and cause a large response to something that was not dangerous. The plan would establish a system to verify that there was a need for an emergency response from the state. All terms in the bill were consistent with existing federal definitions from the EPA.

Jim Green, Administrator, Disaster & Emergency Services, Department of Military Affairs (DOMA), supported the bill because it would provide a way for the state to assist local governments when a hazardous material incident goes beyond their capabilities.

Hazardous materials incidents occur almost daily in Montana, and over 99% of those incidents are handled successfully by local responders, primarily fire departments.

Bob Robinson, Director, DHES, said he did not think the bill would be controversial. He told the committee that Governor Stephens created the Emergency Response to Hazardous Material Incidents group in response to the train wreck in Whitefish where spilled fuels threatened Whitefish Lake. It rapidly became apparent that there was a need to better manage rural incidents of that type. Whitefish did not have the resources to respond and it took some time for assistance to be organized.

Governor Racicot reauthorized the committee and charged it with developing a method of responding to hazardous materials incidents. The committee decided against creating another bureaucracy to deal with those emergencies and in favor of coordinating existing entities already supplied with emergency response equipment (Burlington Northern, Montana Power, and Malmstrom Air Force Base, for example). The bill will not usurp any responsibilities of local responders.

Jim Kembel, City of Billings, strongly supported the legislation.

Bruce Suenram, State Fire Marshall, Department of Justice, also supported HB 461. He said his office was the inspecting agency for many facilities that store and utilize hazardous materials, and stated that there were numerous potential problems.

Jim Smith, Montana Sheriffs & Peace Officers' Association, also supported the bill as it would provide state support to local jurisdictions while recognizing local authority.

Bob Gilbert, Montana State Volunteer Fire Fighters, appeared in support of the bill. He said his people were not always trained to handle hazardous materials and were usually the first to appear following an emergency situation.

Jim Lofftus, Montana Fire District Association, requested that the committee support the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CHRIS CHRISTIAENS commented that it appeared the DOMA had financed planning for the bill, but asked where funding would be found in the future.

Jim Green said the bill would put the Governor's Emergency Response Commission into DOMA, Disaster and Emergency Services Division. If funding were found to be necessary, the proposals would go through that department's budget.

Closing by Sponsor:

REP. RYAN said there were 9,000 emergency responders in the state and the bill would tie them all together to work as one unit. He thought it was a really good piece of legislation and hoped the committee would agree.

EXECUTIVE ACTION ON HB 461

Motion: SENATOR CHRISTIAENS MOVED HB 461 BE CONCURRED IN.

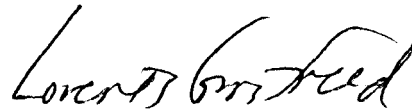
Discussion: CHAIR. GROSFIELD commented that Section 17 of the bill indicated that the bill would require a two-thirds vote of the Senate for passage.

Vote: ALL SEVEN COMMITTEE MEMBERS PRESENT VOTED AYE AND THE MOTION TO CONCUR IN HB 461 CARRIED.

{This meeting was recorded on both sides of one tape, 60 minutes each side.}

ADJOURNMENT

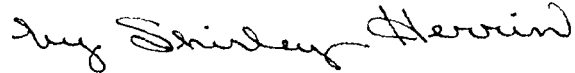
Adjournment: 4:15



LORENTS GROSFIELD, CHAIRMAN



THEDA ROSSBERG, SECRETARY



LG/TR

1.

DATE 3-8-95

SEN

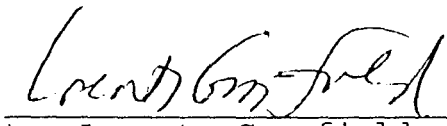
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SENATE STANDING COMMITTEE REPORT


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March 9, 1995


MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 274 (third reading copy -- blue), respectfully report that HB 274 be concurred in.

Signed: 

Senator Lorents Grosfield, Chair

 Amd. Coord.

 Sec. of Senate

SEN. WILLIAM CRISMORE
Senator Carrying Bill

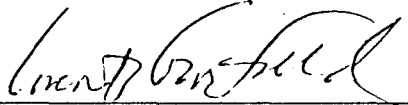
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 9, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 461 (third reading copy -- blue), respectfully report that HB 461 be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

 Amd. Coord.

SA Sec. of Senate

SEN. BILL WILSON
Senator Carrying Bill

551100SC.SRF


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 9, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 215 (third reading copy -- blue), respectfully report that HB 215 be concurred in.

Signed: 
Senator Lorents Grosfield, Chair


Amd. Coord.
Sec. of Senate

SEN. MIKE Foster
Senator Carrying Bill

551054SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 9, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 489 (third reading copy -- blue), respectfully report that HB 489 be concurred in.

Signed: Lorents Grosfield
Senator Lorents Grosfield, Chair

ST

Amd. Coord.
Sec. of Senate

SEN TOM BECK
Senator Carrying Bill

551102SC.SRF

WASH. STATE RECORDS
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14B-215

A BRIEF HISTORY OF ROSS ELECTRIC BILL NO.

Ross Management, formerly Ross Electric of Washington, is currently attempting to get permits from the Montana Department of Health and Environmental Sciences to incinerate transformers and transformer oil in Baker, Montana. (Transformer oil is often contaminated with Polychlorinated Biphenyls [PCBs], hazardous chemicals banned by an act of Congress and believed to cause cancer, birth defects, impair mental functioning, and many other things.) While disposing of PCBs is a job that has to be done, Ross Management is not the company to do it, as their record shows.

PROBLEMS WITH ENVIRONMENTAL PROTECTION AGENCY

Only an accident? In 1988 the EPA fined Ross \$17,000 when it caught Ross Electric incinerating PCBs at 94 ppm. At the time, Federal law limited their kind of incinerator to 50 ppm. In 1993, the EPA fined Ross Electric \$63,000 for failing to get EPA approval to store wastes containing PCBs, an amount marked up 50 percent because of previous violations.

Superfund sites. According to Tina Masterson, of the Washington Ecology Department, Ross Electric is a responsible party two Superfund sites that made the National Priorities List.

***The first was at Coal Creek, Washington, where soil tests revealed concentrations of PCBs up to 21,000 ppm, an amount the EPA concluded had a lifetime cancer risk of three in one thousand. Arguing that others had contaminated the site, Ross Electric paid only a relatively small part of the 12 million dollars that it cost to clean it up. The rest was passed on to companies like Montana Power.

***The second was at the Centralia Landfill where Ross Electric was caught dumping incinerator ash, a dangerous waste, into the town landfill. According to Tina Masterson of the Washington Ecology Department, total cost is at least \$8 million, and may reach \$20 million. But even though Ross Electric is a major reason why the site became a Superfund Site, Ross Electric has refused to contribute to the clean-up and the city of Centralia and its partners have been forced to assume full cost.

PROBLEMS WITH WASHINGTON ECOLOGY DEPARTMENT

Noncompliance in Washington. Department of Ecology inspectors have documented many instances of Ross Electric's noncompliance with Washington laws, resulting in fines against Ross from 1986 to 1990 totalling \$190,000. (Typically, fines in Washington are about \$15,000.) In 1986 Ross Electric received, until then, the largest fine ever assessed by the Ecology Department. In 1993 Ross Electric agreed not to operate in Washington State for 3 years.

DATE 3-8-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: HB 215, HB-461, HB-489

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Check One

Name	Representing	Bill No.	Support	Oppose
Gilb Doolman	L & C County Farringtons Vans	489	✓	
Wayne Rosman	L & C Farringtons Vans Inc.	489	✓	
CLARK V. JOHNSON	STATE EMERGENCY RESPONSE COMMISSION	461	✓	
Roger Thorvilson	MT DWES, WMD	HB215		
W. James Kembel	City of Billings	HB461	✓	
Anne Hedges	MEIC	HB215	✓	
Jim Greene	AES	461	✓	
Bob Gilbert	MT, STATE Volunteer Firefighters	461	✓	
JAMES A. LOFFTUS	MT FIRE DIST ASSN	461	✓	
Wade Sikorski	Southeastern Marketing Alliance	215	✓	
Bill Allen	MT Audubon	215	✓	
J.V. Bennett	MontPIRG	215	✓	
CANDACE TORGERSO	MSG A Mont Cattleman Assn	489	✓	
Daniel Swenson	MT Dept of Justice	461	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

***EXHIBIT NO. 2 - 3/8/95
THE ORIGINAL OF THIS DOCUMENT
IS STORED AT THE HIST.SOCIETY AT
225 N.ROBERTS, HELENA MT 59620-1201
PHONE NO.444-2694***

DATE 3-8-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: _____

HB-215, HB-461, HB-489

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PLEASE PRINT

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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-8-95 BILL NO. HB 274 NUMBER 1

MOTION: To adopt AMENDMENT #1 to hb 027401. after #5 (1)(2)(4)
Failed 6-5

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-8-95 BILL NO. HB 274 NUMBER 2

MOTION: To AMENDMENT hb027402 ate

Failed 5 to 5

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER	X	
JEFF WELDON		
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	