

## **MINUTES**

### **MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION**

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on March 7, 1997, at 3:34 p.m., in Room 413/415.

#### **ROLL CALL**

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

Sen. Kenneth "Ken" Mesaros, Chairman (R)  
Sen. Ric Holden, Vice Chairman (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. Gerry Devlin (R)  
Sen. Don Hargrove (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Walter L. McNutt (R)  
Sen. Linda J. Nelson (D)  
Sen. Bill Wilson (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Doug Sternberg, Legislative Services Division  
Angie Koehler, Committee Secretary

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

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

Hearing(s) & Date(s) Posted: HB 489, 03/04/97  
Executive Action: None

#### **HEARING ON HB 489**

**Sponsor:** REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY

**Proponents:** Pam Langley, MT Agri Business Assoc.  
Ralph Peck, Department of Agriculture  
Scott Selstad, Licensed Ornamental & Turf Pesticide  
Applicator and past President,  
Assoc. of MT Turf & Ornamental  
Professionals (AMTOP)

SENATE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

March 7, 1997

Page 2 of 15

Greg Chadwick, President, MT Assoc. of Nurserymen;  
representing Governor of Montana to  
the American Assoc. of Nurserymen;  
member, Landscape Assoc.; member,  
Garden Centers of America

Brad Culver, Nitro-Green Prof. Lawn & Tree Care

Larry Kurokaws, Peaks & Prairies Golf Course

Superintendents Assoc.

Mark Miner, Ecolab Pest Elimination Division

Bill Jones, Licensed Ornamental and Turf Pesticide  
Applicator

Dan Halverson, AMTOP, Licensed Turf Applicator

Bob Stephens, MT Grain Growers Assoc., MT Farm  
Bureau

John Bloomquist, MT Stockgrowers Assoc.

Judy Stevers, Pro Lawn of MT

Russ Ritter, MT Rail Link

Mike Murphy, MT Water Resources Assoc.

Opponents: Lois Herbig, Missoula City Council and Public Safety  
Committee

Jim Olsen, Friends of the Bitterroot

Lou Ann Crowley, Public Health & Safety Committee of  
Missoula City Council

Alec Hansen, MT League of Cities and Counties

Judy Hoy, Friends of the Bitterroot and Wildlife  
Health Action Task Force

Anne Hedges, MT Environmental Information Center

Tony Tweedale, Missoula

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY: HB 489 is an act specifying the provisions for a local unit of government to regulate the notification of pesticide application. This bill develops a uniform set of criteria for local governments to follow when and if they choose to adopt a local ordinance that requires posting of signs to warn the public that a pesticide has been or is going to be used. This bill attempts to insure that adequate public warning is given. It prevents local ordinances from being overly restrictive to the point of putting up economic barriers to the legal and proper use of pesticides. It will basically apply to commercial applicators. It exempts several categories of applicators: agriculture, silvaculture, utilities, railroads and irrigation ditches from local regulation.

Some will ask why we shouldn't let local governments decide how they want to deal with this matter. It goes to the idea of pesticide use and proper use thereof. Pesticides include herbicides, insecticides and fungicides, a whole host of products that are developed under criteria established by the federal government, tested for safety and labeled for use on how you can use them, when you can use them and in many cases, what kind of notification you have to go through when you do use them. Any

time you start regulating at the state or local level in this area, you tend to make it very difficult for people to use products that the federal government says are safe and effective to use. No company that develops these type of substances is going to develop and label a product for anything other than fairly large regional use. One of the attempts of this bill is to insure that, as long as people use products as required by their label, use them in a safe manner and provide adequate notification to the public, local governments cannot put in ordinances, in the guise of posting, application restrictions.

**Proponents' Testimony:**

**Pam Langley, MT Agri Business Association & AMTOP:** Of the proponents, my testimony will be the longest. Submitted and read written testimony. (EXHIBIT 1)

*{Tape: 1; Side: A; Approx. Time Count: 3:45 p.m.}*

**Ralph Peck, Director, MT Department of Agriculture:** HB 489 provides definition, simplifies, quantifies, standardizes and is less bureaucratic. Please support REP. STORY in moving forward with HB 489. Thank you.

**Scott Selstad, Licensed Ornamental & Turf Pesticide Applicator and past President, Association of MT Turf & Ornamental Professionals (AMTOP):** Submitted and read written testimony. (EXHIBIT 2 & 3)

**Greg Chadwick, President, MT Association of Nurserymen; representing Governor of Montana to the American Association of Nurserymen; member, Landscape Association; member, Garden Centers of America:** We're looking at uniformity. If each town had a different ordinance, it would affect many companies that do business in various towns. We feel the government has set good guidelines and that they're being followed well.

**Brad Culver, owner, Nitro-Green Professional Lawn & Tree Care:** Submitted and read written testimony. (EXHIBIT 4)

**Larry Kurokaws, Peaks & Prairies Golf Course Superintendents Association:** Submitted and read written testimony. (EXHIBIT 5)

**Mark Miner, Ecolab Pest Elimination Division, Missoula, MT:** I would like to give you a brief history as to why HB 489 is before you. It grew out of a hopeless, fruitless attempt to build a pesticide ordinance in Missoula. When I personally found out that the Public Safety and Health Committee was drafting an ordinance, it was already in its fourth revision. When we, the applicators, whether they be ornamental, structural or institutional went to these meetings chaired by Lois Herbig, we were made to feel less than welcome and they did everything they could to ignore us. Our thoughts and ideas meant little to them as was evident by future revisions that showed none of our

concerns. In other words we, the trained applicators, had no voice, contribution or choice. The right-to-know people have used this Council and Committee to publicly spew false claims about the uses of pesticides. HB 489 grew out of our frustration in trying to work with the group to find the middle ground. As of now, 39 states do not allow local regulation. This bill has adopted certain portions of the proposed Missoula ordinance. I believe, in my heart, that this bill is fair to all concerned and urge you to support HB 489 without amendments.

**Bill Jones, Licensed Ornamental and Turf Pesticide Applicator:**

HB 489 only offers guidelines for community posting regulations if a community decides to adopt such an ordinance. I regularly work in 27 different municipalities in six different counties. I have worked in all of these communities within four consecutive days. If these 33 different governing entities all adopted inconsistent posting requirements, compliance would be virtually impossible. HB 489 offers uniformity and also allows individual government bodies the option of implementing posting requirements or not. It would be advantageous to all people in the green industry, including individual property owners. Thank you for hearing my testimony.

**Dan Halverson, Licensed Turf Applicator, Kalispell, MT:** As an employee of a small business, I urge you to pass HB 489. I'm sure you're aware of the large impact small business has in this state. I think HB 489 cuts down on regulations.

**Bob Stephens, MT Grain Growers Association and MT Farm Bureau:** We are in support of HB 489. Thank you.

**John Bloomquist, MT Stockgrowers Association:** As this bill was transmitted to you, we're in favor. Thank you.

**Judy Stevers, Pro Lawn of MT:** My husband and I own this lawn care maintenance business that serves Missoula and many other communities in that area. We support HB 489 and urge it to be passed because it would establish guidelines and prevent unnecessary regulation. Our company does voluntarily post at the time of application. We have been doing this for the eight years that we have owned this business. It has worked very well for all concerned. Notification beyond the limits as set by this bill could result in escalating costs for any business. In our business, it could result in 26 percent of our gross sales, virtually putting us out of business. We operate under the MT Department of Agriculture. We are licensed, trained, tested and inspected. A city ordinance without guidelines could interfere with the system already in place and in some cases prevent our efficient conduction of business for no beneficial reason.

**Russ Ritter, Montana Rail Link:** We stand in support of HB 489.

**Mike Murphy, MT Water Resources Association:** We also wish to go on record in support of HB 489.

{Tape: 1; Side: A; Approx. Time Count: 3:58 p.m.}

Opponents' Testimony:

**Lois Herbig, member, Missoula City Council and Chair, Public Safety Committee:** Submitted and read written testimony.

(EXHIBIT 6) I delivered a letter to you from **Mike Kadas**.

(EXHIBIT 7)

**Jim Olsen, President, Friends of the Bitterroot:** We have about 800 members in western Montana. We're a volunteer organization. I took the day off to come up here and talk to you mostly because I got a lot of phone calls from members. As far as some of the proponents claiming that everyone who is speaking against this bill is anti-pesticide and we've made false claims, I would like to hear specific examples because that certainly isn't true of our organization. In fact, we have a cooperative effort going on with our County Weed Board right now. The Alternative Controls for Pesticides have a demonstration plot at the Lee Metcalf Wildlife Area. One of those plots is pesticides and we are examining better and safer ways to use it.

This is a right-to-know issue. If you look at the bill, it is very restrictive and wouldn't cover a lot of the people that called me. One woman, who has talked to me recently, lives next to the railroad tracks. This bill exempts the railroad tracks. They were spraying and her kids who were out in the front yard were exposed. She could smell it in her house and took them to the doctor. I guess the AMA doesn't support it, but the doctor told her that she suspected the reason her child was in the Emergency Room and now suffers from increased allergies as a four year old is from the pesticides. I'm not going to stand here and say that's true or not true. What I'm going to say is, just like cigarette smoking, we have the right-to-know and the right to make our own decisions as to what chemicals we choose to be exposed to. If we think pesticides are dangerous and we think breathing the spray is dangerous, then we have the right to know when it's going to be sprayed. That's all we're really asking for.

At the Missoula City Council hearing one of the applicators testified that they do 40 to 60 applications a day and said, probably rightly so, that they would have to hire another person to go hang door knockers. If you run out another person at \$8.00 per hour doing 40-60 applications per day, that's less than \$2.00 an application for the cost. As far as increased costs go, large costs, I think the Committee should take a closer look at what the real cost is of actually having people notify their neighbors. It's an important issue to several people who think their kids are sick and getting sick because of the pesticides, who are worried about their kids swimming in water when you don't know what has been put in it. Basically, they have the right-to-know. A closer look at the costs should be taken before you decide it should be prohibited. (EXHIBIT 8)

**Lou Ann Crowley, Public Health & Safety Committee of the City Council of Missoula:** We've been working on this draft for a number of months and it was with great dismay that I learned that a lobbyist for the chemical/pesticide industry could sit down with one of our legislators and with the stroke of a pen, take away our ability to respond to the need of our citizenry and take away our control over our destinies. We've had two public hearings on this ordinance and each time, there has been an outpouring of stories and a cry for protection. So when I stand here before you today, I'm not just here for myself but for all those who cannot be here today. For all the kids sitting in their classrooms not the slightest bit aware that their right-to-know is being determined here. They are the ones that are going to be playing on the lawn next door when that chemical is sprayed. I'm here for the pregnant women, the seniors, for the working folks and the ones who are already sick from their exposures to pesticides.

Our ordinance does not ban pesticides, does not restrict pesticides, it does not stop one drop of pesticides from being put on the lawns of Missoula. It simply says people have the right-to-know when toxic chemicals are going to be placed into their environment. I understand that some of the clients of applicators schedule their applications when they will be out of town because the pesticides bother them and they don't want to be exposed. Don't you think their neighbors should have the same option? Today's Missoulain quotes **Pam Langley**, the industry's lobbyist as saying this bill will give us statewide uniformity of regulation. I have to wonder what **Ms. Langley** was thinking of when she came up with that phrase. Did she just kind of come up with it to justify why she was doing it? When did Montanans start making uniformity a priority? I'm sure you folks can relate if you think how you'd feel if the feds came in and started striking out lines from our codes to limit your ability to govern. We want local control back. Let us work out the bugs, so to speak, among ourselves so that everyone's needs get addressed, not just the special interests. We want the lines that **Pam Langley** took out back so we can have local control.

**Alec Hansen, MT League of Cities and Counties:** There have been numerous bills introduced in this Session of the Legislature where a statewide solution is imposed to try to correct the problem at the local level. I happen to believe, and I think the members of my organization agree, that we need to begin to promote local control. If the City of Missoula wants to regulate pesticides and require notification, they should have that authority. It shouldn't be contravened by the Legislature. There is a pattern developing here that is disturbing in many ways. People have a problem, they don't work it out locally, they come up here, they get a statewide solution that's imposed across the board on 128 cities and towns and 56 counties. A lot of times that locks people out of the discussion. We don't have the people from the neighborhoods of Missoula here. We don't have the people that attend the City Council meetings here. I

would hope that this Committee could take a look at this bill in light of the fact that we need to promote local control, citizen participation in city and county government and assure that the people that aren't here that can't be in this room have a voice in this decision. The best place for them to express their concerns is to the Missoula City Council.

**Judy Hoy, Friends of the Bitterroot, Wildlife Health Action Task Force and the wildlife of the Bitterroot Valley and Montana:**

Submitted and read (some) written testimony. (EXHIBIT 9) I strongly oppose this bill because it exempts fields. Fields are interspersed in the Bitterroot Valley in direct relation to subdivisions. You have a subdivision here and a field right next to it. This is causing a great amount of problems especially in the Bitterroot Valley where you have constant temperature inversions where every time these fields get wet, the chemicals go off and go 20 feet in the air and spread out laterally completely over the valley and then everybody's lungs stop transferring oxygen. This caused one of my friends, a next door neighbor, to die. I would like to go on record as being strongly opposed to this bill. I have pictures if you want to see them.

**Anne Hedges, MT Environmental Information Center:** I am passing out some testimony from one of my members in Missoula. (EXHIBIT 10) I think the Republican Party Platform adopted last year said it all. The Montana Republican Party supports efforts to return control and authority to local government. The reason for that is clear. Why does the State of Montana want authority for our programs? Montana citizens cannot afford to run to Washington D.C. every time they want something changed. Why do local governments want control? Because Montana citizens can't afford to run to Helena every time they want something changed. Montana citizens have the ability to participate at the local level. It is very difficult for them to come to Helena and participate at this level. There are mainly lobbyists here and that's not right. People should have the right to participate in their local communities. That's what this bill is about.

I object to all sorts of provisions in this bill. It's not strong enough. I would support this bill if line 19 on page 4 were removed that says local governments cannot have a regulation more stringent than the state. Citizens should be able to go to their local government saying, we want this to happen and hold hearings on it. People can participate at that level and it's not costly. That seems only fair. At the very least, this Committee should do one of two things. You should either give local governments this ability and, if you think it's wise, make them have a vote of the people in their community on an ordinance. If you don't choose that, at least have a provision in here letting communities that have something in place as of October 1st be grandfathered in. These people have gone to great expense and their community has spent a lot of time adopting these ordinances. It only seems fair that we allow them to go forward with those. If you want to draw the line, do it there.

{Tape: 1; Side: A; Approx. Time Count: 4:18 p.m.}

**Tony Tweedale, Missoula:** (EXHIBIT 11) I'm the one who opened this whole can of worms. Any vertebrate species is conceived and develops as a female until, in humans, about the seventh week of gestation and then, if you have male genes, the testosterone kicks in and your sex organs develop differently. Some of these pesticides and other chemicals interfere with that hormonal process. (Using an overhead projector to illustrate some points.) If you double the pressure in an application, you more or less double the number of small droplets. The consequence of that, in a three mile an hour wind for example, if you lower it from a 100 to a 50 micron droplet you can triple the distance the pesticide formulation travels. Of course, drift is not just droplets or fine mists. You have what is called vapor drift, but is really millions of molecules evaporating into the air. This is just a point from an article saying that an ester formulation of 2,4-D, 35 percent is molecuolized after being applied within, whatever the time period was compared to a three percent of the droplets drift. So much more can molecuolize.

Ironically, in Oregon, some of the grape farmers were a bit upset. A bit of, man bites dog story. They call it phenoxy drift. Basically, what happened was that the grape growers were right next to the subdivisions and the subdivisions were spraying a lot of 2,4-D on their lawns. It's killing off their grape fields. What is really the consequence of drift? This says a new federal court case, because of another case, is going to decide whether FIFRA preempts tort actions. This is an article on the same subject and concerns a letter written by EPA's chief administrator for the pesticide office. It says we would clearly prefer the interpretation that FIFRA does not preempt tort actions. They say the Reregistration of Pesticides Program is very expensive and time consuming. Tort actions could help lead toward safer use of pesticides.

The point I wanted to make about drift was that **Pam Langley** had said that prenotification is not needed. If you don't put up a notification sign ahead of time, how is a passerby going to avoid drift. I will try to conclude very shortly. This bill was characterized as the middle ground. I would like you to take a close look at the page of my handout where I've highlighted three basic points that refute these sorts of arguments. (EXHIBIT 12) The constituency that has been making these arguments is a very small constituency. Your constituency is every person in Montana. We need signs that have information about what pesticide was sprayed. How else is a poison control center going to help save a kid who has been exposed to organic phosphate and whose nerves are paralyzed. Finally, why the focus on Missoula? Local control and individual's rights to know are really the paramount principal whether we're dealing with pesticides or any other area of government regulation.



Written Testimony:

Tony Tweedale, Missoula: (EXHIBIT 14)

Questions From Committee Members and Responses:

**SEN. DON HARGROVE:** It seems like we got awfully far afield of the bill. Was your principal point that you just wanted the right-to-know, for people to know what is going on? Where is that restricted? Aren't people required to be notified?

**Jim Olsen, Friends of the Bitterroot:** The exceptions exempt a lot of things that our members are concerned about. It excepts agriculture, timber, railroad right-of-ways and ditches. In the Bitterroot Valley, in particular, is where a lot of the hazards are. Kids swim in the ditches and river. There are a lot of subdivisions and people around fields other than the workers that are currently protected. There are warning regulations for the workers on the field, but not the people who are next to the field. That's where a lot of my calls come from.

**SEN. HARGROVE:** So you are objecting to A, B, C and D at the top of page 3.

**Mr. Olsen:** Yes, sir. I'm afraid I don't understand. It seems to also exempt some applicators. I didn't look up the CFR, etc. to figure out the difference between line 2 (B) there in reference to applicators.

**SEN. HARGROVE:** What happens if Smithville publishes an ordinance to control pesticide, the enforcement penalty and so on? Would you address that?

**Ralph Peck, Department of Agriculture:** Under existing law, that ordinance is presented to the Department of Agriculture. We review it for compliance with the rule and draft policies that the Department has and then report that back to the county. Then they proceed with their determination if they want to accept the ordinance or not. So we work with them in a cooperative nature to try and establish the policy standards that the Department just established. We are in the process of that review now under the Missoula County ordinance.

**SEN. HARGROVE:** This bill prohibits them from having local control.

**Mr. Peck:** This bill would set up standards and priorities they could not exceed. It would remove the bureaucracy in that function that the Department would do. All we would assure is that they just follow state law.

**SEN. HARGROVE:** If they did exceed the parameters in here, what would we do to them?

**Mr. Peck:** We would refer that back to the county and the Department would say you're violating state law.

**SEN. BILL WILSON:** I'm trying to figure out how this bill relates to railroad property. I've spent days on end spraying weeds from the vantage point of a locomotive. It's my understanding that a person who is on right-of-way is trespassing anyway. No one is supposed to be there except employees of the railroad. What kind of notification, if any, do railroads have to give the public that they're going to be spraying? What is the purpose for an exemption from notification of this bill?

**Russ Ritter, MT Rail Link:** First of all, we operate in about 14 different counties. Our concern is that there be some standardization in all those areas so we don't do one thing in one and something else in another county. Obviously, the reason for spraying is to cut weeds down or to eliminate weeds. Eliminating weeds eliminates another fire danger. That's the concern. We would rather do it that way than use burners to do it. It's much more effective and safe, as far as we're concerned. To answer your question, specifically, what we do at this point is fulfill the requirements imposed upon us within each different county. As a courtesy, we have announced through the media, etc., especially in urban areas, that next month or next week we will be spraying, weather permitting. That's another problem we have is that when you want to do it and the wind blows, obviously it's ineffective. It's conformity within the entire state and that's what we have to look at.

**SEN. WILSON:** So I get called to this weed sprayer train in the morning. You move about 15 miles an hour and must cross five or six counties. Currently, each county along the way is notified?

**Mr. Ritter:** No. They could be notified. If a county doesn't require that, the answer is no.

**SEN. LINDA NELSON:** What am I missing? I'm thinking that this bill is talking about pesticides and now you're talking about herbicides.

**Mr. Ritter:** I believe, technically, a herbicide is part of pesticides.

**SEN. GERRY DEVLIN:** I think there is a difference between a pesticide and herbicide if you're using them to knock weeds down.

**Mr. Peck:** Pesticide includes insecticides, herbicides, fungicides, rodenticide, etc.

**CHAIRMAN KEN MESAROS:** You indicated there has been a lot of work developing an ordinance in Missoula yet I heard testimony that all parties cannot agree on that. Do you have copies of this ordinance?

**Lois Herbig, Missoula City Council:** Yes. I'll leave a copy of the ninth ordinance with you. (EXHIBIT 13) I don't have the others ones that we have done.

**SEN. HARGROVE:** I spent some years spraying herbicides. Is Roundup a pesticide?

**Mr. Peck:** In the definition of the pesticide profession, a herbicide or an insecticide are all under the pesticide classification because a weed is called a pest. When you control a weed with a herbicide you're controlling a pest.

**SEN. HARGROVE:** For this bill it makes a great deal of difference because of irrigation ditches, ag land or forest land. Pests to me are probably bugs that move around and herbs are plants that grow and stay in one place. I'm not an expert, but I did do a lot of it. We need to be certain. Can you assure us that, when we're talking about spraying, pesticide and herbicide are the same thing?

**Mr. Peck:** A lot of the industry is here and they deal with it every day so I would refer that question to them.

**SEN. HARGROVE:** Okay. They're nodding their heads.

**SEN. REINY JABS:** You're exempting agriculture and others. You said previously that agriculture is covered under another statute someplace.

**Pam Langley, MT Agri Business Association:** Under the exempt portion, page 3, lines 2 and 3 cover part of agriculture. Lines 4 and 5 cover the rest. The exemption under line 2 and 3, "an applicator subject to the EPA's worker protection standard" means a lot of agriculture already has to post under EPA worker protection standards. This is a new ruling that came out from the EPA about two years. We went out and helped train our members, helped train growers. The grain growers were very involved in training. It also covers nurserymen and women. This covers the rest of agriculture because, without that second one, you could be under two different sets of standards. We're really concerned about that conflicting regulation. The other thing I think will happen is the guts of this bill, so to speak, 10 years from now will probably be lines 2 and 3 because the EPA has plans to extend its posting and notification requirements under the worker protection standards.

*{Tape: 1; Side: A; Approx. Time Count: 4:36 p.m.}*

**SEN. DEVLIN:** You mentioned a Boulder ordinance. What is that?

**Ms. Herbig:** It's a notification ordinance.

**SEN. DEVLIN:** Where does it get the name, Boulder?

**Ms. Herbig:** Boulder, Colorado. The reason we did nine drafts is to try to take care of all the concerns that were presented to us in Committee. Believe me, it got pretty emotional at times and very hard to control running it as a Chair. I'm sure you run into this problem as well. This is why we drafted it nine times and have three alternatives in the draft.

**SEN. DEVLIN:** What did your draft do about city parks and playgrounds?

**Ms. Herbig:** There would have to be some notification as well.

**SEN. DEVLIN:** Or a ban against?

**Ms. Herbig:** No, this is not a ban. It's just notification, letting people know it's been sprayed so the parents of children who don't want them to play on this grass can take other measures.

**SEN. TOM BECK:** If it's just for the notification, what is your objection to this bill?

**Ms. Herbig:** It limits what we can do. The one section, as **Anne Hedges** from MEIC said, does restrain us from certain things. It limits our ability to enact an ordinance for the protection of our people.

**SEN. BECK:** Missoula tried to pass some type of restriction on chemicals a couple years ago. I don't know what it was.

**Ms. Herbig:** 1991

**SEN. BECK:** Could you tell me what the difference is of what you're proposing now than from what that one was?

**Ms. Herbig:** There are differences. I'm sorry I can't spell them out. I probably should have had all those facts. I might say, the reason it went to a vote of the people was because the Council was completely tied and would not come to a conclusion. They went to the expense of putting it before a vote. It was outspent by the chemical industry 20 to 1. The district it failed the highest in was a newly annexed area into Missoula and I feel it was a way of getting back at the city because they didn't want to be part of the city. That was their slap.

**SEN. BECK:** I would like to see what your proposal is and how it differs from what this bill is trying to do. It appears to me that both are probably accomplishing somewhat the same, but we're trying to do statewide so it's universal across the state.

**Ms. Herbig:** Check with **Mayor Kadas** letter. I think that might help clarify some of it. If you have time, I would be glad to go over the ordinances completely again and spell out the differences. Ours is different than Boulder's as well.

**SEN. GREG JERGESON:** I'm looking at your list of exemptions where notification would not be required and I'm trying to find out what's left where posting would be required.

**Ms. Langley:** Those exemptions were put in by the House Agriculture Committee at the request of the people affected. What is required posting? Agriculture, nurseries, lawn care companies, pest control officers and golf courses are required to post.

**SEN. JERGESON:** You said, "an application on a public utility facility or right-of-way" was added by the House. In Chinook, the sewer lines run down the alleys. I assume that's the right-of-way for that public utility. The water lines run down the streets. Does this exemption then eliminate the need to post? Pesticide applications may run down the alleys or streets of Chinook.

**Ms. Langley:** Public utilities was a term used for power companies and that kind of thing because power lines have much the same problem as the railroad. It was not the intent to exempt alleys or streets.

**SEN. NELSON:** Anne Hedges said she could live with the bill if you took out the portion on page 4, line 19. If you had the rest of the bill, but didn't have that portion, would you still think that was okay?

**REP. STORY:** If we had the rest of the bill and not that portion, we would have nothing.

**SEN. JABS:** Regarding exempting railroads, they don't have to post, they call it out. Did you go along with this amendment when they put it in the House?

**REP. STORY:** This bill has been amended a lot. If you look at what the bill originally said, it required railroads to post either through a radio advertisement or a newspaper advertisement which is basically prenotification. Probably the whole disagreement between the proponents and opponents of this bill has to do with prenotification. If you put into ordinance that you have to prenotify 24 or 72 hours or a week in advance of application, you know how chemical application works in relation to weather. You notify and gear up to do it, but the weather doesn't allow you to do it, then you can't do it because you have to go back and prenotify again. That was really the railroads objection to the prenotification. As pointed out in **Mr. Ritter's** answer to **SEN. WILSON'S** question, a lot of application is done on private property which the public is restricted from being on.

**SEN. WILSON:** This is more of a comment. On the railroad, you're pretty much out in the middle of nowhere, but you are going through small towns and through crossings where vehicles are. I want to make sure that's characterized that way.

Closing by Sponsor:

**REP. STORY:** This is a serious bill and a serious situation. I think both the proponents and opponents have serious concerns about it as evidenced by their testimony today. Probably the primary difference of opinion is prenotification and in how much notification. How much posting needs to be done? We think the bill, as structured, gives adequate warning to citizens when chemicals are used properly. Now, if people are not going to use chemicals properly, all the posting in the world is not going to protect anyone. I will leave it in your hands. Hopefully you will give it good consideration. Thank you.

**CHAIRMAN MESAROS:** We will conclude the hearing on HB 489. We will not take Executive Action on this today.

ADJOURNMENT

Adjournment: 4:46 p.m.

  
SEN. KEN MESAROS, Chairman

  
ANGIE KOEHLER, Secretary

KM/AK