

MINUTES

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

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 7, 1997, at 10:07 A.M., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 334 3/7
HB 348 3/7
HB 361 3/7

HEARING ON HB 348

Sponsor:

REP. DAN HARRINGTON, HD 38, BUTTE

Proponents:

Angela Fultz, Chief Deputy Secretary of State

Opponents:

None

Opening Statement by Sponsor: REP. DAN HARRINGTON presented HB 348. The bill is a clean-up bill. It would eliminate the

requirements of foreign corporations to report property statements on their annual reports that are filed yearly with the Office of Secretary of State. The bill is needed because in 1991 the legislature eliminated the requirement that foreign corporations pay a licensing fee in addition to their filing fee for incorporation in the State of Montana. The information is currently requested on the annual report, kept on file in the Secretary of State's Office, however there is never any public request or need for this information. Reporting by foreign corporations is done in a variety of ways since there is no clear language in the statute of what information should be recorded.

Proponents' Testimony: Ms. Angela Fultz, Chief Deputy with the Secretary of State's Office said this wouldn't change anything that foreign corporations had to do except when they filed their annual report, which every corporation in the state is required to do foreign or domestic. Foreign corporations were required to list what property they own in Montana and elsewhere. The requirement before this was because they were required to file a licensing fee based on their shares. This was repealed in 1991 but subsequently the information wasn't taken out of the law that they had to file this with the Secretary of State's Office.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. DEL GAGE asked if there were no effective date on the bill would those folks still have to do it for the current year. Ms. Fultz replied they would have to for the current year since annual reports were sent out January 1.

SEN. FRED THOMAS asked about the annual reports. Ms. Fultz replied that the information on the reports was updated such as who the registered agent was, officers, directors, etc, with a \$10 filing fee. This would continue. The only portion that would not be required would be the property statement.

Closing by Sponsor: REP. DAN HARRINGTON closed. He said the bill was simple.

HEARING ON HB 361

Sponsor: REP. HAL HARPER, HD 52, HELENA

Proponents:

Jean Voeller, Montana Turf and Ornamental Professionals
Rusty Redfield, self
Polly Bailey, self
Terry Minnow, MFT, MEA, MFSE, MPEA
Glenda Truesdell, self
Rep. Peggy Arnott

Opponents:

Scott Selstad, AMOP

Pam Langley, MABA

Mark Miner, Eco Labs, Missoula

Opening Statement by Sponsor:

REP. HAL HARPER presented HB 361. The bill would standardize pesticide requirements for the state. The bill deals with indoor application. Another bill, HB 489, deals with outside applications. House Bill 361 deals with state and public buildings and deals with posting notice of applications of pesticide. He discussed past use of pesticides and effects. EPA documents show how little we know about pesticides. He pointed out that children were more sensitive to pesticides than adults, therefore schools are more concerned with this bill. Ninety percent of schools as well as public buildings use pesticides on a regular basis. The only data that tells about safety factors are the EPA. He presented documents **EXHIBIT 1** from the EPA, not only active ingredients but inert ingredients, and the adverse health effects. He noted that different people vary in their degree of susceptibility or sensitivity to these chemicals. The bill talks about the right to know when you are entering a building that pesticides have or are about to be used. This does not stop or regulate the use of pesticides. It attempts to protect the rights of citizens to know when they are exposed or about to be exposed to a pesticide. This would answer the question of the state's liability if someone claims to be injured because they were not notified. The bill is self regulating and there are no costs incurred. It will lend itself to better and more careful application of pesticides and for better citizen knowledge.

REP. HARPER discussed amendments presented by Pam Langley **EXHIBIT 2**. He noted the amendments he did or did not agree. REP. HARPER presented another amendment which applied to an integrated pest management policy. He said there were some schools that had this kind of management. The provisions of the bill should not conflict with integrated pest management **EXHIBIT 3**. He noted that in pest management sometimes chemicals used in stronger doses or less but involved mechanical application. The bill should not interfere with the state of the art.

Proponents' Testimony: REP. PEGGY ARNOTT, HD 20, Billings spoke in support of the bill. She related an example of a nurse and teachers that were affected by pesticide application. The pesticides are sometimes for outside application, used indoors without the required waiting period. It is difficult to establish a correlation between pesticides and ailments. There should be notice to people when it is sprayed in their building so they can be aware that the chemical will be used.

Glenda Truesdale, resident of Townsend spoke in support of the bill. She related that she was exposed to pesticides in her work place in 1991 **EXHIBIT 4**. People need to know so they can take steps to protect themselves.

Mary Ann Hayes, East Helena resident, spoke in support of the bill **EXHIBIT 5**. She discussed the chemical injury that changed her life. She pointed out the obligation to offer some protection to the public by requiring notification of pesticide application in public buildings. She read testimony from **Elizabeth Prichard-Sleath EXHIBIT 6** which discussed her exposure and severe effects on her health and life. Ms. Hayes pointed out that routine, monthly application of pesticides was going on without the knowledge of the public and there is no reason why any area large or small should be exempt from notification.

{Tape: 1; Side: A; Approx. Time:10:44 a.m.; Comments: End of Tape 1, Side A.}

Terry Minnow, Montana Federation of Teachers and State Employees testified in support of the bill. Notification is very important.

Rusty Redfield, state employee in the Cogswell Building spoke in support of the bill. He discussed cancer that he had developed and a high level of a chemical toxin that had been found in their home. When he learned of the toxins he was able to make a choice and was able to move. People should all have the right to information that allows them to make health choices. He has been symptom free a year and a half after moving out of the home.

Polly Bailey, from Helena discussed the bill. She said she knew people who were seriously injured through the application of pesticides in the work place without their knowledge. She presented testimony from Sandy Barker who was no longer able to work as a teacher after pesticides were applied at the school, without notice. **EXHIBIT 7** She passed out testimony from Victoria Austin **EXHIBIT 8** who was completely debilitated after her work place was sprayed with pesticide. Mary Kay Owen also had testimony presented who was also injured by pesticide application that had been done without any notification to employees over a long period of time and she is no longer able to work **EXHIBIT 9**. Testimony from Jim Azzara from Missoula was presented and read **EXHIBIT 10**. He discussed why some people were affected and some were not. Michael S. Kakuk, Attorney from Helena discussed his illness from pesticide application in the basement of the Capitol **EXHIBIT 11**. Ms. Bailey passed out an article about spraying pesticides in schools **EXHIBIT 12**. A January 14 EPA memo was distributed **EXHIBIT 13**. The memo is from an EPA employee named Lynn Goldman, M.D. to the President and CEO of DowElanco, the manufacturer of one of the pesticides used in the schools, Capitol complex and everywhere. She wanted to point out the amendment that would take down the notice after the pesticide was dry that everyone who was injured was after the pesticide was dry

since it was applied at night. The label reentry time states it is okay to come in when it is dry, however, the EPA is presently revising the labels. She said the EPA is in support of the public's right to know. **EXHIBIT 14**-Summary Report of Indoor Air Quality Assessment from the C.R. Anderson Middle School in Helena.

Opponents' Testimony:

Pam Langley, Montana Agricultural Business Association spoke in opposition to the bill **EXHIBIT 15**. She said the association represented pesticide companies, distributors, dealers and applicators in the agricultural sector. She said the association was in basic support of the bill, believe people should have the right to know when pesticides are applied. However, they do have concerns about some of the specifics of the bill and also some of the testimony presented. The biggest concern is that it singles out pesticides from other issues like solvents, copy machines, paints, etc. *{Tape: 1; Side: B; Approx. Time: 11:07; Comments: discussed need for amendments.}*

Mark Miner, Eco Lab Pest Elimination Services from Missoula said he supported the bill, however with amendments. As per contract, putting up of signs, would be pertinent to their business. As far as pesticides being put in ventilation systems, that is simply not true. Those systems are a closed system designed with metal duct work and there is no reason to put pesticides in them. He stated that his constant contact with the chemicals he has a 100 times more exposure and has no health problems. They follow the labels and are not in business to hurt people or put anybody in jeopardy. Posting is currently done for certain applications, such as a fogging application.

Scott Selstad, a licensed applicator, spoke in opposition to the bill **EXHIBIT 16**. He said those in the industry are very confident with the existing regulating process. The EPA tests and regulates pesticides regularly and then carried on through the state Agriculture Department. If a label was changed on a pesticide requiring pre- or post- notification, that would become the law. Presently the EPA does not require prenotification or post-notification of those applications. For example, 2-4D is just coming under discontinuing a series of studies which has taken ten years over 60 tests at the cost of about 60 million dollars. That label has a lot of sound science behind it. It does not require prenotification. He stated, this bill establishes a dangerous precedent by passively acknowledging medical problems that have not been shown to exist. Multiple chemical sensitivity has been seriously questioned. He pointed out that the commonly used pesticides are not listed as carcinogens. Eco Labs offers notification of pesticide application at the time of application, which is not a labeling requirement. Prenotification, however, is used as a backhanded way to reduce or discourage pesticide application by raising public concerns to a hysterical level. He stated the greatest

example is someone believing the idea that insecticides, herbicides, fungicides are carcinogens causing a huge array of symptoms or diseases that in actuality there is no evidence to support it.

Questions From Committee Members and Responses:

SEN. DEL GAGE asked the sponsor about the opponents indication that it would be a bother to post the notice but according to the bill the building operator would be required to do the posting.

REP. HARPER said the bill was designed that way to take that burden off the applicators.

SEN. GAGE asked Mark Miner what type of equipment was used for personal protection when applying. **Mr. Miner** replied that during a fogging application a mask, gloves, and coveralls would be worn. The area would be posted and no one allowed in. **SEN. GAGE** asked about amendment 11 if both the location and phone number could be put in. **REP. HARPER** said the more information put on the better but the reason the amendment was being offered was so they could reuse the signs. Since certain people have reactions to certain chemicals, both the name of the chemical and the location where they can go is important.

SEN. MESAROS asked the sponsor how this would be enforced. **REP. HARPER** replied it would be self enforcing or else would fall under the county attorney of each district and subject to whatever fines are currently available. **Gary Gingrich, Montana Department of Agriculture** replied the department would be the responsible agency to administer that portion of the law. They would offer an educational program and inform all state and local governments of its provisions and also ask the federal government to comply.

SEN. THOMAS asked Polly Bailey about pesticide concerns and any known proof as to the direct links, rather than just the theory. For example, would there be studies refuting what the Mayo Clinic has determined. **Ms. Bailey** said that at this point medical science is on the cutting edge of trying to figure that out. It often takes science 10-20 years to make definite connections. For a long time they do experiments and try to figure things out. She discussed the EPA memo and what has been happening behind the scenes with solid science. There is also a lot of lobbying and politics on both sides. The EPA is starting to recognize some of those connections that are made by some scientists and buried by others. If it is noticed and people are exposed to it then there can be a positive connection if it affects them.

SEN. MESAROS asked Mark Miner about contracting for pest elimination. **Mr. Miner** replied that notification would be included at that time. Logs are kept that keep the name of the client, time of day, product used, what the target was, what percentage of concentration of the pesticide or insecticide was used and if a follow up visit was going to be required. **SEN.**

MESAROS asked if the building operators were familiar with the chemical names. Different applications were used depending on the site and may be changed. Therefore if a building operator posted that a certain chemical would be used, then a different chemical be used, there would be a liability. **Mr. Miner** said the sign notification would need to match the application. **SEN. MESAROS** pointed out there may be a problem with two different people posting notifications of the chemicals involved and going beyond the labeling requirements.

REP. HARPER said that it was very important that the name of the chemical be known. When it comes to mass producing signs there appears to be certain chemicals that are used in preponderance over others. There is no reason that those can't have the names of that ingredient. If the gentleman is going to change then he has to call up and revise the information. The responsibility is on the building operator. There should be an attempt to notify the public in advance since this is for the public's right to plan. As far as relying on studies, studies done by the EPA in 1992 were reviewed and said they did not have the documentation to assume that the correct precautionary statements were printed on labels. Toxicity studies were unavailable for 58 of 98 pesticides reviewed. The labeling statements on pesticides may not adequately protect humans and the environment from adverse effects. Precautionary statements on over half the labels are inaccurate. Labels would not include a preposting notice unless the material was immediately deadly. The posting requirements now say the reentry time is this period of time or the time the product is dry might not be adequate. Once it is posted it is not a problem to leave it up, which would try to provide that small margin of safety.

SEN. GAGE asked Mark Miner about the proposed amendments that says "integrated pest management system". **Mr. Miner** replied this was in use now. For example, rather than applying pesticide sometimes a seam could be caulked to keep ants out rather than pesticides. This is an example of an integrated pest management approach.

SEN. BROOKE asked Ms. Debra Fulton, Administrator of General Services Division of the Department of Administration if this was the case that the buildings were sprayed every Wednesday night. **Ms. Fulton** replied the building was sprayed the first Wednesday of every month. **SEN. BROOKE** asked how much that cost. **Ms. Fulton** replied the contract is approximately \$7,000 a year. She noted that the department has been reexamining their practices as a result of this bill.

SEN. BROOKE asked Polly Bailey about the Mayo Clinic testimony or the C.R. Anderson audit. She said she had not seen those.

CHAIRMAN HARGROVE asked the sponsor and Ms. Fulton about a fiscal note and costs to the state. **Ms. Fulton** said they did not believe there was any additional costs. Building operators could

choose to use their existing personnel to provide notice or there could be a cost if they required the pesticide applicators to provide the notice they would certainly charge for that.

Closing by Sponsor: REP. HARPER closed. This bill would balance the ease of administration and application with the public's right to know. This would also address statewide liability on this issue.

HEARING ON HB 334

Sponsor: REP. RAY PECK, HD 91

Proponents:

SEN. GREG JERGESON

Opponents: None

Opening Statement by Sponsor: REP. RAY PECK, presented HB 334. The bill would prohibit using a public employees position for personal or business benefit. He cited some examples and read a letter of a legislator using state stationary. {Tape: 2; Side: A; Approx. Time: 11:41; Comments: examples.}

Proponents' Testimony:

SEN. GREG JERGESON, SD 46, co-sponsor of the bill, discussed the incident that inspired the bill. He said the public should be insured that legislators and other public officials would not ever use their position to threaten somebody else for their own personal benefit. He noted that often the public is nervous about how people might exercise their power. There are other cases where this might apply, such as if a legislator said to his banker "either I get a loan or I am going to make sure you are brought before Senate Business and Industry and made to answer this or I'll find a way to affect banking laws". Those kind of things are inappropriate.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SEN. BROOKE asked the sponsor about the additional language that had been deleted. REP. PECK replied that the House committee had decided it could be covered without that section.

SEN. MESAROS asked if there were other incidents than the one mentioned. REP. PECK replied there are other incidents but not

quite as strongly. **SEN. GAGE** clarified what was job related vs. personal.

CHAIRMAN HARGROVE asked the sponsor for clarification of the word threatened. **REP. PECK** replied that this was not automatic but would be the result of a complaint and a ruling by the commission. It was open to interpretation as was any law. **CHAIRMAN HARGROVE** discussed the election laws and whether an opponent in a campaign could use this. **Ed Argenbright, Commissioner of Political Practices** pointed out the problems of subjective laws. He said he used a strict approach to interpreting them but there is a difference between an act and a threat. Using the word "threat" would give the commissioner the option of looking at that and the procedure would include the filing of the complaint and then presenting the case before the commission. The campaign and election laws are enforced in a different manner. *{Tape: 2; Side: A; Approx. Time Count: 81.1; Comments: how complaints are handled.}* If the procedure included threats, a determination could be made and the person fined up to \$1,000 and then the decision could be appealed to the commission. People would not take that lightly.

CHAIRMAN HARGROVE asked if without the bill could threats be dealt with. **Mr. Argenbright** replied that he consults with the attorneys and they would differentiate between a threat and an act. An act would rise to a level beyond the circumstances.

SEN. MESAROS assumed the chair. *{Tape: 2; Side: B; Approx. Time Count: 11.0.}*

SEN. JERGESON discussed the example used which was an explicit threat. He said the ruling of the commissioner was that he couldn't rule the threat was unethical, there had to be an act where the legislator would have to come to the session and try to consummate the threat by taking action against Blaine County. However, the letter would be objective evidence that a threat was made. The threat did not include this legislator speaking for a class of people but rather his own personal interest. This is a case of a corrosive effect of people using their public position in making threats that frighten people and cause them to question whether they ought to proceed in making their professional or business judgement as they normally would. The public should be insured that it is not a permitted practice for legislators or other public officials.

SEN. BROOKE asked about the Human Rights Commission and if the action taken against them would be correlated to the Kalispell situation. (21.7) **REP. PECK** said he did not know of any threats by any legislator.

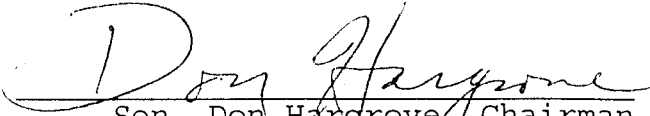
SEN. JERGESON discussed an ethics violation. He said the bill would offer assurance that this kind of thing would not happen in the future. **SEN. GAGE** pointed out this was the type of thing the Rules Committee needed to discuss. **SEN. JERGESON** noted that they

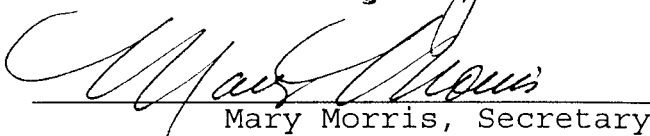
may not find a violation of the ethics law any different than the Commissioner of Political Practices could. The law isn't clear that a threat is not the same of an act. A threat has to be consummated.

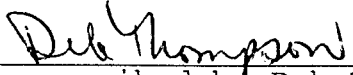
Closing by Sponsor: REP. PECK closed. He said that ethically, the highest standard possible must be maintained. This bill would be specific in order to avoid any future problems.

ADJOURNMENT

Adjournment: 12:16 P.M.


Sen. Don Hargrove, Chairman


Mary Morris, Secretary


Transcribed by Deb Thompson

DH/MM