

HOUSE BILL NO. 445

INTRODUCED BY ROTH, HAMMOND, KEYSER,  
IVERSON, SIVERTSEN, KOLSTAD

IN THE HOUSE

January 23, 1981	Introduced and referred to Committee on Human Services.
February 4, 1981	Committee recommend bill do pass as amended. Report adopted.
February 5, 1981	Bill printed and placed on members' desks.
February 6, 1981	Second reading, do pass.
February 9, 1981	Correctly engrossed.
February 11, 1981	Third reading, passed. Ayes, 93; Noes, 4. Transmitted to Senate.

IN THE SENATE

February 12, 1981	Introduced and referred to Committee on Public Health, Welfare, and Safety.
March 26, 1981	Committee recommend bill be concurrent in. Report adopted.
March 27, 1981	Second reading, concurred in.
March 30, 1981	Motion pass consideration.
March 31, 1981	On motion rules suspended. Bill allowed to be transmitted on 71st legislative day. Motion adopted.  Third reading, concurred in. Ayes, 50; Noes, 0.



IN THE HOUSE

April 22, 1981

Returned from Senate. Sent  
to enrolling.

Reported correctly enrolled.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE <sup>amended</sup> BILL NO. 445  
INTRODUCED BY Roth Boyer Johnson Swanson  
Reidy

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A PROCEDURE TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE MONTANA SOLID WASTE MANAGEMENT ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Variance. (1) Any person may apply to the board for an exemption from rules adopted by the department pursuant to 75-10-204. The board may grant an exemption if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which exemption is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) No exemption may be granted pursuant to this section except after a hearing and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) The hearing before the board for a variance shall be held pursuant to the provisions of the Montana

1  
2  
3  
4

Administrative Procedure Act.  
(4) Nothing in this section may be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended.

-End-

-2- INTRODUCED BILL  
HB 445

Approved by Comm. On Human Services

HOUSE BILL NO. 445

INTRODUCED BY ROTH, HAMMOND, KEYSER,

IVERSON, SIVERTSEN, KDLSTAD

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A PROCEDURE  
TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE  
MONTANA SOLID WASTE MANAGEMENT ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Variance. (1) Any person may apply to the  
board for an exemption from rules adopted by the department  
pursuant to 75-10-204. The board may grant an exemption if  
it finds that:

(a) failure to comply with the rules does not result  
in a danger to public health or safety; or

(b) compliance with the rules from which exemption is  
sought would produce hardship without producing benefits to  
the health and safety of the public that outweigh the  
hardship.

(2) No exemption may be granted pursuant to this  
section except after a hearing PURSUANT TO THE MONTANA  
ADMINISTRATIVE PROCEDURE ACT and consideration by the board  
of the relative interests of the applicant and owners of the  
property likely to be affected by the waste disposal system  
under consideration.

(3) The hearing before the board for a variance shall  
be held pursuant to the provisions of the Montana  
Administrative Procedure Act.

(4) Nothing in this section may be construed as  
relieving the board from the obligation to comply with the  
Resource Conservation and Recovery Act of 1976, as amended,  
OR AS ALLOWING THE BOARD TO ADOPT RULES LESS RESTRICTIVE  
THAN THAT ACT.

-End-

SECOND READING

1                   HOUSE BILL NO. 445  
 2                   INTRODUCED BY ROTH, HAMMOND, KEYSER,  
 3                   IVERSON, SIVERTSEN, KOLSTAD  
 4  
 5   A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A PROCEDURE  
 6   TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE  
 7   MONTANA SOLID WASTE MANAGEMENT ACT."

8  
 9   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 10       Section 1. Variance. (1) Any person may apply to the  
 11   board for an exemption from rules adopted by the department  
 12   pursuant to 75-10-204. The board may grant an exemption if  
 13   it finds that:  
 14       (a) failure to comply with the rules does not result  
 15   in a danger to public health or safety; or  
 16       (b) compliance with the rules from which exemption is  
 17   sought would produce hardship without producing benefits to  
 18   the health and safety of the public that outweigh the  
 19   hardship.  
 20       (2) No exemption may be granted pursuant to this  
 21   section except after a hearing PURSUANT TO THE MONTANA  
 22   ADMINISTRATIVE PROCEDURE ACT and consideration by the board  
 23   of the relative interests of the applicant and owners of the  
 24   property likely to be affected by the waste disposal system  
 25   under consideration.

1                   (3) The hearing before the board for a variance shall  
 2   be held pursuant to the provisions of the Montana  
 3   Administrative Procedure Act.  
 4                   (4) Nothing in this section may be construed as  
 5   relieving the board from the obligation to comply with the  
 6   Resource Conservation and Recovery Act of 1976, as amended,  
 7   OR AS ALLOWING THE BOARD TO ADOPT RULES LESS RESTRICTIVE  
 8   THAN THAT ACT.

-End-

1 HOUSE BILL NO. 445

2 INTRODUCED BY ROTH, HAMMOND, KEYSER,

3 IVERSON, SIVERTSEN, KOLSTAD

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A PROCEDURE  
6 TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE  
7 MONTANA SOLID WASTE MANAGEMENT ACT."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Variance. (1) Any person may apply to the  
11 board for an exemption from rules adopted by the department  
12 pursuant to 75-10-204. The board may grant an exemption if  
13 it finds that:

14 (a) failure to comply with the rules does not result  
15 in a danger to public health or safety; or

16 (b) compliance with the rules from which exemption is  
17 sought would produce hardship without producing benefits to  
18 the health and safety of the public that outweigh the  
19 hardship.

20 (2) No exemption may be granted pursuant to this  
21 section except after a hearing PURSUANT TO THE MONTANA  
22 ADMINISTRATIVE PROCEDURE ACT and consideration by the board  
23 of the relative interests of the applicant and owners of the  
24 property likely to be affected by the waste disposal system  
25 under consideration.

1 (3) The hearing before the board for a variance shall  
2 be held pursuant to the provisions of the Montana  
3 Administrative Procedure Act.

4 (4) Nothing in this section may be construed as  
5 relieving the board from the obligation to comply with the  
6 Resource Conservation and Recovery Act of 1976, as amended,  
7 OR AS ALLOWING THE BOARD TO ADOPT RULES LESS RESTRICTIVE  
8 THAN THAT ACT.

-End-

1                   HOUSE BILL NO. 445  
 2                   INTRODUCED BY ROTH, HAMMOND, KEYSER,  
 3                   IVERSON, SIVERTSEN, KOLSTAD  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A PROCEDURE  
 6 TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE  
 7 MONTANA SOLID WASTE MANAGEMENT ACT."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10           Section 1. Variance. (1) Any person may apply to the  
 11 board for an exemption VARIANCE from rules adopted by the  
 12 department pursuant to 75-10-204. The board may grant an  
 13 exemption VARIANCE if it finds that:

- 14           (a) failure to comply with the rules does not result
- 15 in a danger to public health or safety; or
- 16           (b) compliance with the rules from which exemption A
- 17 VARIANCE is sought would produce hardship without producing
- 18 benefits to the health and safety of the public that
- 19 outweigh the hardship.

20           (2) No exemption VARIANCE may be granted pursuant to  
 21 this section except after a hearing PURSUANT TO THE MONTANA  
 22 ADMINISTRATIVE PROCEDURE ACT and consideration by the board  
 23 of the relative interests of the applicant and owners of the  
 24 property likely to be affected by the waste disposal system  
 25 under consideration.

1           ~~(3) The hearing before the board for a variance shall~~  
 2 ~~be held pursuant to the provisions of the Montana~~  
 3 ~~Administrative Procedure Act.~~  
 4           ~~(4)~~ (3) Nothing in this section may be construed as  
 5 relieving the board from the obligation to comply with the  
 6 Resource Conservation and Recovery Act of 1976, as amended;  
 7 OR AS ALLOWING THE BOARD TO ADOPT RULES GRANT A VARIANCE  
 8 LESS RESTRICTIVE THAN THAT ACT.

-End-



April 9, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO HOUSE BILL 445;  
REFERENCE COPY, AS FOLLOWS:

1. Page 1, Line 11  
Following: "an"  
Delete: "exemption"  
Insert: "variance"
2. Page 1, Line 12  
Following: "an"  
Delete: "exemption"  
Insert: "variance"
3. Page 1, Line 16  
Following: "which"  
Delete: "exemption"  
Insert: "a variance"
4. Page 1, Line 20  
Following: "No"  
Delete: "exemption"  
Insert: "variance"
5. Page 2, Lines 1 through 3  
Following: Page 1, Line 25  
Delete: "(3) The hearing before the board for a  
variance shall be held pursuant to the  
provisions of the Montana Administrative  
Procedures Act."
6. Page 2, Line 7  
Following: "TO"  
Delete: "ADOPT RULES"  
Insert: "grant a variance"



TED SCHWINDEN  
GOVERNOR

State of Montana  
Office of the Governor  
Helena 59620

April 9, 1981

The Honorable Jean A. Turnage  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Robert L. Marks  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 445, "AN ACT TO CREATE A PROCEDURE TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE MONTANA SOLID WASTE MANAGEMENT ACT," without my signature and recommend the attached amendments for the following reasons.

House Bill No. 445 as passed uses the words "variance" and "exemption" interchangeably. The consistent use of either of these words will eliminate any confusion arising from the use of both. I am proposing an amendment which deletes "exemption" and replaces it with "variance."

Section (2) and (3) of HB 445 are duplicative to the extent that they both require the variance hearing to be conducted pursuant to the Montana Administrative Procedures Act. I am proposing an amendment which deletes Section (3).

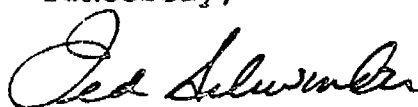
Finally, Section 4 of HB 445 prevents the Board from adopting "rules" less restrictive than the Resource Conservation and Recovery Act of 1976. It appears, however, that the intent of Section 4 was to prevent the Board from granting a "variance", rather than adopting "rules", less re-

Senator Turnage and Representative Marks  
April 9, 1981  
Page Two

stricter than the requirements of that Act. I am proposing  
an amendment which makes that intent clear.

I urge your concurrence in these amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Schwinden".

TED SCHWINDEN  
Governor