

Senate Bill 431

In The Senate

February 11, 1981	Introduced and referred to Committee on Public Health, Welfare and Safety.
	Fiscal note requested.
February 16, 1981	Fiscal note returned.
March 24, 1981	Committee recommend bill do pass as amended.
March 25, 1981	Bill printed and placed on members' desks.
March 26, 1981	Second reading do pass as amended.
March 28, 1981	Correctly engrossed.
	Third reading passed.

In The House

March 30, 1981	Introduced and referred to Committee on Human Services.
April 11, 1981	Committee recommend bill concurred as amended.
April 14, 1981	Second reading not concurred.

In The Senate

April 15, 1981	Returned from House not concurred.
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Senate Bill No. 431
Hagan *DeLo* *Edley* *Ryan*

INTRODUCED BY
A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL LITTER IN MONTANA AND PROVIDE FOR THE RECYCLING OF CERTAIN MATERIALS AND PRODUCTS; AMENDING SECTION 15-30-111, MCA; REPEALING SECTION 61-8-365, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Short title. [This act] may be cited as the "Resource Recycling and Beautification Act of 1981".

NEW SECTION. Section 2. Purpose. (1) It is the intent of the legislature to encourage the recycling of materials and products used in this state in order to maintain the natural environment of the state as nearly litter free as possible.

(2) It is the belief of the legislature that official encouragement of private and public recovery of materials results in the recovery and reuse of major quantities of basic materials and a significant savings of energy.

(3) It is the belief of the legislature that a litter-free environment is possible through enactment of a strong and well-balanced program of litter prevention and public education, because it is people who litter, not the

1 materials and products that become litter.

2 (4) The legislature acknowledges that the people of
3 this state have expressed a desire for a comprehensive
4 litter and recycling act administered by a single agency
5 that will address all types of litter and enhance
6 multiproduct recycling.

7 NEW SECTION. Section 3. Definitions. In [sections 1
8 through 18], unless the context requires otherwise, the
9 following definitions apply:

10 (1) "Account" means the resource recycling and
11 beautification account provided for in [section 9].

12 (2) "Department" means the department of health and
13 environmental sciences provided for in Title 2, chapter 15,
14 part 21.

15 (3) "Highways" means those roadways designated by law
16 as primary or secondary highways of the state.

17 (4) "Litter" means all improperly discarded waste
18 material, including but not limited to convenience food,
19 beverage, and other product packages or containers that are
20 thrown or deposited on land or in water, but not including
21 the properly discarded waste of the primary processing of
22 agriculture, mining, logging, sawmilling, or manufacturing.

23 (5) "Litter receptacle" means a container specified by
24 or acceptable to the department.

25 (6) "Person" includes any individual, organization,

1 partnership, or corporation or a city, county, department,
2 or agency of the state.

3 (7) "Public place" means any area used or held out for
4 public use, including but not limited to highways, parks,
5 campgrounds, trailer parks, drive-in and fast-food
6 restaurants, gasoline service stations, taverns, shopping
7 centers, grocery stores, parking lots, marinas, boat
8 launching areas, beaches, school grounds, business district
9 sidewalks, and sporting event sites when such an area is in
10 use.

11 (8) "Recycling" means the process of collecting,
12 sorting, cleansing, treating, and reconstituting waste or
13 other discarded materials for the purpose of using the
14 altered material.

15 **NEW SECTION.** Section 4. Advisory council. (1) There
16 is an advisory council to the department that consists of
17 seven members appointed by the governor.

18 (2) Members appointed to the council must be aware of
19 and concerned with achieving the goals of [sections 1
20 through 18].

21 (3) Members serve at the pleasure of the governor.

22 (4) Members of the council shall serve without
23 compensation but are entitled to per diem and travel
24 expenses, as provided for in 2-18-501 through 2-18-503, for
25 each day in attendance at council meetings.

1 **NEW SECTION.** Section 5. Meetings -- duties. (1) The
2 council shall meet at least annually, or more often if
3 necessary.

4 (2) The advisory council shall advise the department
5 concerning litter reduction and increased recycling methods
6 and measures. The council shall encourage participation by
7 industry, labor, municipalities, and the public in programs
8 established pursuant to [sections 1 through 18].

9 **NEW SECTION.** Section 6. Duties of the department. (1)
10 The department shall:

11 (a) serve as the coordinating agency between agencies
12 of government and private persons involved in litter
13 reduction, control, and collection and in recycling
14 activities;

15 (b) encourage, organize, and coordinate voluntary
16 local campaigns or campaigns developed by local persons
17 seeking to focus public attention on programs to control
18 litter and increase recycling;

19 (c) engage in educational programs to foster and
20 sustain public awareness of litter;

21 (d) study and adopt those programs that have proven
22 successful in other states for the prevention and reduction
23 of litter;

24 (e) identify and adopt public relations and
25 educational programs;

1 (f) provide grants for programs designed to prevent
2 and reduce litter and enhance recycling;

3 (g) identify existing and potential markets within and
4 outside the state for recyclable materials and the economic,
5 legal, and technical barriers affecting increased recycling
6 in the state;

7 (h) develop and implement programs for litter
8 prevention and increased recycling;

9 (i) adopt rules under the Montana Administrative
10 Procedure Act necessary to implement the provisions of
11 [sections 1 through 18].

12 (2) The department may:

13 (a) contract with any person for the pickup and
14 removal of litter from public places;

15 (b) contract with any person for educational programs
16 designed to create public awareness of litter problems,
17 recycling, and compliance with the provisions of [sections 1
18 through 18];

19 (c) expend money from the account established in
20 [section 9].

21 NEW SECTION. Section 7. Surveys -- annual reports.

22 (1) Within 12 months of July 1, 1981, the department shall
23 conduct or contract with a public agency or private entity
24 to conduct:

25 (a) a survey measuring the amount, by item count, and

1 composition of litter in selected areas of the state. The
2 areas to be surveyed shall be chosen consistent with the
3 necessity of measurement of progress and the need for
4 annual, consistent identification of littering rates. The
5 specific areas surveyed must be representative of the
6 geographic areas and land uses in the state.

7 (b) a survey of the resources being recycled in the
8 state. The survey shall consider resources by volume or
9 weight and economic impact.

10 (2) Within 6 months of July 1, 1981, the department
11 shall conduct or contract with a public agency or private
12 entity to conduct a survey of the litter receptacles in
13 existence on July 1, 1981, and the frequency and manner of
14 collection of their contents.

15 (3) The department shall conduct annual surveys
16 designed for comparison with earlier surveys and report to
17 the governor and the legislature the status and progress
18 achieved by the programs established in [sections 1 through
19 18].

20 NEW SECTION. Section 8. Incentives for recycling. All
21 money earned through recycling efforts is exempt from the
22 Montana state individual income tax provided for in Title
23 15, chapter 30.

24 NEW SECTION. Section 9. Resource recycling and
25 beautification account -- creation -- expenditures. (1)

1 There is a resource recycling and beautification account
 2 within the earmarked revenue fund created in 17-2-102. The
 3 state treasurer shall draw warrants from this account upon
 4 order of the department.

5 (2) The department may order warrants drawn from the
 6 account to:

7 (a) produce and distribute educational and
 8 informational materials concerning litter and recycling
 9 programs;

10 (b) conduct surveys required by [section 7];

11 (c) provide grants authorized in [section 10].

12 NEW SECTION. Section 10. Grants. The department may
 13 make grants to persons for the establishment and operation
 14 of programs authorized in [sections 1 through 18]. The time
 15 period for a grant may not exceed 18 months. A program
 16 qualifying for a grant may include but is not limited to:

17 (1) courses of instruction or the distribution of
 18 informative materials to schools or to the public;

19 (2) public information programs to inform the public
 20 concerning litter, recycling, and the provisions of
 21 [sections 1 through 18];

22 (3) organization and operation of litter removal
 23 activities conducted by municipalities, private
 24 organizations, and service groups;

25 (4) assistance to recycling centers, including

1 information and consultation on available technology,
 2 operating procedures, markets for materials, transportation,
 3 and publicity techniques;

4 (5) the creation and expansion of litter law
 5 enforcement programs.

6 NEW SECTION. Section 11. Grants -- rules. The
 7 department shall adopt rules under the Montana
 8 Administrative Procedure Act that establish:

9 (1) eligibility requirements for grant applicants;

10 (2) standards for the evaluation of proposals
 11 submitted by applicants for grants;

12 (3) the maximum dollar amount allowable for a single
 13 grant;

14 (4) other conditions necessary to provide for a
 15 variety of programs.

16 NEW SECTION. Section 12. Littering prohibited --
 17 penalty. (1) Any person who deposits, throws, discards, or
 18 otherwise disposes of any litter on any public or private
 19 property or in any waters commits the offense of littering
 20 unless:

21 (a) such property is an area designated by law for
 22 disposal of the material and the person is authorized by the
 23 proper public authority to so use the property; or

24 (b) the litter is placed in a receptacle or container
 25 installed for that purpose.

1 (2) This section may not be construed to restrict a
2 private owner in the use of his own property if the placing,
3 depositing, or dumping of waste matter by the owner on the
4 property does not create a public nuisance or a hazard to
5 public health or safety.

6 (3) A person convicted of a violation of this section
7 shall be punished by a fine of not less than \$10 or more
8 than \$50. In addition to the fine, the court may order the
9 person to gather and dispose of litter in an area for a
10 length of time determined by the court.

11 **NEW SECTION.** Section 13. Litter receptacles --
12 penalties. (1) The department shall adopt rules under the
13 Montana Administrative Procedure Act that establish:

14 (a) minimum standards for one or more sizes of litter
15 receptacles that are reasonably uniform as to shape and that
16 shall bear an antilitter symbol designated and adopted by
17 the department. To facilitate public recognition and use of
18 such receptacles, the department shall attempt to emulate
19 antilitter symbols and receptacles used by other states.

20 (b) the minimum number of litter receptacles required
21 to be placed in public places and along highways and the
22 frequency of emptying, maintenance, and replacement.
23 Consideration shall be given to the costs involved.

24 (2) The use of any litter receptacle that was in use
25 prior to the establishment of the adopted standards does not

1 contravene the requirements of subsection (1) if the
2 continued use is conditioned on placement of the antilitter
3 symbol upon each receptacle.

4 (3) A person who owns or operates a public place in
5 which litter receptacles are required shall procure, place,
6 and maintain such receptacles at his own expense in
7 accordance with rules adopted by the department.

8 (4) Responsibility for the removal of litter from
9 litter receptacles placed by agencies of government remains
10 with those agencies.

11 (5) The operator of privately owned property used by
12 the public shall remove litter from litter receptacles
13 placed on that property.

14 (6) Litter receptacles in any public place designated
15 by the department that were in place prior to July 1, 1981,
16 shall be modified to conform with marking requirements no
17 later than October 1, 1981.

18 (7) All litter receptacles in any public place on July
19 1, 1981, that are subsequently replaced shall conform with
20 all rules adopted by the department relating to size and
21 shape.

22 **NEW SECTION.** Section 14. Litter assessment. (1) A
23 person engaged in the selling of merchandise at either the
24 wholesale or retail level and subject to licensing
25 requirements under Title 15, chapter 47, shall remit to the

1 state treasurer an annual litter assessment of \$20. The
2 litter assessment shall be paid when the wholesale or retail
3 license is issued and renewed.

4 (2) A person engaged in the selling at wholesale of
5 any of the items specified in subsection (6) shall remit to
6 the state treasurer with his annual corporation or income
7 tax return an additional litter tax at the rate of \$150 for
8 each \$1 million of gross sales proceeds of the specified
9 items.

10 (3) A person engaged in the selling at retail of any
11 of the items specified in subsection (6) shall remit to the
12 state treasurer with his annual corporation or individual
13 income tax return an additional litter tax at the rate of
14 \$150 for each \$1 million of gross sales proceeds of such
15 items.

16 (4) For persons engaged in the selling at wholesale
17 and retail of any of the items specified in subsection (6),
18 the litter tax shall be based on the gross sales proceeds of
19 the specified items at either the wholesale or retail level,
20 whichever is higher.

21 (5) The department of revenue shall remit to the state
22 treasurer by April 15 of each year the litter tax based upon
23 the gross retail sales proceeds of liquor and wine from
24 state stores.

25 (6) The litter assessment shall be calculated only on

1 gross sales proceeds of the following products:

2 (a) food for human and pet consumption;

3 (b) groceries;

4 (c) cigarettes and other tobacco products;

5 (d) soft drinks and carbonated beverages;

6 (e) liquor, wine, beer, and other malt beverages;

7 (f) tires, motor oil, crankcase and fuel additives;

8 (g) cleaning agents and toiletries;

9 (h) nonprescription drugs;

10 (i) household paper and paper products including
11 magazines, periodicals, and newspapers; and

12 (j) glass, metal, plastic, or fiber containers made of
13 synthetic material.

14 (7) A person selling less than \$50,000 worth of all
15 the items specified in subsection (6) during a calendar year
16 is exempt from the tax imposed by this section.

17 (8) The total annual tax required to be paid under
18 this section by a person may not exceed \$20,000.

19 NEW SECTION. Section 15. Detachable openers
20 prohibited. (1) No person may sell or offer for sale at
21 retail in this state any metal beverage container so
22 designed and constructed that a part of the container is
23 detachable when opening the container.

24 (2) This section does not apply to a beverage
25 container that is opened by a detachable piece of tape.

1 foil, or other soft material.

2 NEW SECTION. Section 16. Public notice --
3 enforcement. (1) Statements and penalties for violating
4 provisions of [sections 1 through 18] shall be posted at
5 such public places as the department considers necessary.

6 (2) The provisions of [sections 1 through 18] and all
7 rules adopted by the department in accordance with [sections
8 1 through 18] shall be enforced by peace officers of this
9 state, including wardens of the department of fish,
10 wildlife, and parks.

11 NEW SECTION. Section 17. Municipal litter ordinances
12 -- restrictions. (1) A municipality may adopt an ordinance
13 that prohibits the same conduct provided for in [sections 12
14 and 13].

15 (2) No local government may enact an ordinance
16 requiring deposits on containers or requiring an assessment
17 on litter-related products.

18 NEW SECTION. Section 18. Litter patrols. The
19 department may design litter patrol programs and provide
20 financial assistance through grants for litter pickup and
21 removal using youths aged 14 to 17, on a seasonal basis.

22 Section 19. Section 15-30-111, MCA, is amended to
23 read:

24 *15-30-111. Adjusted gross income. (1) Adjusted gross
25 income shall be the taxpayer's federal income tax adjusted

1 gross income as defined in section 62 of the Internal
2 Revenue Code of 1954 or as that section may be labeled or
3 amended and in addition shall include the following:

4 (a) interest received on obligations of another state
5 or territory or county, municipality, district, or other
6 political subdivision thereof;

7 (b) refunds received of federal income tax, to the
8 extent the deduction of such tax resulted in a reduction of
9 Montana income tax liability.

10 (2) Adjusted gross income does not include the
11 following which are exempt from taxation under this chapter:

12 (a) interest income from obligations of the United
13 States government, the state of Montana, county,
14 municipality, district, or other political subdivision
15 thereof;

16 (b) all benefits received under the Federal Employees'
17 Retirement Act not in excess of \$3,600;

18 (c) all benefits paid under the teachers' retirement
19 law which are specified as exempt from taxation by 19-4-706;

20 (d) all benefits paid under The Public Employees'
21 Retirement System Act which are specified as exempt from
22 taxation by 19-3-105;

23 (e) all benefits paid under the highway patrol
24 retirement law which are specified as exempt from taxation
25 by 19-6-705;

SB 431

1 (f) all Montana income tax refunds or credits thereof;

2 (g) all benefits paid under 19-11-602, 19-11-604, and
3 19-11-605 to retired and disabled firefighters, their
4 surviving spouses and orphans;

5 (h) all benefits paid by first- or second-class cities
6 for the policemen's retirement system provided for by Title
7 19, chapter 9;

8 ~~(1) all Montana income earned from recycling materials~~
9 ~~in accordance with [section 8].~~

10 (3) In the case of a shareholder of a corporation with
11 respect to which the election provided for under subchapter
12 S. of the Internal Revenue Code of 1954, as amended, is in
13 effect but with respect to which the election provided for
14 under 15-31-202, as amended, is not in effect, adjusted
15 gross income does not include any part of the corporation's
16 undistributed taxable income, net operating loss, capital
17 gains or other gains, profits, or losses required to be
18 included in the shareholder's federal income tax adjusted
19 gross income by reason of the said election under subchapter
20 S. However, the shareholder's adjusted gross income shall
21 include actual distributions from the corporation to the
22 extent they would be treated as taxable dividends if the
23 subchapter S. election were not in effect."

24 Section 20. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 21. Repealer. Section 61-8-365, MCA, is
6 repealed.

7 Section 22. Effective dates. (1) Sections 1 through 14
8 and 16 through 21 of this act are effective July 1, 1981.

9 (2) Section 15 of this act is effective October 1,
10 1982.

-End-

STATE OF MONTANA

REQUEST NO. 355-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 431 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to control litter in Montana and provide for the recycling of certain materials and products.

Assumptions

1. It is assumed that the revenue needed to support these activities will come from House Bill 567.
2. The annual rate of inflation will be approximately 10%.

Fiscal Impact

The revenue for this activity will be supplied by the General Fund and the coal severance tax trust fund:

<u>Source of Funds</u>	<u>FY 1982</u>	<u>FY 1983</u>
General Fund	\$ 750,000	\$ 750,000
Coal Severance Tax	250,000	250,000
Total	<u>\$1,000,000</u>	<u>\$1,000,000</u>

Expenditures:

The expenditures related to this activity will be:

<u>Purpose</u>	<u>FY 1982</u>	<u>FY 1983</u>
3 Grade 14 professionals	\$ 51,300	\$
1 Grade 9 secretary	11,100	
Benefits	11,230	
Operations	4,370	
Subtotal	<u>\$ 78,000</u>	<u>\$ 85,800</u>
Grants for Products	\$ 40,000	\$
Contracts	500,000	470,000
Litter Grants	382,000	444,200
Total	<u>\$1,000,000</u>	<u>\$1,000,000</u>

The revenue impact cannot be calculated because there is no data available.

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-81

STATE OF MONTANA

REQUEST NO. 355-81

FISCAL NOTE

Revised

Form BD-15

In compliance with a written request received February 11, _____, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 431 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Revised
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

This is a revised Fiscal Note.

Description of Proposed Legislation

An act to control litter in Montana and provide for the recycling of certain materials and products.

Assumptions

1. It is assumed that the revenue needed to support these activities will come from HB567.
2. The annual rate of inflation will be approximately 10%.

Fiscal Impact

<u>Source of Funds</u>	<u>1982</u>	<u>1983</u>
General Fund	\$ 750,000	\$ 750,000
Coal Severance Tax	250,000	250,000
TOTAL	<u>\$1,000,000</u>	<u>\$1,000,000</u>

Expenditures

The expenditures related to this activity will be:

	<u>1982</u>	<u>1983</u>
Purpose		
3 Gr. 14 professionals	\$ 55,323	
1 Gr. 9 secretary	12,502	
Benefits	10,175	
Operations	27,500	
(legal services = 5000) Subtotal	\$ 105,500	\$ 113,800
(travel = 8000)		
(supplies and materials = 2000)		
(communication = 4000)		
(rent = 3000)		
(repair and maintenance = 500)		
(capital outlay = 5000)		
(1 typewriter, 4 desks and chairs, calculator)		

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-81

(continued on following page)

STATE OF MONTANA

REQUEST NO. 355-81
revised

FISCAL NOTE

Form BD-15

In compliance with a written request received April 1, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 431 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to control litter in Montana and provide for the recycling of certain materials and products.

Fiscal Impact

The Department of Health and Environmental Sciences estimates revenue for FY 1982 to be \$151,533 in the form of an appropriation in loan funds. The department estimates revenue for FY 1983 would be derived from the "litter tax" and would amount to \$279,000.

Expenditures for the Department of Health and Environmental Sciences would be:

	<u>FY 1982</u>	<u>FY 1983</u>
2 Grade 14 professionals	\$ 32,590	\$ 32,590
1 Grade 9 secretary	<u>10,615</u>	<u>10,615</u>
	\$ 43,205	\$ 43,205
Benefits at 18%	<u>8,353</u>	<u>8,353</u>
Sub Total	\$ 51,558*	\$ 51,558*
Contracted Services	\$ 9,000	\$ 8,000
Supplies	2,000	2,200
Communications	4,000	4,400
Travel	5,000	5,500
Rent	2,000	2,200
Repairs	500	550
Other	1,000	1,500
Equipment	4,300	2,000
Grants	<u>72,175</u>	<u>201,092</u>
Total	\$151,533	\$279,000

*This will increase by pay plan increase.

In addition, the liability of the Department of Revenue for the litter tax resulting from the state liquor store operations would be approximately \$17,540 for the 1982-83 biennium.

David M Lewis
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4-2-81

Technical Note

Apart from the provisions of subsection (4) of Section 13, which requires that the Department of Revenue remit litter tax for state liquor store operations, the bill does not address the responsibilities of the Department of Revenue for administering this proposal. It would be desirable for the bill to be amended so as to clarify the administrative responsibilities of the Department of Revenue with respect to the litter tax and litter assessment.

STATEMENT OF INTENT

SENATE BILL 431

Senate Public Health, Welfare and Safety Committee

A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health in order to provide programs for litter control and resource recycling.

The intent of Senate Bill 431 is to accomplish the following goals:

- (1) to make one agency responsible for litter collection and control and to expend funds for this purpose;
- (2) to utilize litter patrols and educational programs to encourage control of litter;
- (3) to fund required studies of litter and recycling;
- (4) to provide grants to develop and produce educational programs concerning litter and recycling;
- (5) to develop and produce information about this act and programs developed under it;
- (6) to develop and implement pilot programs for litter and recyclable materials collection; and
- (7) to provide technical and informational assistance to recycling centers.

The Council will also review the progress of all programs developed by the administering agency and those

funded with grants.

Rules to be promulgated and adopted under this act include, but are not limited to:

- (1) standards for contracts with other persons for:
 - (a) the development of educational and informational programs and materials; and
 - (b) studies required by the act.
- (2) requirements for grant applicants; standards for the evaluation of proposals; the maximum dollar amount allowable for a single grant; and other conditions necessary to provide for a variety of programs.

First adopted by the Senate Public Health, Welfare and Safety Committee on the 23rd day of March 1981.

Approved by the committee on
Public Health, Welfare and Safety

SENATE BILL NO. 431

INTRODUCED BY HAGER, GOULD, EUDAILY, RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL LITTER IN MONTANA AND PROVIDE FOR THE RECYCLING OF CERTAIN MATERIALS AND PRODUCTS; ~~AMENDING--SECTION--15-30-111--MEAT~~ REPEALING SECTION 61-8-365, MCA; AND PROVIDING AN EFFECTIVE DATES DATE."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Short title. [This act] may be cited as the "Resource Recycling Act of 1981".

Section 2. Purpose. (1) It is the intent of the legislature to encourage the recycling of materials and products used in this state in order to conserve resources and energy and maintain the natural environment of the state as nearly litter free as possible and to encourage litter control and recycling.

(2) It is the belief of the legislature that official encouragement of private and public recovery of materials results in the recovery and reuse of major quantities of basic materials and a significant savings of energy.

(3) It is the belief of the legislature that a

litter-free environment is possible through enactment of a strong and well-balanced program of litter prevention and public education, because it is people who litter, not the materials and products that become litter.

(4) The legislature acknowledges that the people of this state have expressed a desire for a comprehensive litter and recycling act administered by a single agency that will address all types of litter and enhance multiproduct recycling.

Section 3. Definitions. In [this act], unless the context requires otherwise, the following definitions apply:

(1) "Account" means the resource recycling account provided for in [section 9].

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Highways" means those roadways designated by law as primary or secondary highways of the state.

(4) "Litter" means all improperly discarded and uncontrolled waste material thrown or deposited on land or water.

(5) "Person" means any individual, partnership, business, corporation, organization, subdivision of the state or local government, or other legal entity of any kind.

1 (6) "Recycling" means the process of collecting,
2 sorting, treating, and reusing a waste material.

3 (7) "Reuse" means the process of returning a commodity
4 to the economic stream for reuse as a commodity.

5 Section 4. Advisory council. (1) There is an advisory
6 council to the department that consists of seven members
7 appointed by the governor as follows:

8 (a) a representative of either the retail or wholesale
9 food industry;

10 (b) a representative of the recycling industry;

11 (c) a representative of an established environmental
12 organization; and

13 (d) four other members.

14 (2) Members appointed to the council must be aware of
15 and concerned with achieving the goals of [this act].

16 (3) Members serve at the pleasure of the governor.

17 (4) Members of the council shall serve without
18 compensation but are entitled to per diem and travel
19 expenses, as provided for in 2-18-501 through 2-18-503, for
20 each day in attendance at council meetings.

21 Section 5. Meetings -- duties. (1) The council shall
22 meet at least four times a year.

23 (2) The council shall:

24 (a) advise the department concerning litter reduction
25 and increased recycling methods;

1 (b) encourage participation by industry, labor
2 municipalities, organizations, and the public in programs
3 established pursuant to [this act];

4 (c) evaluate reports and programs of the department
5 established pursuant to [this act]; and

6 (d) following at least one public hearing, report to
7 the 48th Montana legislature concerning:

8 (i) an evaluation of department programs established
9 pursuant to [this act];

10 (ii) legislation to further programs judged successful
11 by the council, if needed; and

12 (iii) termination of programs judged unsuccessful by
13 the council.

14 Section 6. Duties of the department. (1) The
15 department shall:

16 (a) serve as the coordinating agency between agencies
17 of government and private persons involved in litter
18 reduction, control, and collection and in recycling
19 activities;

20 (b) encourage, organize, and coordinate voluntary
21 local campaigns or campaigns developed by local persons
22 seeking to focus public attention on programs to control
23 litter and increase recycling;

24 (c) engage in educational programs to foster and
25 sustain public awareness of litter;

1 (d) identify and adopt public relations and education
2 programs;

3 (e) study, for the purpose of reporting to the
4 advisory council no later than August 1, 1982:

5 (i) the status of recycling and reuse, including the
6 respective percentage of total waste comprised, the rates of
7 recycling and reuse, and the barriers to increased recycling
8 and reuse for each of the following materials and products:

9 (A) aluminum and aluminum products;

10 (B) other nonferrous metals and nonferrous metal
11 products;

12 (C) ferrous metal and ferrous metal products;

13 (D) glass and glass products;

14 (E) paper, including office paper, newspaper, computer
15 cards and paper, corrugated paper, low-grade paper, and
16 other paper products;

17 (F) plastic and plastic products;

18 (G) organic materials, including food and yard wastes;

19 (H) waste oil;

20 (I) wood and wood products; and

21 (J) textiles;

22 (ii) the strength of the secondary materials market for
23 each of the materials listed in subsection (1)(e)(i),
24 categorized as follows:

25 (A) stable market, with no additional incentives

1 needed;

2 (B) weak market, with some additional incentives
3 needed;

4 (C) potential market, with some additional incentives
5 needed; or

6 (D) no foreseeable market;

7 (iii) recommended legal or legislative action, if any,
8 that the state of Montana can take to revise existing
9 freight rates by the federal interstate commerce commission
10 that discriminate against transportation of recycled
11 materials; and

12 (f) adopt rules under the Montana Administrative
13 Procedure Act necessary to implement the provisions of [this
14 act].

15 (2) The department may:

16 (a) contract with any person for the pickup and
17 removal of litter from public places;

18 (b) contract with any person for educational programs
19 designed to create public awareness of litter problems,
20 recycling, and compliance with the provisions of [this act];
21 and

22 (c) expend money from the account established in
23 [section 9].

24 Section 7. Surveys -- annual reports. (1) Within 12
25 months of July 1, 1981, the department shall conduct or

1 contract with a public agency or private entity to conduct a
 2 survey measuring the amount, by item count, volume, and
 3 weight, and composition of litter in selected areas of the
 4 state. The areas to be surveyed shall be chosen consistent
 5 with the necessity of measurement of progress and the need
 6 for annual, consistent identification of littering rates.
 7 The specific areas surveyed must be representative of the
 8 geographic areas and land uses in the state.

9 (2) The department shall conduct annual surveys
 10 designed for comparison with earlier surveys and report to
 11 the governor and the legislature the status and progress
 12 achieved by the programs established in [this act].

13 Section 8. Resource recycling account -- creation --
 14 expenditures. (1) There is a resource recycling account
 15 within the earmarked revenue fund created in 17-2-102. The
 16 state treasurer shall draw warrants from this account upon
 17 order of the department.

18 (2) The department may order warrants drawn from the
 19 account to:

20 (a) produce and distribute educational and
 21 informational materials concerning litter and recycling
 22 programs; and

23 (b) conduct surveys required by [section 7].

24 Section 9. Grants. The department may make grants to
 25 persons for the establishment and operation of programs

1 authorized in [this act]. The time period for a grant may
 2 not exceed 18 months. A program qualifying for a grant shall
 3 be for one or more of the following:

4 (1) preparation and distribution to schools and the
 5 public of instructional materials for courses on litter
 6 abatement and recycling;

7 (2) development of public information on litter
 8 abatement and recycling, including radio and television
 9 public service announcements, newspaper ads, posters,
 10 leaflets, and audio-visual aids;

11 (3) organization and operation of litter abatement and
 12 removal activities conducted by private organizations and
 13 service groups;

14 (4) assistance to recycling centers, including
 15 information and consultation on available technology,
 16 operating procedures, markets for materials, transportation,
 17 and publicity techniques through the organization of
 18 seminars and workshops with experts in the field; and

19 (5) the creation and expansion of litter law
 20 enforcement programs.

21 Section 10. Grants -- rules. The department shall
 22 adopt rules under the Montana Administrative Procedure Act
 23 that establish:

24 (1) eligibility requirements for grant applicants;

25 (2) standards for the evaluation of proposals

1 submitted by applicants for grants;

2 (3) the maximum dollar amount allowable for a single
3 grant; and

4 (4) other conditions necessary to provide for a
5 variety of programs.

6 Section 11. Littering prohibited -- penalty. (1) Any
7 person who deposits, throws, discards, or otherwise disposes
8 of any litter on any public or private property or in any
9 waters commits the offense of littering unless:

10 (a) such property is an area designated by law for
11 disposal of the material and the person is authorized by the
12 proper public authority to so use the property; or

13 (b) the litter is placed in a receptacle or container
14 installed for that purpose.

15 (2) This section may not be construed to restrict a
16 private owner in the use of his own property if the placing,
17 depositing, or dumping of waste matter by the owner on the
18 property is controlled and does not create a public nuisance
19 or a hazard to public health or safety.

20 (3) A person convicted of a violation of this section
21 shall be punished by a fine of not less than \$10 or more
22 than \$50. In addition to the fine, the court may order the
23 person to gather and dispose of litter in an area for a
24 length of time determined by the court.

25 Section 12. Department to coordinate litter

1 collection. (1) The department shall coordinate litter
2 collection by state agencies.

3 (2) An agency of state government shall remove litter
4 from litter receptacles placed by the agency.

5 (3) All litter must be collected and disposed of in a
6 manner acceptable to the department.

7 Section 13. Litter assessment. (1) A person engaged in
8 the selling at wholesale of any of the items specified in
9 subsection (6) shall remit to the state treasurer with his
10 annual corporation or individual income tax return an
11 additional litter tax equal to .015% of gross sales proceeds
12 of such items.

13 (2) A person engaged in the selling at retail of any
14 of the items specified in subsection (6) shall remit to the
15 state treasurer with his annual corporation or individual
16 income tax return an additional litter tax equal to .015% of
17 gross sales proceeds of such items.

18 (3) For persons engaged in the selling at wholesale
19 and retail of any of the items specified in subsection (6),
20 the litter tax shall be based on the gross sales proceeds of
21 the specified items at either the wholesale or retail level,
22 whichever is higher.

23 (4) The department of revenue shall remit to the state
24 treasurer by April 15 of each year the litter tax based upon
25 the gross retail sales proceeds of liquor and wine from

1 state stores as provided in subsection (2).

2 (5) The state treasurer shall deposit the money
3 received under this section in the earmarked revenue fund to
4 the credit of the resource recycling account.

5 (6) The litter assessment shall be calculated only on
6 gross sales proceeds of the following products:

- 7 (a) food for human and pet consumption;
- 8 (b) groceries;
- 9 (c) cigarettes and other tobacco products;
- 10 (d) soft drinks and carbonated beverages;
- 11 (e) liquor, wine, beer, and other malt beverages;
- 12 (f) tires, motor oil, and crankcase and fuel
13 additives;
- 14 (g) cleaning agents and toiletries;
- 15 (h) nonprescription drugs;
- 16 (i) household paper and paper products, including
17 magazines, periodicals, and newspapers; and
- 18 (j) glass, metal, or plastic containers or fiber
19 containers made of synthetic material.

20 (7) A person selling less than \$50,000 worth of all
21 the items specified in subsection (6) during a calendar year
22 is exempt from the tax imposed by this section.

23 (8) The total annual tax required to be paid under
24 this section by a person may not exceed \$20,000.

25 Section 14. Public notice enforcement. (1) Statements

1 and penalties for violating provisions of [this act] shall
2 be posted at such public places as the department considers
3 necessary.

4 (2) The provisions of [this act] and all rules adopted
5 by the department in accordance with [this act] shall be
6 enforced by peace officers of this state, including wardens
7 of the department of fish, wildlife, and parks.

8 Section 15. Municipal litter ordinances --
9 restrictions. (1) A municipality may adopt an ordinance that
10 prohibits and prescribes the same conduct prohibited and
11 prescribed in [section 12] or any portion thereof.

12 (2) No local government may enact an ordinance
13 requiring deposits on containers or requiring an assessment
14 on litter-related products.

15 Section 16. Litter patrols. The department may design
16 litter patrol programs and provide financial assistance
17 through grants for litter pickup and removal using youths
18 aged 14 to 17, on a seasonal basis.

19 Section 17. Repealer. Section 61-8-365, MCA, is
20 repealed.

21 Section 18. Effective date. This act is effective July
22 1, 1981.

23 Section 19. Coordination. If SB 258 [LC 1003] is
24 passed and approved, the definition of "department" in
25 subsection (2) of section 3 is changed to the department of

- 1 natural resources and conservation provided for in Title 2,
- 2 chapter 15, part 33.

-End-

HUMAN SERVICES COMMITTEE OF THE HOUSE
AMENDMENTS TO SB 431, third reading copy
April 11, 1981

1. Statement of Intent

Page 1, line 24.

Following: "The"

Insert: "Advisory"

Following: "Council"

Insert: "provided for in [section 4]"

2. Statement of Intent

Page 2.

Following: line 11

Strike: lines 12 and 13 in their entirety

Insert:

"Section 13 as amended authorizes the department of revenue to adopt rules for the collection of the litter assessment. Rules within legislative contemplation at this time would include an interpretation clarifying that operations in interstate commerce which congress has exempted from state taxation would not be taxed, and clarifying how the percentage of total gross sales which is sales of litter stream products shall be calculated. Any other terms or formulae employed in section 13 also are subject to further definition by departmental rules."

3. Title, line 6.

Following: "PRODUCTS;"

Insert: "PROVIDING FOR A LITTER ASSESSMENT ON CERTAIN BUSINESSES;"

4. Page 2, line 13.

Following: "section"

Strike: "9"

Insert: "8"

5. Page 3, line 25.

Following: "and"

Strike: "increased"

Insert: "improved"

6. Page 4, line 1.

Following: "labor"

Insert: ",,"

7. Page 6, line 23.

Following: "section"

Strike: "9"

Insert: "8"

8. Page 7, line 4.

Following: "chosen"

Insert: "to be"

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9. Page 7, line 23.

Following: "[section 7]"

Insert: "; and

(c) perform other duties mandated by [this act]"

10. Page 9, line 15.

Following: "be"

Strike: "contrued"

Insert: "construed"

11. Page 10, line 7.

Following: "(1)"

Strike: remainder of line 7 and lines 8 through 22 in their entirety

Insert: "Except as provided in subsection (4), all individuals, partnerships, estates, trusts, or corporations who sell either at wholesale or at retail any of the items listed in subsection (3) must file a return with the department of revenue on or before the 15th day of the fifth month following the close of its fiscal year, if the items of subsection (3) constitute at least 65% of total gross sales proceeds. The return must list the gross proceeds of all sales made and the gross proceeds attributable to the sale of items listed in subsection (3), and whatever additional information the department of revenue may require. A litter assessment equal to .015% of the gross proceeds from all sales must be remitted with the return. The penalty for failure to file the return and pay the litter assessment by such due date is 100% of the litter assessment due or \$100, whichever is less. In addition to the penalty, interest at an annual rate of 10% shall accrue on the unpaid litter assessment. All revenue from the litter assessment and all penalties and interest collected for failure to pay the litter assessment shall be deposited in the resource recycling account of the earmarked revenue fund."

12. Page 10, line 23 through page 11, line 4.

Strike: subsections (4) and (5) in their entirety

Insert: "(2) On April 15 of each year, beginning in 1982, the department of revenue shall:

(a) determine the gross proceeds from the sale of liquor and wine in state liquor stores during the immediately preceding calendar year;

(b) subtract liquor license and liquor excise taxes; and

(c) deposit .015% of the net proceeds in the resource recycling account of the earmarked revenue fund provided for in [section 8]."

Renumber: subsequent subsections

13. Page 11, line 6.

Following: "of"

Insert: "persons if at least 65% of their gross sales proceeds is derived from"

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14. Page 11, line 11.
Following: "(e)"
Strike: "liquor,"
Following: "beverages;"
Insert: "and"

15. Page 11, line 13.
Following: "additives"
Strike: ";"
Insert: "."

16. Page 11, lines 14 through 19.
Strike: lines 14 through 19 in their entirety

17. Page 11, line 20.
Following: "than"
Strike: "\$50,000"
Insert: "\$200,000"

18. Page 11, line 21.
Following: "subsection"
Strike: "(6)"
Insert: "(3)"
Following: "a"
Strike: "calendar"
Insert: "taxable"

19. Page 11, lines 23 and 24.
Strike: subsection (8) in its entirety

20. Page 11.
Following: line 24
Insert:
"(5) The department of revenue may adopt rules to implement this section.

(6) The provisions of title 15, chapters 1 and 2, govern audits, investigations, and appeals under [this act]."

21. Page 12, line 11.
Following: "section"
Strike: "12"
Insert: "11"

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22. Page 12.
Following: line 18
Insert: "Section 17. Codification instruction. Section 13 is intended to be codified as a new chapter in title 15, and the provisions of title 15, chapters 1 and 2, apply to section 13.

Section 18. Appropriation. Money deposited in the resource recycling account provided for in section 8 is appropriated as follows for the biennium ending June 30, 1983:
to the department of revenue for administration of section 13 --\$50,000.

to the department of health and environmental sciences for administration of the remainder of this act -- all other funds in the account."

Renumber: subsequent sections.

23. Page 12, line 22.
Following: "1981"
Insert: ", except that section 13 is effective for taxable years beginning after December 31, 1980."