

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - 2nd SPECIAL SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By BOB RANEY, CHAIRMAN on July 10, 1992, at 1:00 P.M.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Members Excused: None

Members Absent: None

Staff Present: Paul Sihler, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Announcements/Discussion:

HEARING - HOUSE JOINT RESOLUTION 1

SPEAKER HAL HARPER, SPONSOR said, HJR 1 is a resolution to express legislative approval of the governor's proclamation to extend the drought disaster.

The governor has the authority to declare the drought a disaster and suspend any strict regulations or rules that would hinder or prevent the state from coping with the drought. However, another

section of law limits the length of a disaster called by the governor to no more than 30 days unless a joint resolution of the Legislature declaring a continuation of the conditions of the drought are sufficient to extend it. See the second "Whereas" **EXHIBIT 1.**

Since we will not be in session after this week the governor should have the ability to extend the drought disaster until he determines it should be terminated.

There have been a number of rumors concerning amendments. Some people have thought that since we are dealing with drought, current water rights or holders should be assured there will be no loss in their water rights or decrease the value of their water rights, no matter what happens to it.

People on the other side have said the essence of this resolution is that we need to protect vital food stocks of fish in the streams and algae. The route which was chosen for this resolution was a very strict stripped-down version that got the job done. I will stand in support of no amendments to this resolution from this committee. I will stand in support of this resolution.

Proponents:

George Oschenski, Member of Drought Advisory Council. I don't think this resolution does much except to give the governor the ability to extend the disaster clause which should be passed quickly and quietly.

Gary Fritz, Administrator Water Resources Division, DNRC said, I feel the governor's declaration is important. The drought conditions around the state are not over with yet. As per our recommendation, the governor went ahead and adopted an order that basically directed us to not take any new applications for water rights. The reason being, it doesn't make sense to add new water users on streams in a year where we are looking at the worst drought in many years. There were a few exceptions for applications that were necessary for public health and safety as well as for small groundwater users of less than 35 gallons per minute.

This latest designation also makes an exception where if people can find a source that is unaffected by drought, then we will go ahead and process the application. We are accepting applications and giving them a priority date, but they are not processed at this time. What we are trying to do now, is to make sure that the people who should be getting water, are getting water.

As of July 2nd we have received 45 new applications for water rights that we are not processing now. We have complaints coming in from water users because of the drought situation. mostly from the western and southwestern part of the state. The offices that

are receiving additional complaints are: Havre, Kalispell, Missoula, Helena and Bozeman.

Mr. Fritz showed a chart showing the drought situation around the state which was put together by the Montana State University. The first of June the state was in an extreme state of drought. However, some areas have been helped by the recent rains. The top-soil has been helped substantially in some areas, but the sub-soil is not a lot better than before. When the rain stops the streams will drop dramatically because there is no high altitude snow pack.

Jo Brunner, Executive Secretary Montana Water Resources Association said, we hope that the drought situation has been alleviated with the rains. I agree with Mr. Fritz and hope that the rains continue. We realize that in a few days we could be back to the same drought situation. We have to remember that there are sections of the state that have not gotten the rain they need. The Water Association supports this resolution as it has been introduced. **EXHIBIT 1.**

Opponents: None

SPEAKER HARPER said, the committee should be aware that there has been a number of voluntary actions where some irrigators and water users have voluntarily relinquished their water rights. The Water Policy Committee issued a press release and a letter thanking those people who are trying to help the drought situation.

HEARING - HB 35

CHAIRMAN RANEY said, HB 35 is one of 3 bills I have sponsored concerning permitting for projects under MEPA, water quality, air quality and mining permits. **EXHIBIT 3.** Fiscal Note: **EXHIBIT 4.**

All of these have to do with the degradation of the environment. Presently, we subsidize the issuance of the permits in that only a portion of the permit process is paid for by the applicant.

Under MEPA most of the cost of an EIS is paid for by the applicant, but the costs of an EA are paid for by the taxpayers. For air quality water quality permits, almost all the costs are recovered by the state except for enforcement. The state picks up quite a bit of the costs for issuing water quality permits. This bill requires applicants who pollute the state to pay for all permits and impact statements.

We don't have the fiscal note for this yet, but a draft has been prepared. The fiscal note will be telling you that there is a savings to the tax payers of about \$300,000 per year. This is a cost that should be bourn by the permit applicants who pollute our water or air.

Proponents: Jeff Chaffee, Bureau Chief Air Quality Bureau, Department of Health and Environmental Sciences said, I am here to testify as a proponent to HB 35. There has been some language added to the statute which will to add to our fee authority to allow us to recover legal and enforcement costs for enforcement actions taken. Currently, we are charging annual operating fees for permits throughout the state. This would add on a minor component in terms of enforcement. We plan to work with the federal regulations for permitting programs and with interested parties to bring back suggestions to the next session in January.

Dan Fraser, Chief Department Health and Environmental Sciences said, I support HB 35 because we need additional resources for our water quality permitting. We are requesting that EPA provide us with authority to use the obligated construction grants fund to pay these costs over the current fiscal year and the following fiscal year. If we don't get the grant we won't be able to continue the program at the current level.

We are working through the executive planning process to get this fee bill before the legislature during the next general session. If this bill were to pass it would be compatible with Senator Baucus's bill re-authorizing the Clean Water Act. SB 1081 requires all states to fund a minimum of 50% of their water pollution activities with fees.

Jim Jensen, Executive Director Montana Environmental Information Center said, the Water Quality Bureau does not have enough money or people to monitor the permits they have granted. The effect is a dramatic erosion of their ability to regulate and protect natural resources. For example: there is a mine near Libby which is in a pristine area of the state. For a year and a half that mine has exceeded water quality standards and violated the Water Quality Act. They have reported their violation to the Water Quality Bureau, but no action was taken, until we filed a lawsuit challenging the confidentiality clause that prohibits the public from looking into the files. After filing that suit, the company waived its confidentiality and then a reporter from the Associated Press, Mike Dennison looked through the files and discovered there had been a year and a half of violations and no action had been taken. Had the Water Quality Bureau been able to assess the fees contained in HB 35, they would have caught that and it wouldn't have turned into a big deal. We wouldn't have had to file a lawsuit against this company because of its' violations. This happened because there isn't enough money. There probably won't be any money in the general fund to increase that ability. The people are saying, if they were sending in their records, how can we have any confidence that the state is going to protect our water quality. Therefore, citizens are extremely hesitant to support those projects because they don't have faith the government will do its job.

Another example, is the proposal to incinerate medical waste at Ringling. Those people are afraid their way of life and the

clean air and water they depend upon are not going to be adequately protected. If the state is going to encourage industry to relocate to Montana, they better have a good regulatory program that people will have faith in. In order to do this the applicant or permit holder must pay the fee.

Opponents: John Fitzpatrick, Director Community and Governmental Affairs for Pegasus Gold Corporation said, I rise in opposition to HB 35. EXHIBIT 3.

On Page 3 of the bill, Line 8 through 13 which reads "developing, implementing, and enforcing the terms and conditions of the permit if the permit is issued, costs associated with any enforcement action if the permit is not issued, the department shall return this portion of the fee to the applicant". The department wins regardless of what happens in the court room. Therefore, I feel this portion of the bill needs to be rejected.

On Line 14, Section 3 it reads "to cover the reasonable costs, both direct and indirect costs...". We discussed this in House Appropriations and this type of language authorizes the agency to have a blank check. Where it says "the applicants should also pay all the costs", we are required to have permits to operate our mines. That law is there to protect the public from the adverse effects of mining. I believe it is necessary to have a permit system, but I think the public should be required to pay a portion of that permit process.

Mr. Fraser made the remark that Sen. Baucus will be bringing up a federal bill requiring 50% contribution. However, that bill could be amended from how it appears today. Before we think about a water quality fee, we should probably wait and see what the feds are going to require. I would suggest you take a look at who is creating the burden in the permit processing within the Department of Health.

The EPA is coming out with rules for storm water regulation that are mind-boggling. The EPA is saying that all abandoned mines must have an impact statement. There are about 20,000 abandoned mines. What we really need to look at is the content of the Montana Water Quality Act. The laws on the books should at least be reasonable.

Alec Hanson, Director League of Cities and Towns said, we are opposed to this bill because too much of state government is being paid for by fee systems. Every time the Department of Health needs more people, or to expand an agency, they just pass the cost on down to the local consumer. There are no adequate controls on this process. The people in Montana's cities and towns are slowly being bled-to-death. In 1991 the legislature imposed a fee of \$2.25 on every water connection in the state of Montana to administer the water quality program. They also imposed a fee of 31 cents a ton for all garbage collected in the state of Montana. The cities pass these fees on to the consumer.

The water quality bill provided specific provisions to allow a direct pass-through of funds without even having a hearing.

If the cities and towns of Montana are going to fund the Department of Health, we should have an opportunity to review their budget. Also, look at what they consider direct and indirect costs.

This is a serious problem which needs to be studied. We shouldn't make any decisions until we know what is going to happen in Washington. The financial impact on local governments are supposed to be assessed. The total cost of this bill is \$900,000 according to the fiscal note and most of it will be paid by our public water and sewer systems. \$900,000 is a lot of money to take out of people's pockets. I would hope the department could make a better case in proving to the people who are going to pay the bill that these services are absolutely necessary. What we see from Washington is a steady stream of mandates and requirements. It could be that people won't be able to afford to hook up their water and sewer systems and if that happens there will be a more severe environmental problem.

Gary Langley, Executive Director Montana Mining Association said, This bill essentially has us paying for the entire operation of the Water Quality Bureau and the Air Quality Bureau. What this bill will do if it passes, is place another burden on a mining company that is asking for a permit, the companies that generate tax revenue from the people working at these mines. You are not going to broaden your tax-base if you continue to add costs and uncertainty to the permitting process.

This bill doesn't belong in a special session. This bill has been introduced to harass industry and to add to the burden that industry is already facing when seeking permits to operate in this state.

I respectfully request that this committee defeat this bill.

Don Allen, Montana Products Association said, he is appearing in opposition to this bill. The department has not changed the part as to what is "reasonable". You can spend money for a permit and pay court costs and still not win the case. The same thing applies to the permit, you can apply for a permit, pay the cost and still be denied a permit.

The subcommittee on Human Services appropriations took action that will already upset the fairness towards industries on air quality permits.

Last session, HB 781 said, the industry and the government were to share the implementing of the Clean Air Act for the fee system. That committee in its' action removed the \$300,000 and basically said, "collect that also from industry". You are talking about a doubling of permit fees from the \$450,000 to at

least another \$300,000 on top of that in air quality permits from industries from all over the state.

Before the Board of Health on July 31st our industry and others will testify to a hearing implementing open-burning fees for slash burning. Industry wants to pay its fair share but there is a certain amount of benefit to the public for these things to be controlled.

It is my feeling this bill should be reserved until the next regular session.

Ken Dunham, Montana Contractors Association and also representing the **Montana Concrete producers** said, most of the examples cited have been large corporations. The people I represent are mostly small family owned firms that risk their livelihood or business.

We heard an example of costs for environmental permitting for the Lewis and Clark County which was somewhere between \$80,000 and \$140,000. If a company estimates their costs at \$80,000 and it turns out to be \$140,000 I can assure you a lot of these companies will not be in business next year. Therefore, we urge that you kill this bill.

Discussion by Committee:

Rep. Foster asked, how are the court costs going to work? Are you going to guess the amount of the court and include them in the rates or are you going to wait until you have a court case and then send a bill to the other party?

Mr. Chaffee said, we haven't had a lot of time to think about how it will fit into the fees. At this point, it will probably a backward-looking fee. It could be tagged-on to the fee for that industry or be spread among the industries.

Rep. Foster said, I haven't had time to look at it and it isn't addressed in the fiscal note. Is there any other place in state government where the state can sue someone and send a bill to that party for the court costs?

Mr. Chaffee said, I believe Montana law regarding public water supplies allows the court to award agency costs.

Rep. Foster said, on these indirect costs, when the department sets these fees, what kind of process will you go through to justify these indirect costs?

Mr. Chaffee said, we would go through an executive planning appropriation process to establish the budget for the Air Quality Bureau.

Rep. Foster said, it seems you are opening up the potential for abuse where you are dealing with these indirect costs that aren't tied to anything specific. You are kind of guessing as to what

the fees are covering. What kind of safeguards are you going to build into this process of determining the proper fee?

Mr. Chaffee said, we plan to work with a committee of interested parties, probably including the regulated community, the industries we will be charging fees and environmental groups. We will try to decide what needs to be covered with fees by the next legislative session.

REP. KNOX said, you said you were going to determine how to assess and evaluate what would be indirect costs associated with enforcement actions. Do you have any idea what those costs would be?

Mr. Chaffee said, I don't have specific answers at this time.

REP. BROOKE said, **Mr. Fraser** you mentioned in your testimony something about requesting some fund transfer from EPA. Would you elaborate on that?

Mr. Fraser said, we have funded our permitting program in the last few years with carry-over from previous EPA federal grants. We are requesting from EPA the authority to use the obligated construction grant funds. These were awarded for construction of waste water projects and we are asking for authority to use those funds for this fiscal year and the next.

REP. BROOKE asked, how much does that involve regarding the funds? **Mr. Fraser** said, we are requesting approximately between \$220,000 to \$230,000 this year and the same next year.

REP. BROOKE asked, do you project that will cover the costs of the permitting work that you will be doing? **Mr. Fraser** said, no it will not cover the total costs of the program. It will cover the surface water permits. We have a staff of 3.5 FTE which does surface water permits. At present we are requesting money for the 3.5 FTE.

REP. BROOKE asked, are you saying that it doesn't involve the monitoring of ground water? **Mr. Fraser** said, the bill talks mostly about the cost of permits. The costs we are trying to recover only covers a portion of that. The fiscal note we put together estimates that fees we would need would be about \$900,000 per year to cover the costs as outlined in the bill.

CHAIRMAN RANEY asked **Steve Pilcher** for the fiscal note for executive action.

REP. GILBERT said, there is a sponsors fiscal note we could use if you are comfortable with those figures. **CHAIRMAN RANEY** said, that is okay, but I wouldn't want the bill on the floor until we had a fiscal note that had gone through the proper channels.

In closing, **CHAIRMAN RANEY** said that we are dealing with some

philosophical changes here and also a budget crisis. We are supposed to cut government and make government more efficient. **Alec Hanson's** statement of how much the cities and towns would have to pay to get their air and water quality permits because we would have to tax them to get the money; where is the money coming from now? It is coming from the state supplying the service and we have to raise the taxes in order to do it. The citizens who need the water should pick up the costs for the services.

We have decided that we do not want our air and water polluted. It seems to me that those who would pollute should pay the fees to get the permits. Why should the citizens themselves have to be involved in paying to permit someone to degrade their air and water.

The second paragraph of the Statement of Intent says the department has to document the costs for the permits and the costs have to be limited to these things and cannot include other things. **EXHIBIT 3.**

If the department abuses that privilege then the permittees will be back to the Legislature or they will go to the head of the department or the governor and say they are being abused. We are being charged for things they are not doing. The issue is, who should pay for a permit to degrade our environment?

The Water Quality Bureau doesn't have any money to do enforcement. We don't know what the water quality is because we don't have enough people for enforcement.

The thought from **Mr. Fitzpatrick** is, the citizens are getting the benefits from jobs provide by industry so they should pay for part of the permitting process.

In regard to the **Baucus** bill, why should we wait and see on that bill? We aren't concerned about the **Baucus** bill. This bill will insure that the Montana taxpayers don't pay for the permitting process for the polluters.

Mr. Langley is of the opinion that anyone who wants clean air and water is harassing industry. If industry wants to degrade our environment, let them pay for the permitting process. I'm here to represent the taxpayers, because this isn't a tax it is a fee. I am trying to help reduce the cost of government.

The reference to the Lewis and Clark County landfill doesn't make sense to me. They have to apply for a permit to build a landfill. That permit doesn't fall under these permits as there are other laws concerning landfills.

If the contractors and open cut miners need a permit then they aren't any different than local governments, paper mills, slaughter houses, etc.

If through the department we determine they are not complying with the law and we have to take them to court, then they should pay our courts also.

The fiscal note is only for the Water Quality Bureau for about \$30,000 to \$40,000 that the applicants would have to pay.

EXECUTIVE ACTION - HJR 1

Motion/Vote: REP. FAGG moved that HJR 1 DO PASS. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION - HB 35

Motion: CHAIRMAN RANEY moved that HB 35 DO PASS.

Discussion:

REP. KNOX said, there must be adequate monitoring of our resource industries to maintain public confidence in those industries and a continuation of that type of enterprises in the state of Montana.

I feel that this bill is totally ill-conceived and the statement that the sponsor continually makes that use of any resource equates with abuse and automatically results in pollution, is not proper or fare. That creates a super bureau in a state agency. I don't think that should be the intent of this committee. There is no explanation as to what the direct and indirect costs associated with the permit process might be.

If we pass this bill we will be driving another nail in the jobs of the people that work in these type of industries.

CHAIRMAN RANEY said, the air and water quality permits are issued for abuse of air and water quality. There is a significant explanation of costs in the Statement of Intent. If the court part of this is the hang-up, then I would be happy to amend that out of the bill. I would like the department to explain the fiscal note.

Mr. Fraser said, we tried to determine the cost that the Water Quality Bureau bears for the permits for ground and surface water. We have a ground water program and a surface water in the permitting sections. We have inspectors that look at complaints and do compliance monitoring of discharges. We have a person who establishes water quality standards. We have a couple of attorneys that spend 10% to 20% of their time working on permit issues. I spend about the same amount of time working on permit and non-degradation issues. All the costs, direct and indirect include salaries, travel, operating expenses, etc. That amounts to about \$900,000 per year.

Those costs currently are covered primarily by EPA grants. We are running out of those grants. We have about \$110,000 of RIT

money which covers part of those costs. The \$299,300 is for four months of the coming fiscal year. We are assuming that if the bill passed we could have the fees in place by March of 1993.

REP. FOSTER said, on the federal portion, of \$262,724, are you saying if we adopt this immediately that is the amount of money that would be substituted for the applicant? Would that be covered by the applicants rather than the feds?

Mr. Fraser said, those funds would no longer be necessary to cover those costs. If we have the fees the additional federal funds would be there to cover other costs such as water quality monitoring.

REP. FOSTER said, so you would shift those federal dollars to some other department. **Mr. Fraser** said, I don't know what would happen to the federal dollars, but we would still be eligible for the federal money. There are a lot of requirements under the Water Quality Act, so I would guess that is what the Legislature would choose to do. If we don't get approval to use the federal funds we will have to cut back on our programs immediately. We believe we will get that approval and if we do our closeout strategy indicates we will probably have enough construction grant money to fund the program for the current fiscal year and the following fiscal year.

CHAIRMAN RANEY asked, what are de-obligated construction grants? **Mr. Fraser** said, they are funds that were awarded to communities within the state to build waste water projects. If they don't use all of those funds they have to return them to the state and we have to get permission from EPA as to how we can use those dollars.

CHAIR. RANEY said, so that is to assist the communities in Montana for waste water treatment, but you are going to use it for permitting processes because you have run out of money. Is that correct? **Mr. Fraser** said, that is correct.

CHAIRMAN RANEY said, if we give you enough money so you don't have to use the obligated construction grant, then what would you do with the de-obligated construction grant money? **Mr. Frazer** said, if it was available we would propose to award it to small communities for planning grants for needed waste water facilities.

CHAIRMAN RANEY said, he had some amendments to the bill he would like the LFA to explain.

Paul Sihler, Environmental Quality Council reviewed the amendments with the committee **EXHIBIT 5**.

CHAIRMAN RANEY said, the intent was to cover the concern of run-away enforcement action, that the department could just run up costs and recover them. This addresses part of **REP. KNOX'S**

concern that the state prevails. If the state doesn't prevail then they can't recover the costs from the applicant.

Motion: CHAIRMAN RANEY moved the amendments DO PASS.

Discussion:

CHAIR. RANEY said, he would request to work with the editor on the amendments to make sure they are in order. I assume Subsection 3 under amendment 8 will also go into amendment 9.

Tim Baker, Attorney for Air Quality Bureau said, the changes that REP. RANEY is suggesting for 75-2-211 talks about the recovery of reasonable attorney fees in administrative enforcement action that has been concluded. The department, in the course of its' enforcement activities generally takes administrative action and civil action.

In administrative action, we would issue an administrative order which would possibly follow with a hearing in front of the Board of Health and Environmental Sciences. Those types of costs would be included in the permit fees and we would have to go to the Board of Health to recover those costs. We wanted to address the problem of civil litigation which provides the department to prevail or substantially prevail. This is meant to cover the situation where the department initiates enforcement action and the suit is settled by the court after a trial. The parties enter into a consent decree which is the typical way it is done, but the department has achieved its' objectives. The district court has to find that the department has prevailed. Under the law, if we do bring an enforcement action and it is frivolous an industry could sue us for attorney fees and court costs.

REP. MEASURE asked, under CHAIRMAN RANEY'S amendments and current Montana law, do you feel there is any exposure to the state and the department for the attorney fees and costs to be awarded to the proposed permittee should the state prevail whether or not it is frivolous. Under Montana law, if attorney fees are available, they are available to both parties.

Mr. Baker said, I know that is the case with contract actions, but I am not sure unless the law specifically provides a reciprocal right that they will have that right.

REP. GILBERT asked CHAIRMAN RANEY, is it your intent that the state should have its' cake and eat it also? CHAIR. RANEY said, I don't want to be writing law on the state suing and the state being sued. If there is a general procedure that is already followed by the state, then I don't want to interfere with that in this bill. I am satisfied with what Mr. Baker said.

Mr. Sihler said, I found another parallel in the Air Quality Act amendment that should be carried over to the Water Quality which is Amendment 7 on the first page concerning reasonable attorney fees and administrative action that has been concluded. You do

not have that amendment on this page for the Water Quality bill which is parallel language in the Water Quality Statute. If you choose to adopt these amendments you may choose to also add that language.

Addition to the Amendments: CHAIRMAN RANEY moved to adopt the addition to the amendments.

vote: Amendments and addition to amendments PASSED UNANIMOUSLY.

CHAIRMAN RANEY asked the LFA, concerning Director Iverson's concern with the Board of Health verses Department of Health on approving the fees; is that addressed?

Mr. Sihler said, for the Water Quality fees in the bill as it is drafted, the department would adopt the fees and be responsible for administering them and assessing them and an appeal would go to the Board. Under the existing Air Quality Act the Board is responsible for the fees.

REP. Fagg said, I like the idea of the users paying for the cost of that service. My concern about this bill is, we really don't know what this bill is doing. I feel uncomfortable in passing this bill when we don't know exactly what is happening. I would prefer to have this as a draft for people to work on for the next 5.5 months and review this bill in the next regular session. Therefore, for that reason I am going to oppose this bill. I feel the idea is an excellent one and would hope we would pursue this in the future.

CHAIRMAN RANEY said, if we do what REP. FAGG is suggesting there would be no revenue for this session.

REP. FAGG said, I am saying let's not pass the bill and let the people get together voluntarily and put together a bill using input from everyone that we can seriously consider at the next general session.

REP. FOSTER said, I am going to oppose this bill because it seems it raises too many questions.

CHAIRMAN RANEY said, there are two things to consider; 1) the fees would not be in place prior to when the session starts and 2) it is almost a million dollars in this biennium. This is a significant amount of money the taxpayers will be paying.

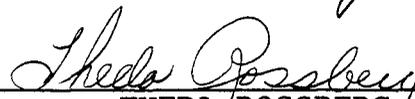
Motion/Vote: CHAIRMAN RANEY moved to approve HB 35 as amended. (Roll Call vote) FAILED 9 - 7.

ADJOURNMENT

Adjournment: 2:35 P.M.



BOB RANEY, Chair



THEDA ROSSBERG Secretary

BR/TR

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 7/10/92

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN			
REP. BOB GILBERT	X		
REP. BEN COHEN			
REP. ORVAL ELLISON			
REP. BOB REAM			
REP. TOM NELSON			
REP. VIVIAN BROOKE	X		
REP. BEVERLY BARNHART	X		
REP. ED DOLEZAL			
REP. RUSSELL FAGG	X		
REP. MIKE FOSTER	f		
REP. DAVID HOFFMAN			
REP. DICK KNOX	X		
REP. BRUCE MEASURE			
REP. JIM SOUTHWORTH	f		
REP. HOWARD TOOLE			
REP. DAVE WANZENRIED	X		
REP. BOB RANEY, CHAIRMAN	X		

1000
Kresberg

HOUSE STANDING COMMITTEE REPORT

July 10, 1992

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that HJR001 (first reading copy -- white) do pass .

Signed: _____
Bob Raney, Chairman

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 7/10/92 BILL NO. HB 35 NUMBER _____

MOTION: Chair. Raney

Move to approve HB 35 as amended

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM		
REP. TOM NELSON		✓
REP. VIVIAN BROOKE		✓
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE		
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN	✓	✓
TOTAL	7	9

Failed
7-9

EXHIBIT 1
DATE 7/10/92
HB HJR-1

1 HOUSE JOINT RESOLUTION NO. 1
2 INTRODUCED BY Raymond G. Castfield, Henry J. Bech
3 BY REQUEST OF THE WATER POLICY COMMITTEE
4 John W. C. Jorgensen

1 WHEREAS, on June 29, 1992, the Governor issued Executive
2 Order No. 14-92, proclaiming a disaster as a result of
3 drought and continued the suspension ordered in Executive
4 Order No. 13-92; and

5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
6 REPRESENTATIVES OF THE STATE OF MONTANA EXTENDING THE
7 GOVERNOR'S STATE OF DISASTER DECLARATION DUE TO CONTINUING
8 DROUGHT CONDITIONS.

5 WHEREAS, pursuant to section 10-3-303, MCA, a state of
6 disaster may not continue for longer than 30 days unless
7 continuing conditions of the state of disaster exist, which
8 must be determined by a declaration of a major disaster by
9 the President of the United States or by a joint resolution
10 of the Legislature declaring continuing conditions of the
11 state of disaster.

10 WHEREAS, Montana is experiencing a prolonged drought,
11 which is a natural disaster that imminently threatens
12 damage, injury, or loss of property; and
13 WHEREAS, pursuant to section 10-3-104, MCA, the Governor
14 has the discretionary power to suspend the provisions of any
15 regulatory statute if strict compliance with the statute
16 would in any way prevent, hinder, or delay necessary action
17 in coping with a disaster; and

11 of the Legislature declaring continuing conditions of the
12 state of disaster.
13 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
14 OF REPRESENTATIVES OF THE STATE OF MONTANA:

18 WHEREAS, the current drought condition requires the
19 exercise of the Governor's authority to suspend regulatory
20 authority of the state; and

15 (1) That the Legislature declares a continuing
16 condition of disaster as a result of the drought.
17 (2) That the state of disaster must continue until
18 terminated by the Governor as provided in section
19 10-3-303(4), MCA.

21 WHEREAS, on June 8, 1992, the Governor issued Executive
22 Order No. 13-92, proclaiming an emergency and suspending
23 certain regulatory authorities of the Department of Natural
24 Resources and Conservation under Title 85, chapter 2, MCA,
25 commonly referred to as the Montana Water Use Act; and

20 BE IT FURTHER RESOLVED, that the Secretary of State send
21 copies of this resolution to the publisher of each newspaper
22 in the state.

-End-

HJR 1





EXHIBIT 2
DATE 7/10/92
HB HJR-1

EXH

501 N. Sanders, Suite #4 • Helena, Montana 59601 • (406) 442-9666

Natural Resources Committee
July 10, 1992

HJR No. 1

Mr. Chairman, Members of the Committee for your information my name is Jo Brunner. I am the Executive Secretary of the Montana Water Resources Association. I also am an ex-officio member of the Governors Drought Advisory Council and sit on the three sub-committees of that Council.

Hopefully the drought situation has alleviated with all this beautiful moisture in the past few weeks. However, a great deal of damage was done prior to the rains, and while we all want the rains to continue, we realize that within a matter of days or weeks, with the wrong conditions, we could be back into the same drought situation as just a short time ago.

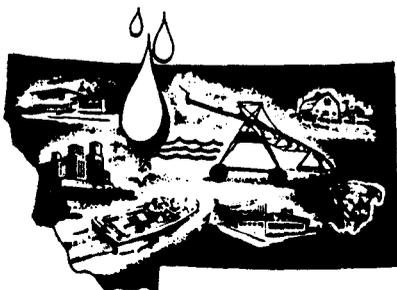
And we have to consider that there are still portions of the state that haven't been blessed so abundantly as other sections. Those who've lost their crops prior to the rains have to comply with regulations for the related programs. The programs have restrictions as to time frames for declarations of disaster.

MWRA supports this resolution as provided herein. We are appreciative of the interest of the Water Policy Committee and the Legislature in recognizing the need for the extension of the time frame.

Thank you,

A handwritten signature in cursive script that reads "Jo Brunner". The signature is written over the typed name and title.

Jo Brunner, Executive Secretary
Montana Water Resources Association



"Montana's Voice for Montana's Water"

EXHIBIT 3
DATE 7/10/92
HB 235

HOUSE BILL NO. 35
Randy Doherty

1 department; however, the costs may not exceed the
2 department's and board's documentable costs. Generally, the
3 department's reasonable costs should encompass all marginal
4 costs associated with permitting, including but not limited
5 to staff time, travel, contracted services, supplies and
6 materials, court fees, laboratory work, communications, and
7 photocopying. Overhead costs, such as rent, employees
8 benefits, computers, vehicles, and other equipment, may not
9 be included in the determination of reasonable costs.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 **Section 1.** Section 75-2-211, MCA, is amended to read:
13 "75-2-211. (Temporary) Permits for construction,
14 installation, alteration, or use. (1) The department shall
15 provide for the issuance, suspension, revocation, and
16 renewal of a permit issued under this part.

17 (2) Not later than 180 days before construction,
18 installation, or alteration begins or as a condition of use
19 of any machine, equipment, device, or facility which the
20 board finds may directly or indirectly cause or contribute
21 to air pollution or which is intended primarily to prevent
22 or control the emission of air pollutants, the owner or
23 operator shall file with the department the appropriate
24 permit application on forms available from the department.

25 (3) Concurrent with the submittal of a permit

1 INTRODUCED BY
2 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
3 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT
4 FEES FOR DEVELOPING AND ENFORCING AIR QUALITY PERMITS
5 REQUIRED UNDER TITLE 75, CHAPTER 2, AND FOR WATER QUALITY
6 PERMITS UNDER TITLE 75, CHAPTER 5; ESTABLISHING A WATER
7 QUALITY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 75-2-211
8 AND 75-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
9 DATE."

STATEMENT OF INTENT

13 A statement of intent is required for this bill because
14 it requires the board of health and environmental sciences
15 to adopt rules, pursuant to 75-5-401, implementing fees to
16 be assessed for water quality permits. The intent of this
17 bill is to require the department of health and
18 environmental sciences to recover the reasonable costs, both
19 direct and indirect, of developing, administering,
20 implementing, and enforcing air quality permits required
21 under Title 75, chapter 2, and water quality permits
22 required under Title 75, chapter 5.

23 The reasonable costs associated with the department's
24 permitting responsibilities must be determined by the



HB 35
INTRODUCED BILL

1 application required by subsection (2) and annually for the
 2 duration of the permit, the applicant shall submit to the
 3 department a fee sufficient to cover the reasonable costs,
 4 both direct and indirect, of developing and administering the
 5 the permitting requirements in this chapter, including the
 6 reasonable costs of:

- 7 (a) reviewing and acting upon the application;
- 8 (b) developing, implementing, and enforcing the terms
- 9 and conditions of the permit if the permit is issued,
- 10 including--However, this amount does not include--any--court
- 11 costs--or--other costs associated with any enforcement action.
- 12 If the permit is not issued, the department shall return
- 13 this portion of the fee to the applicant.
- 14 (c) emissions and ambient monitoring;
- 15 (d) preparing generally applicable regulations or
- 16 guidance;
- 17 (e) modeling, analysis, and demonstrations; and
- 18 (f) preparing inventories and tracking emissions.

19 (4) In addition to the fee required under subsection
 20 (3), the board may order the assessment of additional fees
 21 required to fund specific activities of the department that
 22 are directed at a particular geographic area if the
 23 legislature authorizes the activities and appropriates the
 24 funds for the activities, including emissions or ambient
 25 monitoring, modeling analysis or demonstrations, or

1 emissions inventories or tracking. Additional assessments
 2 may be levied only on those sources that are within or are
 3 believed by the department to be impacting the geographic
 4 area. Before the board may require the assessments, it shall
 5 first determine, after opportunity for hearing, that the
 6 activities to be funded are necessary for the administration
 7 or implementation of this chapter, that the assessments
 8 apportion the required funding in an equitable manner, and
 9 that the department has obtained legislative authorization
 10 for the expenditure and the necessary appropriation.

11 (5) As a condition of the continuing validity of
 12 permits issued by the department under this part prior to
 13 October 1, 1991, the department may require the permit holder
 14 to pay an annual fee sufficient to cover the costs
 15 identified in subsection (3).

16 (6) For any existing source of air contaminants that is
 17 subject to Title V of the federal Clean Air Act, 42 U.S.C.
 18 7401, et seq., as amended, and that is not required to hold
 19 an air quality permit from the department as of October 1,
 20 1991, the board may, as a condition of continued operation,
 21 require by rule that the owner or operator of the source pay
 22 the annual fee provided for in subsection (3). Nothing in
 23 this subsection may be construed as allowing the department
 24 to charge any source of air contaminants more than one
 25 annual fee that is designed to cover the costs identified in

EXHIBIT 3
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1 quality permit system.
2 (10) The department may, for good cause shown, waive or
3 shorten the time required for filing the appropriate
4 applications.
5 (11) The department shall require that applications for
6 permits be accompanied by any plans, specifications, and
7 other information it considers necessary.
8 (12) An application is not considered filed until the
9 applicant has submitted all fees and information and
10 completed all application forms required by subsections (2)
11 through (6) and (11). However, if the department fails to
12 notify the applicant in writing within 30 days after the
13 purported filing of an application that the application is
14 incomplete and fails to list the reasons why the application
15 is considered incomplete, the application is considered
16 filed as of the date of the purported filing.
17 (13) (a) Where an application for a permit requires the
18 compilation of an environmental impact statement under the
19 Montana Environmental Policy Act, the department shall
20 notify the applicant in writing of the approval or denial of
21 the application within:
22 (i) 180 days of the receipt of a filed application, as
23 defined in subsection (12), if the department prepares the
24 environmental impact statement; or
25 (ii) within 30 days after issuance of the final

1 subsection (3).
2 (7) The fees collected by the department pursuant to
3 this section must be deposited in the state special revenue
4 fund to be appropriated by the legislature to the department
5 for the development and administration of the permitting
6 requirements in this chapter.
7 (8) (a) The department shall give written notice of the
8 amount of the fee to be assessed and the basis for the
9 department's fee assessment under this section to the owner
10 or operator of the air contaminant source. The owner or
11 operator may appeal the department's fee assessment to the
12 board within 20 days after receipt of the written notice.
13 (b) An appeal must be based upon the allegation that
14 the fee assessment is erroneous or excessive. An appeal may
15 not be based only on the amount of the fee schedule adopted
16 by the board.
17 (c) If any part of the fee assessment is not appealed,
18 it must be paid to the department upon receipt of the notice
19 in subsection (8)(a).
20 (d) The contested case provisions of the Montana
21 Administrative Procedure Act provided for in Title 2,
22 chapter 4, apply to any hearing before the board under this
23 subsection (8).
24 (9) Nothing in this section shall restrict the board's
25 authority to adopt regulations providing for a single air

1 environmental impact statement by the lead agency if a state
 2 agency other than the department has been designated by the
 3 governor as lead agency for preparation of the environmental
 4 impact statement.
 5 (b) However, where an application does not require the
 6 compilation of an environmental impact statement, the
 7 department shall notify the applicant in writing within 60
 8 days of the receipt of a filed application, as defined in
 9 subsection (12), of the approval or denial of the
 10 application. Notification of approval or denial may be
 11 served personally or by registered or certified mail on the
 12 applicant or his agent.

13 (14) When the department approves or denies the
 14 application for a permit under this section, a person who is
 15 jointly or severally adversely affected by the department's
 16 decision may request, within 15 days after the department
 17 renders its decision, upon affidavit setting forth the
 18 grounds therefor, a hearing before the board. A hearing
 19 shall be held under the provisions of the Montana
 20 Administrative Procedure Act.

21 (15) The department's decision on the application is not
 22 final unless 15 days have elapsed and there is no request
 23 for a hearing under this section. The filing of a request
 24 for a hearing postpones the effective date of the
 25 department's decision until the conclusion of the hearing

1 and issuance of a final decision by the board.
 2 75-2-211. (Effective November 1, 1992) Permits for
 3 construction, installation, alteration, or use. (1) The
 4 department shall provide for the issuance, suspension,
 5 revocation, and renewal of a permit issued under this part.
 6 (2) For all sources of air contaminants that are
 7 subject to the provisions of Title V of the federal Clean
 8 Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions
 9 of this section apply in addition to the other applicable
 10 provisions of this chapter.

11 (a) The board shall by rule require that permits issued
 12 to sources described in subsection (2) be of limited
 13 duration, but it may not limit the duration of the permits
 14 beyond that required by the federal Clean Air Act, 42 U.S.C.
 15 7401, et seq., as amended.

16 (b) The board shall by rule provide for the renewal of
 17 permits issued to the sources.

18 (c) The board shall by rule establish a transition
 19 schedule for air quality permits held by sources of air
 20 contaminants subject to the provisions of subsection (2).
 21 The transition schedule must specify dates for the
 22 expiration of the permits, absent an application for renewal
 23 by the source. The transition schedule may not specify
 24 expiration dates that are earlier in time than those
 25 required by Title V of the federal Clean Air Act, 42 U.S.C.

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1 7401, et seq., as amended. The transition schedule
2 established by the board also applies to existing sources of
3 air contaminants that are subject to the provisions of Title
4 V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as
5 amended, and that do not hold an air quality permit from the
6 department as of November 2, 1992.
7 (3) Not later than 180 days before construction,
8 installation, or alteration begins or as a condition of use
9 of any machine, equipment, device, or facility which the
10 board finds may directly or indirectly cause or contribute
11 to air pollution or which is intended primarily to prevent
12 or control the emission of air pollutants, the owner or
13 operator shall file with the department the appropriate
14 permit application on forms available from the department.
15 (4) Concurrent with the submittal of a permit
16 application required by subsection (3) and annually for the
17 duration of the permit, the applicant shall submit to the
18 department a fee sufficient to cover the reasonable costs,
19 both direct and indirect, of developing and administering
20 the permitting requirements in this chapter, including the
21 reasonable costs of:
22 (a) reviewing and acting upon the application;
23 (b) developing, implementing, and enforcing the terms
24 and conditions of the permit if the permit is issued,
25 including---However,--this amount does not include any court

1 costs or other costs associated with any enforcement action.
2 If the permit is not issued, the department shall return
3 this portion of the fee to the applicant.
4 (c) emissions and ambient monitoring;
5 (d) preparing generally applicable regulations or
6 guidance;
7 (e) modeling, analysis, and demonstrations; and
8 (f) preparing inventories and tracking emissions.
9 (5) In addition to the fee required under subsection
10 (4), the board may order the assessment of additional fees
11 required to fund specific activities of the department that
12 are directed at a particular geographic area if the
13 legislature authorizes the activities and appropriates the
14 funds for the activities, including emissions or ambient
15 monitoring, modeling analysis or demonstrations, or
16 emissions inventories or tracking. Additional assessments
17 may be levied only on those sources that are within or are
18 believed by the department to be impacting the geographic
19 area. Before the board may require the assessments, it shall
20 first determine, after opportunity for hearing, that the
21 activities to be funded are necessary for the administration
22 or implementation of this chapter, that the assessments
23 apportion the required funding in an equitable manner, and
24 that the department has obtained legislative authorization
25 for the expenditure and the necessary appropriation.

1 (6) As a condition of the continuing validity of
 2 permits issued by the department under this part prior to
 3 October 1, 1991, the department may require the permit holder
 4 to pay an annual fee sufficient to cover the costs
 5 identified in subsection (4).

6 (7) For any existing source of air contaminants that is
 7 subject to Title V of the federal Clean Air Act, 42 U.S.C.
 8 7401, et seq., as amended, and that is not required to hold
 9 an air quality permit from the department as of October 1,
 10 1991, the board may, as a condition of continued operation,
 11 require by rule that the owner or operator of the source pay
 12 the annual fee provided for in subsection (4). Nothing in
 13 this subsection may be construed as allowing the department
 14 to charge any source of air contaminants more than one
 15 annual fee that is designed to cover the costs identified in
 16 subsection (4).

17 (8) The fees collected by the department pursuant to
 18 this section must be deposited in the state special revenue
 19 fund to be appropriated by the legislature to the department
 20 for the development and administration of the permitting
 21 requirements in this chapter.

22 (9) (a) The department shall give written notice of the
 23 amount of the fee to be assessed and the basis for the
 24 department's fee assessment under this section to the owner
 25 or operator of the air contaminant source. The owner or

1 operator may appeal the department's fee assessment to the
 2 board within 20 days after receipt of the written notice.

3 (b) An appeal must be based upon the allegation that
 4 the fee assessment is erroneous or excessive. An appeal may
 5 not be based only on the amount of the fee schedule adopted
 6 by the board.

7 (c) If any part of the fee assessment is not appealed,
 8 it must be paid to the department upon receipt of the notice
 9 in subsection (9)(a).

10 (d) The contested case provisions of the Montana
 11 Administrative Procedure Act provided for in Title 2,
 12 chapter 4, apply to any hearing before the board under this
 13 subsection (9).

14 (10) Nothing in this section shall restrict the board's
 15 authority to adopt regulations providing for a single air
 16 quality permit system.

17 (11) The department may, for good cause shown, waive or
 18 shorten the time required for filing the appropriate
 19 applications.

20 (12) The department shall require that applications for
 21 permits be accompanied by any plans, specifications, and
 22 other information it considers necessary.

23 (13) An application is not considered filed until the
 24 applicant has submitted all fees and information and
 25 completed all application forms required by subsections (3)

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1 through (7) and (12). However, if the department fails to
2 notify the applicant in writing within 30 days after the
3 purported filing of an application that the application is
4 incomplete and fails to list the reasons why the application
5 is considered incomplete, the application is considered
6 filed as of the date of the purported filing.

7 (14) (a) Where an application for a permit requires the
8 compilation of an environmental impact statement under the
9 Montana Environmental Policy Act, the department shall
10 notify the applicant in writing of the approval or denial of
11 the application within:

12 (i) 180 days of the receipt of a filed application, as
13 defined in subsection (13), if the department prepares the
14 environmental impact statement; or
15 (ii) within 30 days after issuance of the final
16 environmental impact statement by the lead agency if a state
17 agency other than the department has been designated by the
18 governor as lead agency for preparation of the environmental
19 impact statement.

20 (b) However, where an application does not require the
21 compilation of an environmental impact statement, the
22 department shall notify the applicant in writing within 60
23 days of the receipt of a filed application, as defined in
24 subsection (13), of the approval or denial of the
25 application. Notification of approval or denial may be

1 served personally or by registered or certified mail on the
2 applicant or his agent.

3 (15) When the department approves or denies the
4 application for a permit under this section, a person who is
5 jointly or severally adversely affected by the department's
6 decision may request, within 15 days after the department
7 renders its decision, upon affidavit setting forth the
8 grounds therefor, a hearing before the board. A hearing
9 shall be held under the provisions of the Montana
10 Administrative Procedure Act.

11 (16) The department's decision on the application is not
12 final unless 15 days have elapsed and there is no request
13 for a hearing under this section. The filing of a request
14 for a hearing postpones the effective date of the
15 department's decision until the conclusion of the hearing
16 and issuance of a final decision by the board."

17 **Section 2.** Section 75-5-402, MCA, is amended to read:

18 "75-5-402. Duties of department. The department shall:

19 (1) issue, suspend, revoke, modify, or deny permits to
20 discharge sewage, industrial wastes, or other wastes into
21 state waters, consistently with rules made by the board;

22 (2) examine plans and other information needed to
23 determine whether a permit should be issued or suggest
24 changes in plans as a condition to the issuance of a permit;

25 (3) clearly specify in any permit any limitations

1 imposed as to the volume, strength, and other significant
2 characteristics of the waste to be discharged; and

3 (4) establish as conditions to the issuance of permits
4 for which a performance bond or other surety is filed under
5 75-5-405 certain reclamation requirements sufficient to
6 prevent pollution of state waters during and after operation
7 of the project or activity for which a permit is issued; and

8 (5) adopt rules implementing the fee schedule contained
9 in [section 3]."

10 **NEW SECTION. Section 3. Fees authorized for cost**
11 **recovery.** (1) To recover the costs of permitting, the
12 department shall adopt a fee schedule for permits obtained
13 under the authority of this part. The fee must be sufficient
14 to cover the reasonable costs, both direct and indirect, of
15 developing, administering, implementing, and enforcing the
16 permit requirements of this part, including the costs of:

17 (a) reviewing and acting upon an application;
18 (b) any monitoring or compliance activity undertaken
19 pursuant to a permit;

20 (c) preparing generally applicable regulations or
21 guidance;

22 (d) determining nondegradation of state waters pursuant
23 to 75-5-303; and

24 (e) enforcing the terms and conditions of the permit if
25 the permit is issued, including any costs associated with

1 enforcement action.

2 (2) (a) The department shall give written notice of the
3 amount of the fee to be assessed and the basis for the
4 department's fee assessment to the applicant for a water
5 quality permit. The applicant may appeal the department's
6 fee assessment to the board within 20 days after receipt of
7 the written notice.

8 (b) An appeal must be based on the allegation that the
9 fee assessment is erroneous or excessive. An appeal may not
10 be based only on the fee schedule adopted by the department.

11 (c) If any part of the fee assessment is not appealed,
12 it must be paid to the department upon receipt of the notice
13 in subsection (2)(a).

14 (d) The contested case provisions of the Montana
15 Administrative Procedure Act, provided for in Title 2,
16 chapter 4, apply to any hearing before the board under this
17 subsection (2).

18 (3) The fee must be submitted by a permit applicant at
19 the time of application and annually thereafter for the
20 duration of the permit. An application is not considered
21 complete until the applicant has submitted all fees.

22 (4) The fee schedule may not result in the collection
23 of revenue that exceeds the board's and department's
24 documented costs.

25 (5) Fees collected pursuant to this section must be

EXHIBIT 3
DATE 7/10/92
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1 deposited in the water quality special revenue account
2 established in [section 4].

3 NEW SECTION. **Section 4. Water quality special revenue**
4 account. (1) There is a water quality special revenue
5 account within the state special revenue fund established in
6 17-2-102. There must be paid into the account all revenue
7 collected pursuant to [section 3].

8 (2) Funds in the account may be used only to pay
9 department and board costs as described in [section 3].

10 NEW SECTION. **Section 5. Codification instruction.**
11 [Sections 3 and 4] are intended to be codified as an
12 integral part of Title 75, chapter 5, part 4, and the
13 provisions of Title 75, chapter 5, part 4, apply to
14 [sections 3 and 4].

15 NEW SECTION. **Section 6. Effective date.** [This act] is
16 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0035, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the Department of Health and Environmental Sciences to collect fees for developing and enforcing air quality permits required under Title 75, Chapter 2, and for water quality permits under Title 75, Chapter 5; establishing a water quality special revenue account; and providing an immediate effective date.

Water Quality Bureau

ASSUMPTIONS:

1. Actual program costs were used.
2. Fees would be available as of March 1, 1993.
3. Present level of federal support will be maintained through 1993.

FISCAL IMPACT:

	<u>FY93</u>
<u>Revenue:</u>	
Permit Fees (new)	\$299,300
RIT	(36,576)
Federal	(262,724)
<u>Funding:</u>	
RIT Account	(36,576)
Federal Revenue	(262,724)
Permit Fees	299,300

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Permit holders such as cities and county sewer districts will be required to pay fees.

TECHNICAL NOTES:

On page 2, lines 7, 8 and 9 necessary and reasonable costs of maintaining the permit program are incorrectly excluded from cost recovery.

(Over)

Steve Yeakel 7/11/92

STEVE YEAKEL, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

EXHIBIT 4
DATE 7/10/92
HB 35

ROBERT H. RANEY, PRIMARY SPONSOR DATE

Fiscal Note for HB0035, as introduced

HB 35

Air Quality Bureau

ASSUMPTIONS:

1. The expense for fiscal year 1993 would be similar to those for fiscal year 1992.
2. Staff size and needs would remain the same.
3. No change in expenses except an increase in the amount attributed to legal fees and court costs.

FISCAL IMPACT:

	<u>FY93</u>
<u>Revenue</u>	
General Fund	\$43,520
State Special	(43,520)
<u>Funding:</u>	
General Fund	43,520
State Special	(43,520)

EFFECT ON LOCAL GOVERNMENTS:

None of permit fee money is included in the current county grants.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Removing certain overhead costs from fee coverage will potentially increase reliance of the department on general fund or federal grant dollars (if available).

General fund or federal fund revenue will continually be needed to fund those costs deemed unreasonable by the Statement of Intent, yet which are essential to the operation of any permitting program.

Authority: Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Completed worksheets are due in the Office of Budget and Program Planning on or before 7/10/92

Note: The copy of the proposed legislation must be returned to the Budget Director with the completed worksheets.

To: Aracata

A Fiscal Note estimate and statement are requested:

As Originally Introduced Bill EXHIBIT 4
 Second Reading (yellow) Copy _____
 Third Reading (blue) Copy _____
 Salmon Reference Copy _____
 Ivory Final Reference Copy _____

S.B. 25
 H.B. 35

Senate Amendments (pink) _____
 House Amendments (green) _____
 Other, as described _____

DATE 7/10/92
 HB _____

1. Estimated Effect on venue and/or Expenditures	Fiscal Year 1993						Total Est. Inc. (Dec.) FYE93
	Est. Increase (Dec.) JAN	Est. Increase (Dec.) FEB	Est. Increase (Dec.) MARCH	Est. Increase (Dec.) APRIL	Est. Increase (Dec.) MAY	Est. Increase (Dec.) JUNE	

A. Effect on Revenue by Source:

(List in Detail)	74,825	74,825	74,825	74,825	74,825	74,825	299,300
Revenue Fees (new)							
RIT	(9,144)	(9,144)	(9,144)	(9,144)	(9,144)	(9,144)	(36,576)
Federal	(65,681)	(65,681)	(65,681)	(65,681)	(65,681)	(65,681)	(262,724)
TOTAL REVENUE							

B. Effect on Expenditures by Category:

- Personal Services
- Operating Expenses
- Capital Outlay
- Local Assistance, Grants
- Benefits & Claims

TOTAL EXPENDITURES

NET EFFECT (A LESS B)

C. Fund Information:

General Fund							
State Spec. Revenue Fund	(9,144)	(9,144)	(9,144)	(9,144)	(9,144)	(9,144)	(36,576)
Federal Spec. Revenue	(65,681)	(65,681)	(65,681)	(65,681)	(65,681)	(65,681)	(262,724)
Capitol Project Fund							
Proprietary Fund							
Other (describe) Revenue Fees	74,825	74,825	74,825	74,825	74,825	74,825	299,300

(CONTINUED)

EXHIBIT

DATE

7/2/92

REQUEST NO.

Form ED 14

HB

II. ASSUMPTIONS USED IN OBTAINING ESTIMATES

(Please list clearly and in detail; use extra sheets if necessary)

List assumptions made during preparation of the fiscal note. If certain costs associated with the proposed legislation can be absorbed without additional funds, indicate this as an assumption. If no dollar estimates have been presented, list reasons in this space.

1. Actual program costs were used
2. Assume fees would be available as of march 1, 1993.
3. Assume present level of federal support will be maintained through 1993.

III. DERIVATION OF ESTIMATES

Show basic calculations or provide a brief description of the techniques used to obtain estimates; also, cite sources of basic data used for projects.

Costs of programs were derived from the State SBAS System.

STATE OF MONTANA
Form BD-14
FISCAL NOTE WORKSHEET

REQUEST NO. _____

EXHIBIT 4

DATE 7/10/92

HB _____

IV. AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Provide an estimate of the local impact.

Permit holders such as cities and county sewer districts will be required to pay fees.

V. LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Use this space to describe any potentially significant effects the proposed legislation might have on expenditures and/or revenues for subsequent fiscal years, give quantitative estimates whenever possible.

Will decrease present state expenditures and will prevent future increases in state expenditures which would be necessary to support the permit program when expected decreases in federal support occur.

VI. TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

Explain.

On page 2, lines 7, 8 and 9 necessary and reasonable costs of maintaining the permit program are incorrectly excluded from cost recovery.

Agency Representative Who Prepared Estimates:

Jan Fraser
(Name)

Bureau Chief
(Title)

7-10-92
(Date)

Office of Budget and Program Planning:

Received _____
Analyzed by _____

Fiscal Note by _____
Date _____

EXHIBIT 4

STATE OF MONTANA - FISCAL NOTE

Form BD-15

Version:

DATE 7/10/92

HB 25

In compliance with a written request, there is hereby submitted a Fiscal Note for _____

Description of Proposed Legislation:

An act requiring the Department of Health and Environmental Sciences to collect fees to support costs of water quality permitting.

Assumptions:

Fees available by March 1, 1993.
Permit program will be maintained at level necessary to comply with state and federal requirements.

Fiscal Impact:

Fees will replace RIT and Federal support with user charges.

Affect on County or Other Local Revenue or Expenditures:

Permit holders such as cities and county sewer districts will be required to pay fees.

Long-Range Effects of Proposed Legislation:

Will decrease FIT and Federal expenditures, by replacing them with user fees.

Technical or Mechanical Defects or Conflicts with existing Legislation:

On page 2, lines 7, 8 and 9 necessary and reasonable costs of maintaining the permit program are incorrectly excluded from cost recovery.

BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

PRIMARY SPONSOR

DATE

Fiscal Note for _____

Amendments to House Bill No. 35
First Reading Copy

EXHIBIT 5
DATE 7/10/92
HB 35

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Paul C. Sihler
July 10, 1992

1. Title, line 9.

Following: "75-2-211"

Insert: ", 75-2-413,"

2. Title, line 10.

Strike: the first "AND"

Following: "75-5-402"

Insert: "AND 75-5-635"

3. Page 1, line 15.

Following: "the"

Strike: "board"

Insert: "department"

4. Page 1, line 16.

Following: "to"

Strike: "75-4-401"

Insert: "75-4-402"

5. Page 1, lines 21 through 22

Following: "enforcing" on line 21

Strike: "air" through "and" on line 22

6. Page 2.

Following: line 9.

Insert:

"It is also the intent of the legislature that the department be able to recover the cost of enforcement activities through the fee assessed for an air quality permit under Title 75, chapter 2."

7. Page 3, line 11.

Following: "costs"

Insert: "and reasonable attorney fees"

Following: "any"

Insert: "administrative"

Following: "action"

Insert: "that has been concluded"

8. Page 14.
Following: line 16.
Insert:

Section 2 Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties -- out-of-state litigants -- effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order or permit made or issued pursuant thereto and after notice thereof has been given by the department shall be subject to a civil penalty not to exceed \$10,000. Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) In any action under subsection (1), if the district court finds that the department has prevailed or substantially prevailed in the action, the district court shall award the department its costs of litigation, including but not limited to reasonable attorney fees and expert witness fees.

~~(3)~~(4) Moneys collected hereunder shall be deposited in the state general fund."

{Internal References to 75-2-413:

75-2-401 75-2-4

Re: number: subsequent sections

9. Page 15.
Following: line 9
Insert:

Section 3. Section 75-5-635, MCA, is amended to read:

"75-5-635. Costs and expenses -- recovery by department -- deposit in water quality rehabilitation account. (1) In a civil action initiated by the department under this chapter, the ~~department may ask for and the court shall is authorized to~~ assess a violator for the cost of:

(a) the investigation or monitoring survey which led to the establishment of the violation; and

(b) any expense incurred by the ~~stated~~ department in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants; and

(c) expenses of litigation incurred by the department, including reasonable attorney fees and expert witness fees.

(2) Any costs and expenses recovered by the department under subsection (1) for actions that the department financed with money from the water quality rehabilitation account authorized in 75-5-507 must be deposited in the water quality rehabilitation account."

{Internal References to 75-5-635:
75-5-611 75-5-615}

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. 35

DATE 7/10/92 SPONSOR(S) REP. BOB RANEY

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>John Brunner</i>	<i>MURA</i>		<input checked="" type="checkbox"/>
<i>Don Youngberg</i>	<i>MT Farm Bureau</i>		<input checked="" type="checkbox"/>
<i>George Chamberlain</i>	<i>SECRET</i>		
<i>Jim Jensen</i>	<i>MEIC</i>	<input checked="" type="checkbox"/>	
<i>John Fitzpatrick</i>	<i>Pegasus Gold Corp</i>		<input checked="" type="checkbox"/>
<i>James Allen</i>	<i>DHRC</i>		
<i>Don Field</i>	<i>DHES</i>	<input checked="" type="checkbox"/>	
<i>Jeff Chaffee</i>	<i>DHES - Air Quality</i>	<input checked="" type="checkbox"/>	
<i>Don Allen</i>	<i>Mt. West Products Area</i>		<input checked="" type="checkbox"/>
<i>Alec Hansen</i>	<i>MLCT</i>		<input checked="" type="checkbox"/>

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

