Local air pollution control legislation in Montana 1979

Linda J. Ruprecht

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LOCAL AIR POLLUTION CONTROL LEGISLATION
IN MONTANA, 1979

by
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B.A., Simmons College, 1973

Presented in partial fulfillment of the requirements for
the degree of
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UNIVERSITY OF MONTANA
1979

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[Signatures]
Chairman, Board of Examiners
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CHAPTER I

INTRODUCTION

The Montana State Legislature meets for a single ninety-day period every two years. The onset of each new legislative session touches off a period of furious political activity as improvement-minded persons around the state attempt to transform gripes and suggestions into well-articulated, strategically-sponsored pieces of legislation. The 1979 legislative session was no exception. Close to 1350 bills were drafted and introduced into the session.¹ One of these bills included amendments to the Montana Clean Air Act. These amendments would have clarified and expanded the powers of local air quality control agencies within the state. The history of these local air quality control measures, as they were originated, acted upon, and defeated within the legislative process, provides the framework upon which this study is based.

This study was conceived as an exercise in political advocacy and legislative analysis. As a paper, it is intended to be both a case study of the career of a specific local control issue in Montana's Forty-sixth Legislative Assembly, and a guide to active involvement in the legislative process.
The study traces the course of a bill from the conception of a legislative idea to the signing of the governor's signature, and it supplements this procedural information with insights gained from the author's personal experience in the process.

The legislative process entails more than what can be seen from the gallery of the capitol. One legislative follower has likened the legislative process to an iceberg:

That is, what is below the surface and invisible determines what appears above the water line. The experienced navigator avoids hasty judgment of the iceberg because he knows its subsurface characteristics. The informed citizen likewise is equipped to avoid hasty judgments of the legislature when he knows the full character of the problems.2

In an attempt to become familiar with the "full character" of the legislative process, the author embarked upon the study using largely a participant-observer methodology. The unique nature of the study at hand necessitated the use of this seemingly unobjective approach.3

Methodologists in the social sciences give cautious support to observational procedures. Kerlinger claims that the strength and weakness of this procedure lie with the observer's powers of inference. The observer can readily bring together the observed behavior and the constructs of the study, but dependence upon direct observations also leaves room for making incorrect inferences from observations.4
have experience in dealing with the situation at hand. The author of this paper employed the aid of numerous and varied, experienced sources throughout the research and writing of this document. What follows, then, is a most earnest attempt at an objective and thorough characterization of the legislative process, with a special focus on the way in which the legislative process dealt with one particular air quality issue.

In attempting to analyze the legislative process, it seems appropriate to bear in mind some of the fundamentals of game theory. Game theory studies rational decision-making processes in which two or more participants have choices to make and the outcome depends on the choices made by each of them. Each decision-maker finds that his choices are interdependent, and each choice carries with it a "payoff" for each decision-maker. Each facet of legislative activity—drafting, amending, and voting—appears to manifest this game-like strategy, and those who are shrewd strategists tend to come out the most successful.

Strategy is the key. A set of decisions is made to achieve optimum payoff even after consideration of the opponents' decisions. Game theorists use the term "minimax" to refer to the strategy which maximizes a gain or minimizes a loss no matter what the opponents do. This is conservative strategy in that it is used to reduce losses and insure
gains rather than to seek maximum gains at the risk of great losses. The concept of "minimax" helps to explain why changes in law through the legislative process are usually incremental rather than revolutionary.

The predictive value of game theory in policy-making is limited since the conditions of game theory are rarely approximated in real life. The value of game theory lies more in its use as an analytic tool in determining what happened.\footnote{11}

In a democracy, it would appear that anyone with an idea that he/she would like to see become law, is capable of seeking legislative approval of that idea. Yet, even good ideas die quickly within the mechanisms of the political machine if their advocates are unfamiliar with the formal and informal rules and operating procedures. A number of theoretical political models have been suggested which endeavor to explain some of the frequently complex events in our democratic political system. Two of these models, the group equilibrium model and the elite preference model, are helpful in coming to know the iceberg-like legislative process.

The group equilibrium model views politics as a struggle among groups to influence public policy.\footnote{12} The political system manages group conflict by establishing rules and by arranging and enforcing compromises. Public policy at any point in time is determined by the equilibrium reached
through the relative influences of the various interest
groups. According to political scientist Earl Latham:

The legislature referees the group struggle, ratifies
the victories of the successful coalition, and records
the terms of the surrenders, compromises, and conquests
in the form of statutes.13

Group influence in the political system tends to be deter­
mined by numbers, wealth, organizational strength, leader­
ship, access to decision-makers, and internal cohesion.14

The equilibrium within the political system is maintained
not only by the countervailing forces of the various inter­
est groups, but by overlapping group membership.15 In the
legislature, representatives who belong to a coalition for
the passage of one bill, will undoubtedly belong to other
groups which represent different legislative interests.
These multiple alliances have a moderating effect on the
legislative process, again resulting in changes that are
incremental and not revolutionary.

Elite theory suggests that public policy is deter­
mined by the preferences of a powerful few, and not by the
demands of the majority.16 Elitism views the popular major­
ity as apathetic and ill-informed, so much so that policy
decisions are essentially made by a few "civic-minded"
elites. A consensus among elites about fundamental norms
underlying the social system and agreement about the rules of
the game, foster the stability and survival of the social
and political system. The bases of this elite consensus are
sanctity of private property, limited government, and individual liberty. Most importantly, elite theory views public policy as not reflecting the demands of the masses, but rather as expressing the values of the elites. Thus, policy decisions tend to be self-serving to the political and social system, and they deviate only minutely from the status quo.

A study conducted throughout the state following the 1977 legislative session raised serious doubts as to whether or not some elected officials, the elites, were truly voting on bills in accordance with the desires of their constituencies. The activities of these legislators fit suspiciously well into the elite theory framework, and should the same study be repeated for subsequent sessions, it would not be surprising to find similar patterns of legislative behavior.

Both group theory and elite theory offer illuminating insights into the operation of the political system and the legislative process. A legislator or lobbyist well-versed in these theories stands to function competently in the legislature.

This overview of political theory should prepare the reader for greater understanding of the pages to follow. Familiarity with these theoretical basics will add a valuable dimension to the account of the author's legislative
experience. It is hoped that the combined chapters of this paper will better equip the aspiring political advocate for success in the legislative arena.
FOOTNOTES

1 Telephone interview with the Montana Legislative Council, Helena, Montana, 17 April 1979.


3 A nationally-recognized study which uses a participant-observer approach to record the legislative process at the federal level of government was produced by Eric Redman in The Dance of Legislation, (New York: Simon and Schuster, 1973).


6 Kerlinger, Foundations, p. 539.

7 Sjoberg and Nett, Social Research, p. 176.

8 Ibid., pp. 162, 187.


10 Ibid., p. 36.

11 Ibid., p. 37.

12 Ibid., p. 23.


15 Ibid., p. 25.
16 Ibid, p. 25.


CHAPTER II

PRE-SESSION ACTIVITY

Ideas for legislative proposals come from a variety of sources. Citizen groups, public and private organizations, public agencies, and election platforms can produce a mountain of legislation suggestions that, if passed, would possibly make the world a better place in which to live.

Legislative bills articulate the policy recommendations of people. Ideally, the policy changes provided for in any bill should reflect the values of the bill's sponsors and supporters. According to elite theory, the more consistent the provisions of the legislative idea with the shared values of the political power elite and the current political system, the greater the likelihood of legislative success.

The idea to introduce legislation on local air quality control originated during the fall, 1978, election campaign. Daniel Kemmis of Missoula, running as a Democrat for a seat in the Montana House of Representatives, presented to a group of interested graduate students an outline of the types of legislation he wanted to sponsor if elected. One of these ideas was to somehow amend the Montana Clean Air Act to allow for greater local control of air quality. He was particularly intrigued with the idea of a locally imposed
tax on air pollution, and he needed help in researching the feasibility of such a radical proposal.

The author's research into the topic of local air quality control was begun shortly after that meeting. Preliminary survey of the literature revealed that several states have relied heavily on local agencies to conduct their quality programs, while some other states have assumed the entire responsibility of in-state air quality control themselves. In seventeen states and U.S. territories, there is no local government activity in air pollution control at all, and there exists a full spectrum of variation from one to another regarding the respective roles of local and state government in air pollution management.¹

Generally, it is an accepted premise that air pollution control should be the responsibility of the lowest level of government capable of dealing with the problem in its entirety.² Some people construe "the lowest level of government capable of dealing with air pollution problems" to be synonymous with state control, while others argue that individual communities are capable of effective air quality control. In many ways, control of air quality at the local level is desirable over state control. A local air quality program can be tailored to specific community needs. The economy of operation can be improved, and such a program is assessible and responsive to the local citizenry. Still,
local entities are not often in the financial position to hire the necessary technical personnel or acquire the appropriate equipment to run a satisfactory program. In large metropolitan areas, the existing multiplicity of local governments cannot be expected to operate separate programs of air quality control in an efficient and effective manner. Finally, industrial and commercial interests sometimes control the actions of local governments in such a way as to render their air pollution programs virtual shams.\(^3\)

For the most part, the responsibility for determining the relationship between state and local government agencies rests with the states since local governments have only those powers and duties specifically given to them by the states. According to one analyst:

> The general nature and scope of such arrangements are given in broad state laws and in the constitutions. It remains for the operating air pollution control agencies to work out the details of state-local relationships in control operations.\(^4\)

In Montana, Part Three of the Montana Clean Air Act, Sections 75-2-101 to 75-2-415, MCA, provides the legal framework for the establishment and operation of local air quality control programs. To date, there are three such programs in the state. These are located in Missoula County, Yellowstone County, and Cascade County. While each of these programs was created as a result of an initiative vote of community concern for air quality, none has absolute
authority over the air pollution sources within its boundaries. The level of program operation varies from one agency to another, and each of them depends greatly on financial and technical assistance from the state.5

This dependence on state aid imposes limitations on the scope of the local programs. State control of the purse strings largely dictates the type and extent of the air pollution control activities at the local level, and thereby renders the local programs less responsive to the individual needs and desires of the community.

Officials of the local air pollution control agencies in Missoula, Great Falls, and Billings were most helpful in describing the nature of the local control issues of air pollution, and in identifying what changes needed to be made in the law to allow their agencies to better meet the air quality considerations in their communities. Persons considering legislative proposals to change the operation of any agency would be advised to discuss these proposals with the agency as a first step. Agency records and experience can document need for change, and possibly identify the approximate form that change should take. Sometimes a whole new law is needed, while at other times, an amendment to an existing law is sufficient. Additional help with the legal compatibility of a proposal with existing laws, or with the legal interpretation of a potential proposal, can be obtained
through consultation with a lawyer.

The preliminary research into the legal, social, environmental, economic, and administrative implications of a legislative idea may take weeks or months to complete. During this period, one should also begin looking for an appropriate legislative sponsor. Naturally, a final choice of a sponsor cannot be made until after the election results are known, but it is helpful to have a hopeful candidate or two who will offer constructive criticism and guidance throughout the research process.

Election results allow for the development of real strategy decisions. The general tone of a legislative session is at least partially determined by the election. One would be wise to pay particular attention to which party controls which house, and to take note of likely prospects for leadership positions.

The 1978 Montana election resulted in the Republican Party gaining a one member majority in the Senate. The Democrats retained control of the House, but due to the candidacy choices of the former Democratic House leaders, the Democratic leadership went to new faces. For environmental issues such as air quality, the forecast for legislative action was conservatively progressive at best, and regressive at worst.6
Given a potential legislative climate, one is faced with the problem of choosing a sponsor. In the case of this study, no problem existed since the proposal's originator, Daniel Kemmis (D - Missoula) was elected to the House. In other instances, one's choice must be based on an overall evaluation of what kind of legislator could carry a particular proposal well, given the various factors of the political climate. Would a Democratic representative be a more promising bill carrier than a Republican senator? In some cases, co-sponsorship with legislators from each house is a choice well made. A look at past legislative records will show who voted for what and who carried what. Has one incumbent legislator had good past success in carrying a given type of proposal? Is the geographical location of a legislator's constituency important to the particular piece of legislation at hand?

Early discussions with legislators may help direct one to a legislator best suited for sponsorship. These discussions also help to familiarize members of the assembly with the proposal so that they can begin thinking about its merits. In addition, these early discussions may shed light on any inconsistencies in the proposal or possible misinterpretations.

Choice of a legislative sponsor should be followed by a meeting to discuss the form and strategy of the proposal.
These meetings may amount to setting up one's ideals against the realities of the political system at hand and seeing how they balance. How much is one willing to risk? Should one be satisfied with guaranteed incremental changes over a series of legislative sessions, or should one risk all and attempt to effect major change in one effort?

After Kemmis' victory in the November elections, a series of brainstorming sessions was held in Missoula to discuss the refinement of the still vague local air quality control proposal. These sessions were attended by a variety of air-quality-conscious people including university professors, local health agency officials, a city councilman, a local health board member, some interested graduate students, and Dan Kemmis. The various stages of development of this proposal are included in Appendix A.

It should be noted that while all of the persons in attendance at these sessions were interested in increasing the power of local governments in the area of air pollution control, there was still considerable disagreement as to how such an expansion of local power should come about. Those wary of the elitist tenets of the state legislators tended to suggest the least radical ideas. "All-or-nothing" type suggestions came from those who seemed to regard strategy theory as hopelessly complicated and marginally useful.
The first draft of the local control amendments to the Montana Clean Air Act was an attempt to delineate a public petition process by which local governments with existing air pollution control programs could assume and maintain control over air pollutant sources heretofore controlled by the state, but which lie within the local jurisdictions' boundaries. This draft also delegates broad taxing powers to local governments for maintenance of their air pollution programs. The intent was to leave this taxing authority very loosely defined so that local entities could produce community-suited tax schedules and collection processes. One possibility was that a community with an automobile emissions problem or a road dust problem could funnel a percentage of the air pollution tax revenue into a public transportation system. Keeping the taxing authority loosely defined in law would allow for these liberal interpretations.

The other major section of the proposal's first draft addressed a part of the Montana Environmental Policy Act (MEPA). Under this law, the state is directed to complete a detailed environmental impact statement for any major state action affecting the air quality of the local air pollution control jurisdiction. Rather than attempt to change MEPA, at the real risk of weakening it, it was decided that absolute local control over air pollution matters would be compromised. The draft specifies that the state is still
responsible for completing the environmental impact state-
ments, but that final determination of any proposed action
rests with the local air pollution control authority.

Draft II of the proposal was a more refined version
of Draft I. The public petition procedure through which a
local jurisdiction could gain control over air pollution
sources within its district was dropped. In its place
emerged a notice and hearing process in which the state must
prove that it is better able than the local jurisdiction of
controlling a particular air pollution source before it
would be allowed to retain control over that source. The
wording of this section was changed to apply only to specific
sources of air pollution rather than to classes of sources,
thereby recognizing that an agency may be competent to handle
some, but not all, air contaminant sources within a given
class within its boundaries. Relative efficiency and eco-
mics were dropped as the decisive criteria by which the state
could retain control over pollutant sources. It was felt
that these criteria would almost certainly determine that
the state should retain control in every case, and that
respect for community autonomy would be disregarded.

In the second draft, the taxing section was revised
to make it appear less threatening to a potentially conserva-
tive legislative assembly. While maintaining a potential
for liberal interpretation, this section was "dressed up" in
"legalese" to make it more acceptable. Finally, after consultation with two lawyers over the compatibility of the proposal with the provisions of MEPA, the Draft I provision defining state and local roles in questions of environmental impact statements was retained.

Draft III, the proposal subsequently taken to Helena, added a few minor changes to the provisions of Draft II. One addition provided for an application procedure by which existing air pollution control agencies could request control over air pollution sources currently under state control. The addition of this provision was deemed necessary since the Draft II notice and hearing procedure was to apply to newly-established local air pollution control agencies. A second change specified that the taxing authority of the local entities was to be applicable only with regard to sources within the air pollution agency's jurisdiction. Finally, a phrase addressing the primary purpose of an air pollution control program as being the protection and improvement of "a clean and healthful environment," was added in an attempt to relate the provisions of this proposal to the guaranteed citizen rights in Article II, Section 3 of the Montana State Constitution. Again, this was a potential selling point with the legislature.

Discussion with a legislator over a proposal's intent and wording will lead into strategy planning.
Legislative proposals need widespread support for passage. Agency support at the state and local levels may be helpful, if not absolutely necessary to the bill's success. For political reasons, not all agencies who contribute information for the proposal's research can be depended upon for support. Of the three local air quality control agencies in the state who gave willingly of their information for this study, one thought it to be politically unwise to come out in favor of the proposal's passage. As expected, state agency support for these local control measures was minimal.

In soliciting support for a particular piece of legislation, one is apt to become engulfed in compromise. The application of game theory and group theory to these compromise situations helps to sort out the processes at work. Individual or agency support for a given proposal usually appears to hinge on one factor or another. The party in question may be seeking reciprocal support for another issue, or a change in wording or a modification of a provision may be the bargaining item. The negotiator for the original proposal must keep in mind the limits to his willingness to compromise. At some point, the original intent of the bill may lose its identity in the compromise process. What is left may be a widely supported bill which, in effect, may not do what its initiators had intended it to do.
The unfortunate transformation of the local air quality control measures into what became House Bill 716 (H.B. 716)⁸, was the result of several compromise sessions between Dan Kemmis and the Montana Air Quality Bureau (AQB) of the Department of Health and Environmental Sciences. Officials of AQB arranged to meet with Kemmis to discuss their desire to have him carry a series of amendments to the Montana Clean Air Act. These amendments dealt with granting the State Board of Health the authority to adopt permit fee schedules and noncompliance penalty fee schedules. These amendments were needed in order to keep the Montana Clean Air Act consistent with the recently approved amendments to the Federal Clean Air Act. The local air quality amendments were also intended to be amendments to the Montana Clean Air Act. It seemed only logical that all the amendments could be incorporated into one bill which would then carry the united support of both state and local air pollution control agencies.

In the rush to get this bill submitted to the Legislative Council by the closing date,⁹ the local air pollution tax provisions were abandoned. The AQB refused to consider and back such a revolutionary step in air quality control at the local level when the state itself didn't dare to ask for such authority.¹⁰ Rather, they claimed, the primary concern for obtaining more monies for the operation of local air
quality programs could be met by allowing local agencies to assess and collect permit fees and noncompliance penalty fees. These local powers were to be directly in line with the state agency's requested powers. Dan Kemmis made the concession out of respect for time and with the hope that local air quality control programs would benefit, albeit to some lesser extent, from these abbreviated provisions. A strategy trade-off had been one of settling for less than ideal local authority over air pollution in exchange for inclusion of these provisions into a legislative package that would appear more widely supported and more acceptable to a conservative legislative assembly.
FOOTNOTES


2 Ibid, p. 145.

3 Ibid, p. 145.


5 Telephone and personal interviews with officials at the Yellowstone County Air Pollution Control Program, the Missoula City/County Health Department, and the Cascade County Health Department, Fall, 1978.


7 Montana, Montana Environmental Policy Act, Revised Codes of Montana, (1947), Section 69:6504.


9 The Legislative Council has the responsibility of preparing the official legislative drafts of all bills to be introduced into a session. The Council accepts bill proposals only up to a given date shortly after the beginning of the session.

10 Telephone interview with Jon Bolstad of the Air Quality Bureau, Helena, Montana, January 1979.
CHAPTER III

THE LEGISLATIVE PROCESS

Every piece of legislation is funneled through the legislature according to a set procedure. A proposal, coming from the drafting efforts of the Legislative Council, is returned in bill form to the sponsor. The legislative sponsor introduces the bill into the House or the Senate. This means that the bill's title is read aloud on the floor and then turned over to the house leadership for assignment to a legislative standing committee. The assignment of a bill is at the discretion of the Speaker of the House or the President of the Senate. A bill's sponsor may request that it be assigned to a particular committee, and these requests are frequently, though not always, honored.

The membership of the legislative standing committees is also dependent on the respective house leaders. Reelected legislators are frequently reassigned to committees on which they have had prior experience. The make-up of any given committee involves some strategy on the part of the house leadership. Known legislative proposals can be successfully passed or defeated as a result of committee action. The interests of the house leadership are often served by the
composition of a particular committee and the subsequent assignment of bills to that committee.

A legislative standing committee reviews the bills assigned to it and makes a recommendation to the larger house assembly. The rationale behind the existence of standing committees is addressed by Rhoten Smith:

The committee system is a means of giving bills the detailed consideration and scrutiny necessary for deliberate and consistent legislation without burdening the legislators beyond the limits of time and energy.\(^2\)

There are seventeen standing committees in the Senate and fifteen in the House of the Montana Legislature. Each committee reviews all the proposed legislation which falls under the general topic area of its purview. This review process includes a public hearing. The bill's chief sponsor opens the hearing with some brief remarks about the intent and major provisions of the bill. These opening comments are followed by testimony by proponents and opponents of the bill. Committee members may ask questions of those who testify, and amendments may be proposed and discussed at this time.

It should be noted that chairpersons of legislative committees are powerful individuals. They are able to determine the dates on which bills will be considered, the sequence in which the bills will be heard before committee, the amount of time allotted for testimony, and the order in which testifiers will be heard.\(^3\)
Following the public hearing, the committee meets in executive session to further discuss the merits of the bill. A committee vote is taken, and the bill receives a "do pass", a "do not pass", or a "do pass as amended" recommendation. Procedural rules adopted at the beginning of each legislative session determine whether or not a bill with a "do not pass" recommendation can be considered on the floor of the assembly. A committee may also decide to "sit on" a bill, which essentially kills that piece of legislation since it cannot pass onto the floor of the assembly without a recommendation from the committee.

A bill with a committee report is reintroduced to the full house assembly during second reading. During this time, the individual components of the bill may be debated and possibly amended. A vote is taken and the bill, if passed, is returned to the printer for final printing. The bill is heard on the floor once more during the third reading, after which a final house vote is taken. If the vote carries, the bill is sent to the other house of the legislature for a repeat of the same process. If the vote fails, the bill is discarded for the remainder of the session, unless the house votes to reconsider it.

In the second house, a bill will be approved, disapproved, or amended again. A bill which is amended in the second house, either in committee or on the floor, must be
returned to the first house for reconsideration. This house may concur with the amended version of the bill, kill the bill, or request a conference committee to negotiate a compromise between the two houses on the provisions of the bill. Such a conference committee is composed of three members of each house whose goal it is to reach an agreement about the final version of a bill. Any agreement reached by the members of the conference committee must be approved by votes in both houses of the legislature.

A bill which receives the approval of both houses must meet the approval of the governor before it becomes law. The governor has several alternatives regarding action on any legislation that reaches his desk. He may approve a bill, in which case his signature transforms the bill into law. Another option would be to veto a bill, after which the bill may be sent back to the legislature where it must receive a two-thirds majority vote in each house before it becomes law. The governor may also give an amendatory veto to a bill which he feels is unacceptable as written, but which could become acceptable with a few changes. Such a bill would be sent back to the legislature with the governor's amendments for majority approval in each house. If passed, such a bill is returned to the governor for his signature.
Throughout the hearing, debate, and voting activities of the legislative process, two factors of significant impact on the success of a bill are apparent. One of these factors is the political personalities of the primary legislative proponents and opponents of a bill. Those legislators who speak well, who through their manner and rational, knowledgeable approach, command the respectful attention of their audiences, can sometimes sway the vote on a particular issue. These persons tend to be informal leaders in the legislature.  

A second major influence is lobbying. Lobbying efforts usually consist of face-to-face interaction between interest groups and legislators. In an effort to influence votes, interest group representatives pass on considerable amounts of issue information to the legislators. During the 1979 legislative session, there were 344 registered lobbyists who walked the halls of the capitol in search of votes favorable to their interests.  

Lobbying efforts can also entail intensive telephone campaigns whereby key vote legislators are telephoned by vast numbers of callers all encouraging the legislators to vote a particular way on an issue. Such a campaign worked extremely well for opponents of the 1979 "bottle bill", HB2, who managed to sway some twenty votes during the fifteen hours between second and third readings of the bill in the House. The telephone campaign resulted in a surprise killing of the bill on the third reading.
FOOTNOTES

1 A thorough yet simple discussion of this process can be found in a pamphlet by Jeffrey J. Demetrescu called A Guide to the Montana State Legislature, printed by the Rocky Mountain Development Council, Helena, Montana, 1979.

2 Smith, Life of a Bill, p. 18.


5 Interview with official of the Montana Secretary of State Office, Helena, Montana, 19 April 1979.


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CHAPTER IV

THE CAREER OF HOUSE BILL 716

House Bill 716, a bill to amend the Montana Clean Air Act, was introduced by Representative Daniel Kemmis into the Montana House of Representatives on February 12, 1979. The House leadership assigned the bill to the House Committee on Natural Resources. On Friday, February 16, 1979, the Natural Resources Committee met to consider this bill. Despite the small room, at least fifty people in addition to the committee members were present. Consideration of two other bills preceded the hearing on H.B.716. The hearing on one of these bills, H.B.715—"An Act to Adopt the Federal Ambient Air Standards", had packed the room with representatives from major industry across the state. Many of these same representatives stayed in the room for the hearing on H.B.716.

According to the committee rules explained by Chairman Art Shelden (D-Libby) at the session's beginning, testimony on bills was to be limited to fifteen minutes for each side. Dan Kemmis, the sponsor, opened the hearing on H.B.716 by briefly outlining the major provisions of the bill. The proposed amendments to the Montana Clean Air Act would allow the state to assess permit fees for permit applications, to
assess noncompliance fees, and to increase the civil penalty fee from $1,000 per day to $25,000 per day. The amendments would clarify and somewhat broaden the powers of the local air quality control agencies.³

Kemmis' opening remarks were followed by testimony from Mike Roach, Chief of the State Air Quality Bureau. Roach elaborated on the point that H.B. 716 was needed in order to make the Montana Clean Air Act consistent with the recently amended federal Clean Air Act, and that in doing so, the amendments would "limit federal intervention into state affairs."⁴

Roach's testimony was followed by a short statement by the author who voiced support for the bill in general and who commented specifically on the local control provisions of the bill. An amendment to further clarify the new local powers regarding permit fees was also suggested.⁵

Additional statements of support were forthcoming from David Peffer, Public Health Officer for Missoula, and Steve Foster, lawyer for the Anaconda Copper Company. Mr. Foster expressed support for the bill, but proposed some minor changes to the permit sections for clarification purposes.

Those who spoke in opposition to the bill did so only to the extent of proposing some amendments to specific provisions. Dennis Lopach of the Montana Power Company, Bob Lohmeyer of the Conoco Company, and Martin Perga of Cenex,
all offered their provisionary support for the bill. Bob Lohmeyer summed up industry's position quite well when he commented that industry in Montana preferred to deal with state officials, not federal officials, on matters of air quality, and therefore the bill merited industry's support. 7

As the time ran out for testimony, Representative Scully (D-Bozeman) suggested that the committee postpone further consideration of the bill until all the proposed amendments could be properly integrated into the bill. Should the bill not be returned to the committee by the end of the weekend, the bill would be tabled while action was taken on other legislation coming before the committee. 8

In closing the hearing, Representative Kemmis stated that he had prepared the following statement of intent for the bill since its provisions were granting rule-making authority and the extent of that authority should be clearly expressed.

- The Legislature intends to grant the Board of Health and Environmental Sciences rule-making authority to adopt a permit fee schedule. Local air pollution control agencies that assess fees in accordance with these rules shall use the same permit fee schedule. 9

This statement, which was to appear on every newly-printed version of the bill, was issued to eliminate possible misinterpretation of the powers granted to the various levels of government by the bill.

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The busy work-schedule of the legislative members was very evident during the committee hearing. Several Representatives were forced to either arrive late or leave early in order to speak before other committees on bills which they sponsored. As soon as the committee ended, the Representatives were scheduled to meet in assembly in the House Chambers.\footnote{10}

With the fast approach of transmittal date,\footnote{11} the need to resolve the various amendments to the bill was pressing. After the committee hearing, those who had proposed amendments to the bill in testimony were asked to meet in the offices of the Air Quality Bureau for an amendment work session. This session was attended by representatives of Conoco, Exxon, Montana Sulphur Company, Montana Power Company, and Anaconda Copper. Mike Roach and Jon Bolstad of the Air Quality Bureau were present, as were Joan Miles of the Environmental Information Center and the author.

Many of the amendments proposed by the industrial representatives were identical from one company to another. Their primary concern was to make certain that the permit application process was not going to be inextricably complicated or time-consuming.\footnote{12} The local control provisions and proposed amendments were agreeable to all. A large portion of the discussion centered around the setting of the maximum penalty fee. Most felt that an increase from $1,000
per day to $25,000 per day was too great an increase. Eventually, a fee of $10,000 per day was agreed upon, since this was the fee administered for violations of water pollution laws within the state.

The amendments to H.B.716 were sent to Representative Kemmis, who then placed the amended bill back into the hands of the committee by Sunday morning. Discussion of H.B.716 during the February 18 executive session meeting of the House Natural Resources Committee focused on the civil penalty fee. Mike Keedy (D-Kalispell) proposed that the amendments to decrease the penalty fee from $25,000 per day to $10,000 per day not to be accepted. He argued that $25,000 per day was the fee set by the federal government, and this was the fee that the federal government would collect if the state didn't do so first. The motion to accept all of the other amendments to the bill passed easily. The motion to accept the lowered civil penalty fee failed on a vote of eight-to-eight. Amended as such, H.B.716 passed out of committee with a twelve-to-five "do pass" recommendation.13

By Thursday, February 22nd, H.B.716 came up for debate on the floor of the House of Representatives. The clock was running out with literally hundreds of bills yet to be considered by midnight Friday. Perhaps due to the time constraints, the floor debate in the House on H.B.716 was virtually nonexistent. The bill passed second reading.
easily, and it received a reassuring seventy-to-twenty-three vote on third reading.\textsuperscript{14}

Up till this point, the local air pollution control provisions in H.B.716 had aroused surprisingly little public controversy. No one throughout the entire House action on this bill had questioned the wisdom of granting local governments the authority to collect permit and noncompliance fees and to use this money as additional financial support for local air quality control programs. Jean Miles of the Environmental Information Center suggested that these issues were "sleeper" provisions, since other provisions of the bill, such as the civil penalty fee, appeared to be more threatening and therefore attention-demanding to the potential opposition.\textsuperscript{15}

Another possibility for the lack of controversy over the local control measures may have been the existence of other bills, such as H.B.715, which demanded the full attention of those who might otherwise have attacked these provisions with a double-edged sword. Chairman Shelden of the House Natural Resources Committee, whose sympathies lay with H.B.716, may have had this diversionary strategy in mind when he scheduled the hearings for both of these bills for the same session. Whatever the reasons, H.B.716 and its local air pollution control provisions was well intact as it left the House bound for the Senate.
Despite the smooth passage of the bill through the House, there was expressed concern about the bill's career in the more conservative Senate. Representative Kemmis and co-sponsor Senator Chet Blaylock (D-Laurel) met with officials of the Air Quality Bureau and the Environmental Information Center for a pre-Senate strategy session. Mike Roach of the AQB, doubtful about the Senate's acceptance of the local air pollution control measures, asked Kemmis how firmly he would stand on these provisions if opposition arose. Roach's concern was that these provisions would cost the bureau the whole bill. Kemmis responded that he had given and would continue to give support to the provisions of H.B.716 most desired by AQB, and that he expected the same sort of support from AQB for these other provisions in return.16

House Bill 716 was assigned to the Senate Natural Resources Committee on the last day of February. On Wednesday, March 14, the committee met to consider the bill. House Bill 716 was originally scheduled to be heard first, but after taking a hand count of those present who wished to speak to either of the scheduled bills, Chairman Roskie decided to begin the session with the hearing on the other bill. As a result of this rescheduling, less than half of the session's time remained when the hearing on H.B.716 was begun.
Kemmis again introduced the bill by saying that the bill was needed in order to comply with federal law. The hazard of not passing the bill would be in having the Environmental Protection Agency assess and collect non-compliance penalty fees in the State of Montana. Senator Blaylock, in his opening remarks, advised the committee that they may see fit to lower the civil penalty fee from $25,000 per day to $10,000 per day, which he felt would constitute a more appropriate penalty for the state's industrial pollutant sources.17

Eight people, including Mike Roach and several representatives of the state's industrial sector, presented testimony in support of the bill. Several amendments were again suggested. The author presented the same testimony in support of the local control provisions as was presented at the bill's hearing in the House Natural Resources Committee. Lester Loble II of the Montana Public Utilities and chairman of the Board of Health in Lewis and Clark County, delivered a statement of dubious support. Amongst his other comments, Loble questioned the wisdom of allowing local agencies to assess and collect noncompliance fees which is much the same situation, he said, as having "the fox watching the eggs."18

This same line of reasoning was continued in testimony presented in opposition to the bill. Robert Helding,
Executive Director of the Montana Wood Products Association, delivered what turned out to be a fatal blow to the local control provisions in H.B. 716. Helding attacked the bill saying that it gave local government authority without any guidelines or limitations; that in granting local governments and the state the same authority to assess noncompliance fees, the bill creates conflict; that it may be undesirable to give compliance work to local jurisdictions in cases where the state could perform the work more efficiently and economically; and that the local control provisions will make it possible for the existence of an undesirable double-standard of air quality policy and enforcement within the state—one standard for the state and one for each individual local jurisdiction. Based on these criticisms, Helding proposed that all sections of the bill which addressed local air quality control be dropped.\(^{19}\)

Peter Jackson of the Western Environmental Trade Association followed Helding's remarks by briefly stating his support for the bill and for the amendments proposed by Mr. Helding. Jackson claimed that air pollution is a very complex and highly technical problem, and that it should not be "an arena for amateurism and emotionalism" at the local level.\(^{20}\)

In this case, it was unfortunate that committee hearings do not provide adequate opportunity for rebuttal.\(^{21}\)
Kemmis, in his closing remarks, asked the committee to again consider the bill's statement of intent. He then offered to prepare an additional amendment that would rid the bill of any ambiguity that might exist regarding local authority. As there were no questions from the committee, the hearing was closed.22

Through this committee session, it was informative to note that the committee members appeared to be all but enthusiastically interested in their job. Sporadic private conversations amongst committee members and frequent trips for water and coffee appeared to provide the only incentives for staying awake. The meeting room was overly warm and poorly ventilated, and perhaps it was these factors which made the Senators appear more sleepy and disinterested than they would otherwise be. The committee members became most alert over a toddling girl who had escaped from her mother's care to wander under and around the committee table. The Senators' attentions and comments were directed to this smiling child and not to the testimony being presented before them. When the child was withdrawn from the committee table, the Senators resumed their disinterested countenances. Concerned citizens might well wonder if it is worth the trip to the capitol to testify under such circumstances.23

On Monday, March 19, the Senate Natural Resources Committee met in executive session to consider once again
H.B. 716. Discussion ran consistently with the attitudes expressed by Mr. Helding and Mr. Jackson in the committee hearing. Apparently, there was fear that by allowing the local control provisions to remain in the bill, every little town and city in Montana would soon be policing and fining industry for alleged air pollution violations, while all the while filling up local pocketbooks. Senator Etchart (R-Glasgow) moved for adoption of the amendments proposed by Mr. Helding and the motion passed on a four-to-three roll call vote. Those voting for the motion were: Senator Lowe (R-Billings), Senator Roskie (R-Great Falls), Senator Etchart (R-Glasgow), and Senator Manley (D-Helena). Those voting against the motion were: Senator Steve Brown (D-Helena), Senator Jergeson (D-Chinook), and Senator Lockrem (R-Billings).24

Analysis of this committee vote renders nothing very conclusive. Neither differences in the regions of residence, nor urban-rural considerations, lends itself to an easy explanation of the vote. A split in the vote along party lines is not obviously evident.

Of the four committee members who voted to gut the bill of its local control provisions, three were Republicans. The sole Democrat voting for the motion, Senator Manley, was found to be one of the most conservative Democrats of the Forty-fifth Montana Legislature by the Montana Democratic State Central Committee.25 In fact, his votes on Democratic
platform bills reflected a more Republican position than many of the Republican voting records. If, for the sake of analysis, Manley can be considered a Republican in Democratic clothing, then it would appear that the issue of local control as it relates to air quality regulations, is not terribly popular with Republicans.

Further analysis of the vote is possible. A possible correlation emerges when one compares the committee vote to the Environmental Information Center's (EIC) mid-session assessment of legislators' votes on key environmental bills.26 All of those Senate Natural Resources Committee members who had voted to rid H.B.716 of its local control provisions, had cast consistently unfavorable votes for every major environmental bill included in the assessment. Their assessment ratings by EIC were all zero percent. Those committee members who had voted against Senator Etchart's motion had received assessment ratings of 88 percent, 71 percent, and 14 percent for Jergeson, S. Brown and Lockram respectively. Of these three, Lockrem's rating is of questionable reliability since he failed to vote for two of the eight bills included in the rating. It would appear from this vote comparison that the committee members environmental voting records are somehow related to their votes on the issue of local air quality control. Because of an insufficient sample size, statistical analysis cannot bear out
this relationship.

A few other minor amendments were considered and approved during this same executive session. One of them was the expected reduction in the civil penalty fee from $25,000 per day to $10,000 per day. A set of amendments submitted by Kemmis, which would have guaranteed that local powers and standards could not exceed those of the state, was rendered moot by the committee's quick adoption of Helding's amendments. Finally, the committee voted five to two to concur with the House's approval of H.B.716 as amended. Senators Manley and Lockrem voted against the motion to concur. Senator Lockrem claimed that the bill had been too weakened by the amendments. He apparently felt that passage of no bill would be better than passage of a weak one.

The remaining portions of H.B.716 experienced no opposition on the Senate floor. The bill passed both second and third readings with a forty-five to zero vote.

Because it had been amended in the Senate, H.B.716 was sent back to the House for a vote of concurrence. Dan Kemmis, weary of the consistently negative actions taken by the Senate on local control issues, decided against requesting a conference committee to reconsider the provisions of the bill. Such a committee, he felt, would become hopelessly deadlocked, and the still-remaining portions of the bill
risked being lost. 29

This last consideration had served as a bargaining point at an earlier strategy session between Kemmis and Mike Roach. Roach was well-aware that the Senate would probably amend H.B. 716 to delete the local control provisions and thereby send the bill back to the House for reconsideration. He feared that, should Kemmis request a conference committee on the bill, the opportunity would be there in negotiation for making undesirable changes in the provisions of special interest to the AQB. Kemmis had agreed to not take the bill into conference committee if Roach would agree to meet with David Feffer of the Missoula City/County Health Department to negotiate a workable state-local agency relationship on matters of air pollution control. 30

As a motion in the House, Kemmis asked that the Representatives vote to concur with the Senate's amendments, but "to do so as reluctantly as [he]." 31

The final House vote of seventy-nine to sixteen on April 2, doesn't quite do justice to the reluctant nature of the vote. Some of the state's most staunch supporters of environmental issues had voted against this final concurrence. 32 As these representatives had voted previously for the passage of H.B. 716, one can only conclude that their "no" votes were a form of protest, either against the loss of the local control measures or against the lowering of the
civil penalty or both.\textsuperscript{33}

House Bill 716, without its local control provisions, was signed into law by Governor Thomas Judge on April 12, 1979.
FOOTNOTES

^House Bill 716 appears in its entirety in Appendix B.

Montana Legislature, House, An Act to Require the Board of Health to Adopt the Federal Ambient Air Quality Standards Promulgated by the Environmental Protection Agency. (H.B. 715), 46th Legislative Assembly, 1979.

Daniel Kemmis. Introduction of House Bill 716 before the House Natural Resources Committee, Montana Legislature, 46th Legislative Assembly, Meeting of 16 February 1979.

Mike Roach. Testimony before the House Natural Resources Committee, Montana Legislature, 46th Legislative Assembly, Meeting of 16 February 1979.

A complete copy of this testimony is included in Appendix C.

David Feffer was unable to attend this meeting, so his written testimony was read by Lee Losher.

Montana Legislature, House, Natural Resources Committee, 46th Legislative Assembly, Minutes of Meetings, Meeting of 16 February 1979.

Ibid.

Ibid.

Personal observation of the author while attending House Natural Resources Committee Hearing meeting, 16 February 1979.

Transmittal date is the date midway through the legislative session when all legislation which was introduced into one house is moved into the second house for consideration.

Personal notes of meeting with industrial representatives, officials of the Air Quality Bureau, and Joan Miles in the Air Quality Bureau Offices, Helena, Montana, 16 February 1979.

Montana Legislature, House, Natural Resources Committee, 46th Legislative Assembly, Minutes of Meetings, Meeting of 19 February 1979.
The final House vote on this bill appears in Appendix D.

Telephone interview with Joan Miles of the Environmental Information Center, Helena, Montana, 24 February 1979.

Telephone interview with Representative Daniel Kemmis, Helena, Montana, 22 April 1979.

Montana Legislature, Senate, Natural Resources Committee, 46th Legislative Assembly, Minutes of Meetings, Meeting of 14 March 1979.

Ibid.

Ibid.

Peter Jackson, Western Environmental Trade Association. Testimony before Senate Natural Resources Committee, Montana Legislature, 46th Legislative Assembly, Meeting of 14 March 1979.

Rebuttal can be arranged if a committee member who is sympathetic to the proponents asks a question to a proponent such as, "How would you respond to what has been said?"

Montana Legislature, Senate, Natural Resources Committee 46th Legislative Assembly, Minutes of Meetings, Meeting of 14 March 1979.

Personal observation of the author while attending the Senate Natural Resources Committee Meeting, 14 March 1979.

Ibid. Meeting of 19 March 1979.


Montana Legislature, Senate, Natural Resources Committee, 46th Legislative Assembly, Minutes of Meetings, Meeting of 19 March 1979.

Telephone interview with Joan Miles of the Environmental Information Center, Helena, Montana, 16 April 1979.
Telephone interview with Daniel Kemmis, Helena, Montana, 22 April 1979.

*Idem.*

*Idem.*

The following representatives, who were rated very highly in the already cited Environmental Information Center assessment, voted against concurrence with the Senate's amendments to House Bill 716: M. Keedy (D-Kalispell), A. Dussault (D-Missoula), F. Bardanouve (D-Harlem), H. Harper (D-Helena), J. Vincent (D-Bozeman), and D. Oberg (D-Havre).

Confirmation of the validity of this conclusion came from Representative Daniel Kemmis and Joan Miles of the Environmental Information Center, both of whom worked closely with these legislators throughout the session.
CHAPTER V

CONCLUSIONS

A number of options for future political action awaits any frustrated bill-proponent. First, one can always hope for the political climate to change and elect to reintroduce the same measures during the next legislative session. Such an action depends largely on the wishful thinking that the voters will elect law-makers who are more sympathetic to one's political interests. In making such a choice, one should keep in mind that an informed, voting public runs contrary to elite theory, which suggests that the chances of a radically different legislative composition for the next session are slight. As an alternative action, one could analyze the history of the bill's failure, revise the provisions, and then reintroduce them. Such a revision should reconsider, possibly within the game theory and group equilibrium frameworks, every aspect of the legislative process, from selection of a sponsor to lobbying efforts to testimony presentation. One should then attempt to fabricate more skillful strategy for the next legislative session. Lastly, one can give up on the legislative process altogether and seek to put the downtrodden ideas on the ballot.
as an initiative during an upcoming election.

As stated earlier, the fatal blow to the local control provisions of H.B.716 came during the Senate Natural Resources Committee hearing in the form of testimony from the Montana Wood Products Association. The proponents of the measures were ill-prepared for adequate defensive action at that time. The opposition, knowing the attitude and personalities of the Senate committee, addressed a sure-fire issue in a winning manner. Robert Helding commented later that he knew that he "would get a better hearing in the Senate" than in the House, so he just bided his time until H.B.716 was scheduled for consideration by the Senate Natural Resources Committee. Being categorically "opposed to local control", Helding felt that the Senate committee would probably be more sympathetic to his cause. By choosing to wait for the Senate hearing to express his opposition to the local air pollution control provisions in H.B.716, Mr. Helding, perhaps unwittingly, appeared to have mastered the game theory strategy of "minimax."

The decision of the Senate Natural Resources Committee to drop all reference to local air quality control in H.B.716 reflects the relative powers of influence exerted by those who lobbied and testified on this bill. The political forces of the Montana Wood Products Association and the Western Environmental Trade Association apparently carried more...
thrust than the efforts of those who supported these measures. One would suspect that these industrial organizations possessed greater numbers, wealth, and most importantly, access to key legislators throughout the session. These factors tended to sway the policy decision in their favor.

The issue of local control, against which Mr. Helding spoke so convincingly, suffered greatly at the hands of the Senate throughout the session. Not only were the local control provisions struck from H.B.716, but several other bills offering expanded powers to local governments were similarly destroyed by the Senate. Most notably, the Senate killed in committee S.B.275, an act authorizing local governing bodies to review and approve shopping centers; S.B.469, an act permitting a local governing body to adopt a stricter building code than the state; and S.B.472, an act providing for local air pollution control rules that are punishable as minor violations. Under these circumstances, it is not surprising that the local air pollution control provisions met with such absolute legislative failure.

Legislative defeat of these provisions is not the end of the story. There still remains a certain amount of leeway in the law for negotiations over control operations between the state and local agencies. The legislative proposal of the local control amendments brought these agencies
together for some long-needed dialogue about the desires, capabilities, and constraints of local air pollution control.

One of the direct results of this legislative endeavor, and Kemmis' shrewd strategy, has been a verbal agreement between Mike Roach of the Air Quality Bureau and David Feffer of the Missoula City/County Health Department. A written letter from David Feffer, which itemizes the points of their agreement, is now being reviewed by the staff of the Air Quality Bureau and the Department of Health and Environmental Sciences. According to this letter, the state will reimburse the local agency the portion of each permit fee paid to the state equal to the percentage of permit-related work performed by the local staff. Secondly, the cost of any work performed by the local staff in preparation of environmental impact statements will be reimbursed by the state. Finally, the monies reimbursed to the local agency are to supplement, not supplant, the monies otherwise given to the agency by the state for the operation of the local air pollution control program.\(^5\)

Should the provisions of this letter be approved by the various officials of the state, a formal, written, policy-statement will replace the heretofore relied upon unwritten policy. The vague operating relationship between the state and the local agencies conceivably could be transformed into something more concrete and dependable. Local
agencies could receive the financial compensation and respectful consideration they deserve. It must be realized, however, that "the bargaining and maneuvering, the pulling and hauling of the policy-adoption process carries over into the policy-implementation process." As a result of this implementation jockeying, the situation in the foreseeable future may well warrant the reintroduction of legislative proposals to expand and clarify the powers of local air quality control agencies within the State of Montana. A working knowledge of the iceberg-like legislative process will be an asset to anyone undertaking such an endeavor.
FOOTNOTES


4 Montana Legislature, Senate, An Act Providing for Local Air Pollution Control Board Rules That are Punishable as Minor Violations, (S.B. 472), 46th Legislative Assembly, 1979.

5 David Feffer to Michael Roach. 19 April 1979.

APPENDIX A

PRE-SESSION DRAFTS OF LOCAL AIR
POLLUTION CONTROL AMENDMENTS
Sec. 69-3919 Local Air Pollution Control Programs

(1) unchanged
(2) unchanged
(3) unchanged
(4)(a) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may assume and retain control over that class of air contaminant source. No charge shall be assessed against the jurisdiction therefor. Findings made pursuant to this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

*(b) Any municipality or county having an existing air pollution control program may assume control over any remaining air contaminant source within its district upon being petitioned by fifteen percent (15) of the qualified electors within the local jurisdiction. In order to conduct these expanded air pollution control responsibilities, the local government is herein enabled to levy an air pollution tax.

(5) unchanged
(6) unchanged
(7) unchanged

*(8) Any major state action significantly affecting the air quality of the local air pollution control jurisdiction shall mandate a detailed statement to be prepared by the state as directed under Section 69-6504 of the Montana Environmental Policy Act of 1971. Final determination of such proposed action rests with the local air pollution control authority.

*Indicates a change in the law
The following are some proposed changes to Section 69-3919 of the Montana Clean Air Act. Material to be deleted is crossed out; new material is underlined.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction may be more efficiently and economically performed at the state level it may direct the department to assume and retain control over that class of air contaminant source. No charge may be assessed against the jurisdiction therefor. Such a finding made by the board must be preceded by notice and hearing, and must be based upon a positive finding that the department is better able than the local jurisdiction to control the air contaminant source.

(9) A municipality or county which administers a local air pollution control program under this section may pay all or any part of the costs of such a program from the proceeds of a tax levied by the local jurisdiction upon air contaminant sources. The local jurisdiction may design and enact its own pollution tax structure, provided that the contaminants and the contaminant sources to be taxed and the rates imposed thereon are reasonably related to the maintenance of an effective and efficient program of air pollution control.

(10) Any major state action significantly affecting the air quality of the local air pollution control jurisdiction shall mandate a detailed statement to be prepared by the state as directed under Section 69-6504 of the Montana Environmental Policy Act of 1971. Final determination of such proposed action rests with the local air pollution control authority.
The following are some proposed changes to Section 69-3919 of the Montana Clean Air Act. Material to be deleted is crossed out; new material is underlined.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction it may direct the department to assume and retain control over that class of contaminant source. No charge may be assessed against the jurisdiction therefor. Such a finding made by the board must be preceded by notice and hearing, and must be based upon a positive finding that the department is better able than the local jurisdiction to control the air contaminant source. Determination of a request by a local jurisdiction for authority over a particular air contaminant source controlled by the department must be preceded by a hearing. Should the local jurisdiction's request be turned down, reapplication for such control may be made after one year.

(9) A municipality or county which administers a local air pollution control program under this section may pay all or any part of the costs of such a program from the proceeds of a tax levied by the local jurisdiction upon air contaminant sources within its jurisdiction. The local jurisdiction may design and enact its own pollution tax structure, provided that the contaminants and the contaminant sources to be taxed and the rates imposed thereon are reasonably related to the maintenance of an effective and efficient program of air pollution control whose primary purpose is the protection and improvement of a clean and healthful environment.

(10) Any major state action significantly affecting the air quality of the local air pollution control jurisdiction shall mandate a detailed statement to be prepared by the state as directed under Section 69-6504 of the Montana Environmental Policy Act of 1971. Final determination of such proposed action rests with the local air pollution control authority.
APPENDIX B

OFFICIAL LEGISLATIVE DRAFTS
OF HOUSE BILL 716

I. Introduced Proposal
II. House Amended Version
III. Senate Amended Version
INTRODUCED BY REPRESENTATIVE LARRY REED
BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION; TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM $1,000 TO $25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."

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

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules implementing and consistent with for the administration, implementation, and enforcement of this chapter and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereof, transcripts of which will be available to the public at cost;

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits under this chapter."

Section 2. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

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INTRODUCED BILL
1. (a) by appropriate administrative and judicial
2. proceedings, enforce orders issued by the board;
3. (b) secure necessary scientific, technical,
4. administrative, and operational services, including
5. laboratory facilities, by contract or otherwise;
6. (c) prepare and develop a comprehensive plan for the
7. prevention, abatement, and control of air pollution in this
8. state;
9. (d) encourage voluntary cooperation by persons and
10. affected groups to achieve the purposes of this chapter;
11. (e) encourage local units of government to handle air
12. pollution problems within their respective jurisdictions on
13. a cooperative basis and provide technical and consultative
14. assistance for this. If local programs are financed with
15. public funds, the department may contract with the local
16. government to share the cost of the program. However, the
17. state share may not exceed 30% of the total costs.
18. (f) encourage and conduct studies, investigations, and
19. research relating to air contamination and air pollution and
20. their causes, effects, prevention, abatement, and control;
21. (g) determines, by means of field studies and samplings,
22. the degree of air contamination and air pollution in the
23. state;
24. (h) make a continuing study of the effects of the
25. emission of air contaminants from motor vehicles on the
26. quality of the outdoor atmosphere of this state and make
27. recommendations to appropriate public and private bodies
28. with respect to this;
29. (i) collect and disseminate information and conduct
30. educational and training programs relating to air
31. contamination and air pollution;
32. (j) advise, consult, contract, and cooperate with
33. other agencies of the state, local governments, industries,
34. other states, interstate and interlocal agencies, the United
35. States, and any interested persons or groups;
36. (k) consult, on request, with any person proposing to
37. construct, install, or otherwise acquire an air contaminant
38. source or device or system for the control thereof
39. concerning the efficacy of this device or system or the air
40. pollution problems which may be related to the source,
41. devices or system. Nothing in this consultation relieves a
42. person from compliance with this chapter, rules in forc-
43. under it, or any other provision of law;
44. (l) accept, receive, and administer grants or other
45. funds or gifts from public or private agencies including
46. the United States, for the purpose of carrying out this
47. chapter. Funds received under this section shall be
48. deposited in the state treasury to the account of the
49. department.
50. (3) The department may assess fees for the analysis of
the environmental impact of any application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 3. Section 75-2-205, MCA, is amended to read:

*75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given at least 30 days before the time of publication of the proposed text to comment thereon. The notice shall be given by public advertisement not less than 30 or more than 90 days before the date set for the public hearing and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto.*

Section 4. Section 75-2-211, MCA, is amended to read:

*75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department and pay to a local government exercising authority under 75-2-201(9) or to the department, if such local authority is not exercised a fee sufficient to cover (a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted. The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) The department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

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

(5) An application is not considered filed until the applicant has submitted all information and completed all
application forms required by subsections (2), (3), and (4).

However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(6) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. Notice of approval or denial may be served personally or by mail on the applicant or his agent.

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

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

Section 5. Section 75-2-301, R.C.M., is amended to read:

"75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and
(c) provides for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of populations, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state-level and that the department is better able than the local jurisdiction to control the air contaminant source, it may direct the department to assume and retain control over that class of air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may, with the approval of the board, establish or resume an air pollution control program which meets the
requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(9) A municipality or county that is administering an air pollution control program under this section may exercise the following powers:

(a) The municipality or county may assess and collect noncompliance penalties provided for in sections 7 through 15, for air contaminant sources under its jurisdiction. All noncompliance penalties collected by the municipality or county pursuant to sections 7 through 15 shall be deposited in a trust and agency account until a final determination and adjustment are made as provided in section 10 and amounts are deducted by the municipality or county for costs attributable to implementation of sections 7 through 15 and for contract costs incurred pursuant to subsection (3) of section 8. If any, after a final determination is made and additional payments or refunds are made, the remaining penalty money shall be transferred to the general fund of the municipality or county.

(b) The municipality or county may collect permit fees provided for in 75-2-211.*

Section 6. Section 75-2-401, MCA, is amended to read:

*75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served personally or by mail on the alleged violator or his agent. The notice shall specify the provision of this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.
(3) Instead of issuing the order provided for in subsection (1), the department may either:
(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or
(b) initiate action under 75-2-412 or 75-2-413.

(4) Action under 75-2-412 is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

(5) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(6) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

NEW SECTION. Section 7. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2) and subject to collection by a local government pursuant to 75-2-301(9), the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source which is not in compliance with any provision of [Title 75, chapter 2] or any rule adopted or order issued pursuant to [Title 75, chapter 2];
(b) a stationary source which is not in compliance with an emission limitations, emission standards, standard of performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or
(c) any source referred to in subsections (1)(b) or (1)(c) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extensions, orders, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of sections 7 through 15 with respect to a particular instance of noncompliance which:
(a) the department finds is de minimus in nature and in duration; or
(b) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

NEW SECTION. Section 8. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source
under sections 7 through 15 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the boards which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirements, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under section 11 does not submit a timely petition under subsection (2)(b) of section 11 or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under sections 7 through 15 on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

NEW SECTION. Section 9. Manner of making payment. (1) The assessed penalty required under sections 7 through 15 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under
subsection (1)(b) of section 8], after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under [section 11] with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under [section 11] and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

NEW SECTION. Section 11a. Adjustment of fees. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under [subsection (2)(a) of section 11], if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of [sections 7 through 15].

(2) Upon making a determination that a source with respect to which a penalty has been paid under [sections 7 through 15] is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

NEW SECTION. Section 11b. Notice of noncompliance --

challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to [subsection (1) of section 7] which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with [subsection (1) of section 9]) and the schedule of payments (determined in accordance with [section
9) for each source and, within 45 days after issuance of
the notice of noncompliance, submit that calculation and
proposed schedule together with the information necessary
for an independent verification thereof, to the department;
or
(b) submit to the board a petition within 45 days
after the issuance of such notice, challenging such notice
of noncompliance or alleging entitlement to an exemption
under [subsection (2) of section 7] with respect to a
particular source.
(3) Each person to whom notice of noncompliance is
given shall pay the department the amount determined under
[section 8] as the appropriate penalty unless there has been
a final determination granting a petition filed pursuant to
subsection (2)(b).

NEW SECTION. Section 12. Hearing on challenge. (1)
The board shall provide a hearing on the record and make a
decision (including findings of fact and conclusions of law)
not later than 90 days after the receipt of any petition
under [subsection (2)(b) of section 11] with respect to such
source.
(2) If the petition is denied, the petitioner shall
submit the material required by [subsection (2)(a) of
section 11] to the department within 45 days of the date of
decision.

NEW SECTION. Section 13. Deposit of noncompliance
penalty fees. All noncompliance penalties collected by the
department pursuant to [sections 7 through 15] shall be
deposited in an earmarked revenue fund until a final
determination and adjustment have been made as provided in
[section 10] and amounts have been deducted by the
department for costs attributable to implementation of
[sections 7 through 15] and for contract costs incurred
pursuant to [subsection (3) of section 8], if any. After a
final determination has been made and additional payments or
refunds have been made, the penalty money remaining shall be
transferred to the state general fund.

NEW SECTION. Section 14. Effect of new standards on
noncompliance penalty. In the case of any emission
limitation, emission standard, or other requirement approved
or adopted by the board under [Title 75, chapter 2] after
the effective date of this act which is more stringent
than the emission limitation or requirement for the source
in effect prior to such approval or promulgation, if any, or
where there was no emission limitation, emission standard,
or other requirement approved or adopted before [the
effective date of this act], the date for imposition of the
noncompliance penalty under [sections 7 through 15] shall
be the date on which the source is required to be in full
compliance with such emission limitation, emission standard,

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or other requirement or 3 years after the approval or
promulgation of such emission limitation or requirements,
whichever is sooner.

NEW SECTION. Section 15. Effect of noncompliance
penalty on other remedies. (1) Any orders, payments,
sanctions, or other requirements under [sections 7 through
15] shall be in addition to any other permits, orders,
payments, sanctions, or other requirements established under
[Title 75, chapter 2] and shall in no way affect any civil
or criminal enforcement proceedings brought under 75-2-412
or 75-2-413.

(2) The noncompliance penalties collected pursuant to
[sections 7 through 15] are intended to be cumulative and in
addition to any other remedies, procedures, and requirements
authorized by [Title 75, chapter 2].

Section 16. 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 made pursuant thereto shall be subject to a civil
penalty not to exceed $100.00 or $250.00. 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 rules or
orders made under it by injunction or other appropriate
civil remedies.

(b) An action under subsection (1) or to enforce this
chapter or the rules or orders made 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) Moneys collected hereunder shall be deposited in
the state general fund."

Section 17. Codification. It is intended that sections
7 through 15 be codified as an integral part of Title 75,
chapter 2, part 4, and the provisions of Title 75, chapter
2, apply to sections 7 through 15.

Section 18. Saving clause. This act does not affect
rights and duties that matured, penalties that were
incurred, or proceedings that were begun before the
effective date of this act.

Section 19. Severability. If a part of this act is
invalid, all valid parts that are severable from the invalid
STATEMENT OF INTENT RE: HB 716

The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule. Local air pollution control agencies that assess fees in accordance with these rules shall use the same permit fee schedule.

First adopted by the HOUSE COMMITTEE ON NATURAL RESOURCES on February 19, 1979.
HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, REMIS, BABDANOUVE, GERKE,
DUSSAULT, LORTY, MCBRIDE, COONEY, JERGESON,
SHELTON, KESSLER, REICHERT

BY REQUEST OF THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR
ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY
FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO
PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT
ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH
THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME
REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY
COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT RULES A
SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO
PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS
AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO
REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE
CONTROL OF AIR CONTAMINATION; TO ESTABLISH NONCOMPLIANCE
PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM
$1,000 TO $25,000; AMENDING SECTIONS 75-2-111, 75-2-112,
75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA.*

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

Section 1. Section 75-2-111, MCA, is amended to read:
"75-2-111. Powers of board. The board shall:
(1) adopt, amend, and repeal rules implementing and
consistent with for the administration, implementation, and
enforcement of this chapter, for issuing orders under and in
accordance with 42 Usca 7412, and for fulfilling the
requirements of 42 Usca, 7420, and regulations adopted
pursuant thereto;
(2) hold hearings relating to any aspect of or matter
in the administration of this chapter at a place designated
by the board. The board may compel the attendance of
witnesses and the production of evidence at hearings. The
board shall designate an attorney to assist in conducting
hearings and shall appoint a reporter who shall be present
at all hearings and take full stenographic notes of all
proceedings thereafter, transcripts of which will be available
to the public at cost.
(3) issue orders necessary to effectuate the purposes
of this chapter;
(4) by rule require access to records relating to
emissions;
(5) by rule adopt a schedule of fees required for
permits under this chapter;"
1. HAVE THE POWER TO ISSUE ORDERS UNDER AND IN
ACCORDANCE WITH 42 U.S.C. [4112.]

Section 2. Section 75-2-112, MCA, is amended to read:

(1) The department is responsible for the administration of
this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial
proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical,
administrative, and operational services, including
laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the
prevention, abatement, and control of air pollution in this
state;

(d) encourage voluntary cooperation by persons and
affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air
pollution problems within their respective jurisdictions on
a cooperative basis and provide technical and consultative
assistance for this. If local programs are financed with
public funds, the department may contract with the local
government to share the cost of the program. However, the
state share may not exceed 50% of the total cost.

(f) encourage and conduct studies, investigations, and
research relating to air contamination and air pollution and
their causes, effects, prevention, abatement, and control;

(g) determine by means of field studies and sampling,
the degree of air contamination and air pollution in the
state;

(h) make a continuing study of the effects of the
emission of air contaminants from motor vehicles on the
quality of the outdoor atmosphere of this state and make
recommendations to appropriate public and private bodies
with respect to this;

(i) collect and disseminate information and conduct
educational and training programs relating to air
contamination and air pollution;

(j) advise, consult, contract, and cooperate with
other agencies of the state, local governments, industries,
other states, interstate and interlocal agencies, the United
States, and any interested persons or groups;

(k) consult on requests, with any person proposing to
construct, install, or otherwise acquire an air contaminant
source or device or system for the control thereof
concerning the efficacy of this device or system or the air
pollution problems which may be related to the source,
device, or system. Nothing in this consultation relieves a
person from compliance with this chapter, rules in force
under it, or any other provision of law.
(1) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(2) The department may assess fees for the analysis of the environmental impact of an application to redesignate the classification of any area except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe under the classifications established by 42 U.S.C. 7470 through 7479 [prevention of significant deterioration of air quality]. The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

Section 3. Section 75-2-205, MCA, is amended to read:

"75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given at least 30 days before the time of publication of the proposed text to comment thereon. The such notice shall be given by public advertisement not less than 20- or more than 30 days before the date set for the public hearing and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto."

Section 4. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machinery, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department and pay to a local government exercising authority under 75-2-201(9) or to the department if such local authority is not exercised a fee sufficient to cover all the reasonable costs of reviewing and acting upon the application for such permit and all the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement actions). The fee shall be deposited in an earmarked revenue fund to be used by the department or said local government for administration of
this section.

23. NOTHING IN THIS SECTION SHALL RESTRICT THE BOARD'S AUTHORITY TO ADOPT REGULATIONS PROVIDING FOR A SINGLE AIR QUALITY PERMIT SYSTEM.

24(1) The department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

24(2) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

24(3) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (1), (2), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

24(4) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 60 days of the receipt of a filed application as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application as defined in subsection (5), of the approval or denial of the application. Notification of approval or denial may be served personally or by REGISTERED OR CERTIFIED MAIL ON THE APPLICANT OR HIS AGENT.

25(1) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefore, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

26(1) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

Section 5. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified
electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these arc such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be charged on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level and that the
department is better able than the local jurisdiction to
control the air contaminant source, it may direct the
department to assume and retain control over that class of
air contaminant source. No charge may be assessed against
the jurisdiction therefore. Findings made under this
subsection may be either on the basis of the nature of the
sources involved or on the basis of their relationship to
the size of the communities in which they are located.

(7) A jurisdiction in which the department administers
its air pollution control program under subsection (5) of
this section may, with the approval of the board, establish
or resume an air pollution control program which meets the
requirements of subsection (1) of this section.

(8) A municipality or county may administer all or
part of its air pollution control program in cooperation
with one or more municipalities or counties of this state or
of other states.

(9) A municipality or county that is administering an
air pollution control program under this section may
exercise the following powers:

(a) The municipality or county may assess and collect
noncompliance penalties provided for in sections 7 through
13 for air contaminant sources under its jurisdiction. All
noncompliance penalties collected by the municipality or
county, pursuant to (sections 7 through 13), shall be

deposited in a trust and agency account until a final
determination and adjustment are made as provided in
section 10. and amounts are deducted by the municipality or
county for costs attributable to implementation of sections
7 through 15 and for contract costs incurred pursuant to
subsection (3) of section 8. If any, after a final
determination is made and additional payments or refunds are
made, the remaining penalty money shall be transferred to
the general fund of the municipality or county.

(b) The municipality or county may collect permit fees
provided for in 75-2-211.
2. If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

3. Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

4. A violation committed in violation of this chapter is not a bar to enforcement of this chapter or any order made under it by injunction or any other appropriate remedy. The department may institute and maintain in its own name, or in the name of the state, any enforcement proceedings.

5. This chapter does not prevent the board or the department from making efforts to obtain voluntary compliance through warning, conferences, or any other appropriate means.

6. In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

NEW SECTION. Section 7. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2) and subject to collection by a local government pursuant to 75-2-301(9), the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source other than a primary nonferrous shelter which has received a nonferrous shelter under 42 U.S.C. 7419 which is not in compliance with any provision of Title 75, Chapter 29 or any rule adopted or order issued pursuant to Title 75, Chapter 29.
(c) any source referred to in subsections (1)(A) or (1)(A) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order, or a primary nonferrous shelter which has received a primary nonferrous shelter order under 42 U.S.C. 7413a if such source is not in compliance with any intermediate requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of sections 7 through 15 with respect to a particular instance of noncompliance which:

(a) the department finds is de minimis in nature and in duration; or

(b) is exempt under 42 U.S.C. 7420(4)(2)(B) of the federal Clean Air Act.

NEW SECTION. Section 8. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under sections 7 through 15 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirements to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(A).

(2) To the extent that any expenditure under subsection (1)(B) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(A), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under section 11 does not submit a timely petition under subsection (2)(B) of section 11 or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information
necessary for independent verification thereof, the
department may enter into a contract with any person who has
no financial interest in the matter to assist in determining
the amount of the penalty assessment or payment schedule
with respect to such source. The cost of carrying out such
contract may be added to the penalty to be assessed against
the owner or operator of such source.

(4) Any person who fails to pay the amount of any
penalty with respect to any source under [sections 7 through
15] on a timely basis shall be required to pay in addition a
quarterly nonpayment penalty for each quarter during which
such failure to pay persists. Such nonpayment penalty shall
be equal to 20% of the aggregate amount of such person's
penalties and nonpayment penalties with respect to such
source which are unpaid as of the beginning of such quarter.

NEW SECTION. Section 9. Manner of making payments. (1)
The assessed penalty required under [sections 7 through 15]
shall be paid in quarterly installments for the period of
covered noncompliance. All quarterly payments, determined
without regard to any adjustment or any subtraction under
[subsection (1)(a) of section 8], after the first payment
shall be equal.

(2) The first payment shall be due on the date 6
months after the date of issuance of the notice of
noncompliance under [section 11] with respect to any source.

Such first payment shall be in the amount of the quarterly
installment for the upcoming quarter, plus the amount owed
for any preceding period within the period of covered
noncompliance for such source.

(3) For the purpose of this section, the term "period
of covered noncompliance" means the period which begins on
the date of issuance of the notice of noncompliance under
[section 11] and ends on the date on which such source comes
into or, for the purpose of establishing the schedule of
payments, is estimated to come into compliance with such
requirement.

NEW SECTION. Section 10. Adjustment of fees. (1) The
department shall adjust from time to time the amount of the
penalty assessment calculated or the payment schedule
proposed by such owner or operator under [subsection (2)(a)
of section 11], if the department finds after notice and
opportunity for a hearing on the record that the penalty or
schedule does not meet the requirements of [sections 7
through 15].

(2) Upon making a determination that a source with
respect to which a penalty has been paid under [sections 7
through 15] is in compliance and is maintaining compliance
with the applicable requirements, the department shall review
the actual expenditures made by the owner or operator of
such source for the purpose of attaining and maintaining
compliance and shall make a final adjustment within 180 days after such source comes into compliance and:
(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person or
(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

NEW SECTION. Section II. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to (subsection (1) of section 7) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.
(2) Each person to whom notice has been given pursuant to subsection (1) shall:
(a) calculate the amount of penalty owed (determined in accordance with [subsection (1) of section 8]) and the schedule of payments (determined in accordance with [section 9]) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department;
(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under (subsection (2) of section 7) with respect to a particular source.
(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under [section 8] as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

NEW SECTION. Section 12. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under (subsection (2)(b) of section 11) with respect to such source.
(2) If the petition is denied, the petitioner shall submit the material required by [subsection (2)(a) of section 11] to the department within 45 days of the date of decision.

NEW SECTION. Section 13. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to [sections 7 through 15] shall be deposited in an earmarked revenue fund until a final determination and adjustment have been made as provided in
[section 10] and amounts have been deducted by the
department for costs attributable to implementation of
[sections 7 through 15] and for contract costs incurred
pursuant to [subsection (3) of section 8], if any. After a
final determination has been made and additional payments or
refunds have been made, the penalty money remaining shall be
transferred to the state general fund.

NEW SECTION. Section 14. Effect of new standards on
noncompliance penalty. In the case of any emission
limitation, emission standards or other requirement approved
or adopted by the board under [Title 75, chapter 2] after
the effective date of this act] and approved by the
FEDERAL ENVIRONMENTAL PROTECTION AGENCY AS AN AMENDMENT TO
THE STATE IMPLEMENTATION PLAN, which is more stringent than
the emission limitation or requirement for the source in
effect prior to such approval or promulgation, if any, or
where there was no emission limitation, emission standards,
or other requirement approved or adopted before [the
effective date of this act], the date for imposition of the
noncompliance penalty under [sections 7 through 15] shall
be the date on which the source is required to be in full
compliance with such emission limitation, emission standard,
or other requirement or 3 years after the approval or
promulgation of such emission limitation or requirements,
whichever is sooner.

NEW SECTION. Section 15. Effect of noncompliance
penalty on other remedies. (1) Any orders, payments,
sanctions, or other requirements under [sections 7 through
15] shall be in addition to any other penalties, orders,
payments, sanctions or other requirements established under
[Title 75, chapter 2] and shall in no way affect any civil
or criminal enforcement proceedings brought under 75-2-412
or 75-2-413.

(2) The noncompliance penalties collected pursuant to
[sections 7 through 15] are intended to be cumulative and in
addition to any other remedies, procedures, and requirements
authorized by [Title 75, chapter 2].

Section 16. 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 made pursuant thereto shall be subject to a civil
penalty not to exceed $1,000, $25,000. 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
1 75-2-412.
2 (2) (a) Action under subsection (1) of this section is
3 not a bar to enforcement of this chapter or of rules or
4 orders made under it by injunction or other appropriate
5 civil remedies.
6 (b) An action under subsection (1) or to enforce this
7 chapter or the rules or orders made under it may be brought
8 in the district court of any county where a violation occurs
9 or is threatened if the defendant cannot be located in
10 Montana.
11 (3) Money collected hereunder shall be deposited in
12 the state general fund.

Section 17. Codification. It is intended that sections
7 through 15 be codified as an integral part of Title 75,
chapter 2, part 4, and the provisions of Title 75, chapter
2, apply to sections 7 through 15.

Section 18. Saving clause. This act does not affect
rights and duties that matured, penalties that were
incurred, or proceedings that were begun before the
effective date of this act.

Section 19. Severability. If a part of this act is
invalid, all valid parts that are severable from the invalid
part remain in effect. If a part of this act is invalid in
one or more of its applications, the part remains in effect
in all valid applications that are severable from the

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MR 716
STATEMENT OF INTENT RE: HB 716

The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule to be used by air-pollution-control-agencies that assess fees in accordance with these rules. They shall use the same permit fee schedule and to adopt a schedule of penalty assessments for noncompliance with respect to any source under sections 7 through 13 of this act. First adopted by the House Committee on Natural Resources on February 19, 1979.

HB 716
HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, KENMIS, BARDAHOUVE, GERKES,
DUSSAULT, LORI, MCBRIDE, COONEY, JERGSON,
SHELDEN, KESSLER, REICHERT

BY REQUEST OF THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR
ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY
FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO
PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT
ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH
THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME
REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY
COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT A RULE A
SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO
PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS
AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO
PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO
REVISE AND CLARIFY THE "ABLE TO MEAL GOVERNMENT IN THE
ENVIRONMENT--AIR--CONTAMINATIONS" TO ESTABLISH NONCOMPLIANCE
PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM
$1,000 TO $25,000; AMENDING SECTIONS 75-2-111, 75-2-112,
75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA.

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

Section 1. Section 75-2-111, MCA, is amended to read:
"75-2-111. Powers of board. The board shall:
(1) adopt, amend, and repeal rules implementing and
consistent with for the administration, implementation, and
enforcement of this chapter, for issuing orders under and in
accordance with 42 U.S.C. 7419, and for fulfilling the
requirements of 42 U.S.C. 7420 and regulations adopted
pursuant thereto;
(2) hold hearings relating to any aspect of or matter
in the administration of this chapter at a place designated
by the board. The board may compel the attendance of
witnesses and the production of evidence at hearings. The
board shall designate an attorney to assist in conducting
hearings and shall appoint a reporter who shall be present
at all hearings and take full stenographic notes of all
proceedings thereat, transcripts of which will be available
to the public at cost.
(3) issue orders necessary to effectuate the purposes
of this chapter;
(4) by rule require access to records relating to
emissions;
(5) by rule adopt a schedule of fees required for
permits under this chapter;

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REFERENCE BILL
163. HAVE THE POWER TO ISSUE ORDERS UNDER AND IN

ACCORDANCE WITH 42 U.S.C. 7512—

Section 2. Section 75-2-112 MCA, is amended to read:

*75-2-112. Powers and responsibilities of department;

(1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total costs.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.
(1) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(2) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any areas except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe under the classifications established by 42 U.S.C. 7470 through 7479. The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

Section 3. Section 75-2-205, MCA, is amended to read:

"75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given at least 30 days before the time of publication of the proposed text to comment thereon. The public notice shall be given by public advertisement not less than 20 or more than 30 days before the date set for the public hearing and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto."
this section

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

(2) The department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

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

(4) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(5) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application as defined in subsection (5) of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5) of the approval or denial of the application. Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.

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

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

Section 5. Section 75-2-301, MCA, is amended to read:

(1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified...
electors in its jurisdiction and, if the program is
consistent with this chapter and is approved by the board
after a public hearing conducted under 75-2-111, may
thereafter administer in its jurisdiction the air pollution
control program which:
(a) provides by ordinance or local law for
requirements compatible with, more stringent, or more
extensive than those imposed by 75-2-203, 75-2-210,
75-2-212, and 75-2-402 and rules issued under
these sections;
(b) provides for the enforcement of these requirements
by appropriate administrative and judicial process;
(c) provides for administrative organization, staff,
financial, and other resources necessary to effectively and
efficiently carry out its program,
(2) If the board finds that the location, character,
or extent of particular concentrations of population, air
contaminant sources, or geographic, topographic, or
meteorological considerations or any combination of these
are such as to make impracticable the maintenance of
appropriate levels of air quality without an areawide air
pollution control program, the board may determine the
boundaries within which the program is necessary and require
it as the only acceptable alternative to direct state
administration.

(3) If the board has reason to believe that an air
pollution control program in force under this section is
inadequate to prevent and control air pollution in the
jurisdiction to which the program relates or that the
program is being administered in a manner inconsistent with
this chapter, the board shall, on notice, conduct a hearing
on the matter.
(4) If, after the hearing, the board determines that
the program is inadequate to prevent and control air
pollution in the jurisdiction to which it relates or that it
is not accomplishing the purposes of this chapter, it shall
require that necessary corrective measures be taken within a
reasonable time, not to exceed 60 days.
(5) If the jurisdiction fails to take these measures
within the time required, the department shall administer
within such jurisdiction all of the provisions of this
chapter. The department’s control program supersedes all
municipal or county air pollution laws, rules, ordinances,
and requirements in the affected jurisdiction. The cost of
the program shall be a charge on the municipality or county.
(6) If the board finds that the control of a
particular class of air contaminant source because of its
complexity or magnitude is beyond the reasonable capability
of the local jurisdiction or may be more efficiently and
economically performed at the state level and that the
department is better able than the local jurisdiction to
clean up a contamination source or may be
efficiently and economically performed at the state level.

It may direct the department to assume and retain control
over that class of air contaminant source. No charge may be
assessed against the jurisdiction thereafter. Findings made
under this subsection may be either on the basis of the
nature of the sources involved or on the basis of their
relationship to the size of the communities in which they
are located.

(7) A jurisdiction in which the department administers
its air pollution control program under subsection (5) of
this section may, with the approval of the board, establish
or resume an air pollution control program which meets the
requirements of subsection (1) of this section.

(8) A municipality or county may administer all or
part of its air pollution control program in cooperation
with one or more municipalities or counties of this state or
of other states.

It is the municipality or county that is administering an
air pollution control program under this section may
exercise the following powers:

it is the municipality or county may assess and collect
noncompliance--sanities--provided--for--in--sections:3--through--153--shall--be
county--noncompliance--sections:2--through--153--shall--be
residents--in--sections:2--through--153--shall--be
if--sanities--collected--by--the--municipality--or
self--determination--of--adjustment--or--assessments--are--made--as--provided--in
section:153--and--sanities--are--deducted--by--the--municipality--or
county--for--costs--attributable--to--implementation--of--sections
3--through--153--and--for--contract--costs--incurred--pursuant--to
section:153--of--section:63--if--pays--If--a--final
determination--is--made--and--additional--sanities--are
made--the--remaining--sanities--shall--be--transferred--to
the--general--fund--of--the--municipality--or--county

that--the--municipality--or--county--may--collect--permit--fees
provided--for--in--section:153--is--amended--to--read:

Section 6, Section 75-2-401, MCA, is amended to read:

75-2-401. Enforcement. (1) When the department
believes that a violation of this chapter or a rule made
under it has occurred, it may cause written notice to be
served personally or by registered or certified mail on the
alleged violator or his agents. The notice shall specify the
provision of this chapter or rule alleged to be violated and
the facts alleged to constitute a violation and may include
an order to take necessary corrective action within a
reasonable period of time stated in the order. The order
becomes final unless within 30 days after the notice is
received, the person named requests in writing a hearing
before the board. On receipt of the request, the board shall
hold schedule a hearing.

(2) If, after a hearing held under subsection (1) of
this section, the board finds that violations have occurred,
it shall either affirm or modify an order previously issued
or issue an appropriate order for the prevention, abatement,
or control of the emissions involved or for the taking of
other corrective action it considers appropriate. An order
issued as part of a notice or after a hearing may prescribe
the date by which the violation shall cease and may
prescribe time limits for particular action in preventing,
shutting, or controlling the emissions. If, after hearing on
an order contained in a notice, the board finds that no
violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in
subsection (1), the department may either:
(a) require that the alleged violators appear before
the board for a hearing at a time and place specified in the
notice and answer the charges complained of; or
(b) initiate action under 75-2-412 or 75-2-413.

(4) Action under 75-2-412 is not a bar to enforcement
of this chapter or of rules made under it by
injunction or other appropriate remedia. The department may
institute and maintain in the name of the state any
enforcement proceedings.

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(5) This chapter does not prevent the board or
department from making efforts to obtain voluntary
compliance through warnings, conference, or any other
appropriate means.

(6) In connection with a hearing held under this
section, the board may and on application by a party shall
compel the attendance of witnesses and the production of
evidence on behalf of the parties.

NEW SECTION. Section 7. Persons subject to
noncompliance penalties -- exemptions. (1) Except as
provided in subsection (2) and subject-to-collection-by-a
local-government-pursuant-to-75-2-301(9); the department
shall assess and collect a noncompliance penalty from any
person who owns or operates:
(a) a stationary source other than a private
nonferrous shelter which has received a nonferrous shelter
order under 52 U.S.C. 7412 which is not in compliance with
any provision of Title 75 chapter 2 or any rule adopted
by or issued pursuant to Title 75 chapter 2 emission
limitation specified in an order of the board.
(b) a stationary source which is not in compliance
with an emission limitations emission standards standard of

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1. any source referred to in subsections (1)(b)(A) or (1)(c)(A) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order on a primary nonferrous shelter which has received a primary nonferrous shelter order under 42 U.S.C. 7419a if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extensions, order, or suspension.

2. Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of sections 7 through 15 with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration; or

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

3. Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon

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AFFIDAVIT SETTING FORTH THE GROUNDS THEREFOR, A HEARING BEFORE THE BOARD, A HEARING SHALL BE HELD UNDER THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT.

NEW SECTION. Section 8. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under sections 7 through 15 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted
for such quarter from the costs under subsection (1)(a),
such expenditure may be subtracted for any subsequent
quarter from such costs. In no event may the amount paid be
less than the quarterly payment minus the amount attributed
to actual cost of construction.

(3) If the owner or operator of any stationary source
to whom notice is issued under [section 11] does not submit
a timely petition under [subsection (2)(b) of section 11] or
submits a petition which is denied and if the owner or
operator fails to submit a calculation of the penalty
assessment, a schedule for payment, and the information
necessary for independent verification thereof, the
department may enter into a contract with any person who has
no financial interest in the matter to assist in determining
the amount of the penalty assessment or payment schedule
with respect to such source. The cost of carrying out such
contract may be added to the penalty to be assessed against
the owner or operator of such source;

(4) Any person who fails to pay the amount of any
penalty with respect to any source under [sections 7 through
15] on a timely basis shall be required to pay in addition a
quarterly nonpayment penalty for each quarter during which
such failure to pay persists. Such nonpayment penalty shall
be equal to $20 of the aggregate amount of such person's
penalties and nonpayment penalties with respect to such
penalties which are unpaid as of the beginning of such quarter.

NEW SECTION. Section 9. Manner of making payment. (1)
The assessed penalty required under [sections 7 through 15]
shall be paid in quarterly installments for the period of
covered noncompliance. All quarterly payments, determined
without regard to any adjustment or any subtraction under
[subsection (1)(b) of section 8], after the first payment
shall be equal.

(2) The first payment shall be due on the date 6
months after the date of issuance of the notice of
noncompliance under [section 11] with respect to any source.
Such first payment shall be in the amount of the quarterly
installment for the upcoming quarter, plus the amount owed
for any preceding period within the period of covered
noncompliance for such source.

(3) For the purpose of this section, the term "period
of covered noncompliance" means the period which begins on
the date of issuance of the notice of noncompliance under
[section 11] and ends on the date on which such source comes
into or, for the purpose of establishing the schedule of
payments, is estimated to come into compliance with such
requirement.

NEW SECTION. Section 10. Adjustment of fee. (1) The
department shall adjust from time to time the amount of the
penalty assessment calculated or the payment schedule
proposed by such owner or operator under [subsection (2)(a) of section 11] if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of [sections 7 through 15].

(2) Upon making a determination that a source with respect to which a penalty has been paid under [sections 7 through 15] is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

NEW SECTION. Section 11. Notice of noncompliance -- challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to [subsection (1) of section 7] which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with [subsection (1) of section 8]) and the schedule of payments (determined in accordance with [section 9]) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department;

(b) submit to the board a petition within 45 days after the issuance of such notice challenging such notice of noncompliance or alleging entitlement to an exemption under [subsection (2) of section 7] with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under [section 8] as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).
under [subsection (2)(b) of section 11] with respect to such

source.

(2) If the petition is denied, the petitioner shall
submit the material required by [subsection (2)(a) of
section 11] to the department within 45 days of the date of
decision.

NEW SECTION. Section 13. Deposit of noncompliance
penalty fees. All noncompliance penalties collected by the
department pursuant to [sections 7 through 15] shall be
deposited in an earmarked revenue fund until a final
determination and adjustment have been made as provided in
[section 10] and amounts have been deducted by the
department for costs attributable to implementation of
[sections 7 through 15] and for contract costs incurred
pursuant to [subsection 3 of section 8], if any. After a
final determination has been made and additional payments or
refunds have been made, the penalty money remaining shall be
transferred to the state general fund.

NEW SECTION. Section 14. Effect of new standards on
noncompliance penalty. In the case of any emission
limitation, emission standards, or other requirement approved
or adopted by the board under [Title 75, chapter 2] after
the effective date of this act, and approved by the
federal environmental protection agency as an amendment to
the state implementation plan, which is more stringent than
the emission limitation or requirement for the source in
effect prior to such approval or promulgation, if any, or
where there was no emission limitation, emission standard,
or other requirement approved or adopted before [the
effective date of this act], the date for imposition of the
noncompliance penalty under [sections 7 through 15] shall
be the date on which the source is required to be in full
compliance with such emission limitation, emission standard,
or other requirement or 3 years after the approval or
promulgation of such emission limitation or requirement,
whichever is sooner.

NEW SECTION. Section 15. Effect of noncompliance
penalty on other remedies. (1) Any orders, payments,
sanctions, or other requirements under [sections 7 through
15] shall be in addition to any other penalties, orders,
payments, sanctions, or other requirements established under
[Title 75, chapter 2] and shall in no way affect any civil
or criminal enforcement proceedings brought under 75-2-412
or 75-2-413.

(2) The noncompliance penalties collected pursuant to
[sections 7 through 15] are intended to be cumulative and in
addition to any other remedies, procedures, and requirements
authorized by [Title 75, chapter 2].

Section 16. Section 75-2-413, MCA, is amended to read:
*75-2-413, Civil penalties -- out-of-state litigants
Section 17. Codification. It is intended that sections 7 through 15 be codified as an integral part of Title 75, chapter 21, part 4, and the provisions of Title 75, chapter 2, apply to sections 7 through 15.

Section 18. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 19. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-
APPENDIX C

TESTIMONY ON HOUSE BILL 716
Testimony on House Bill 716—An Act to Amend the Clean Air Act of Montana

(Presented before the House Natural Resources Committee on 16 February 1979)

My name is Linda Ruprecht and I'm a resident of Missoula, a former schoolteacher, and now a candidate for a Master of Science degree at the University of Montana. I'd like to speak in support of House Bill 716 in general, and in specific, I'd like to offer my comments on the local air pollution control amendments included in this bill.

The first air pollution law in the United States was an 1881 ordinance adopted by the Chicago City Council. That ordinance allowed the emission of dense smoke from the smokestack of any boat or locomotive or from any chimney within the city to be treated as a public nuisance. Air pollution now, as then, is predominantly a local problem and concern. The choice of air quality is essentially a local choice which depends on the local meteorological conditions, the mix of pollutants released, the availability of technology and the cost of controls, and the local preferences for clean air relative to other individual and social goals. Any air pollution control effort should be allowed to reflect the values of the local citizenry regarding air quality. House Bill 716, if passed, would allow for more sensitive responses by the state's air pollution control agencies to individual community situations.

Montana currently has only three local air pollution control programs: Missoula County, Yellowstone County, and Cascade County. These programs were established as a result of expressed community concern for air quality. In the future, public concern may bring about the establishment of similar programs in other communities. Montana citizens should have the right to handle their community affairs, including air quality, in ways which meet both the state regulations as well as their own community concerns. House Bill 716 is a step in that direction and I urge you to support it.

Linda J. Ruprecht
4801 Sundown Road
Missoula, Montana 59801
Proposed Amendment to House Bill 716

For reasons of clarification of intent, I'd like to propose the following amendment to House Bill 716:

On page 6, under subsection (b), lines 13-17, on line 16 after the word "department" please insert the phrase "or authorized local government".

On page 11, under subsection (b), lines 23-24, on line 24 after "75-2-211", please insert the following phrase: "All fees collected by the municipality or county pursuant to this section shall be deposited in an earmarked revenue fund to be used by the local government authority for operation of its air pollution control program."
APPENDIX D

OFFICIAL VOTING RECORDS OF
THE HOUSE AND SENATE ON
HOUSE BILL 716
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MONTANA STATE SENATE
HB 716

46TH LEGISLATURE

45 YEAS 0 NAYS 0 PRES 5 EXC 0 N/V

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VOTED FOR

CHANGED VOTE
## STATE OF MONTANA
### HOUSE OF REPRESENTATIVES
#### 1979

**VOTE TABULATION**

**CALL**

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| Yardley, Dan (D) | Mr. Speaker | Y

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