

March 21, 1977

The Natural Resources Committee convened on March 21, 1977, at 8:00 a.m., in the Governor's Reception Room with Chairman Sheldon presiding and all members present except Rep. Huennekens who was excused and Rep. Cooney absent. Chairman Sheldon opened the meeting to a hearing on the following bill:

SB 302 SENATOR GEORGE ROSKIE, Senate District 21, as chief sponsor of the bill, said this isn't Roskie's bill, but a bill of the Administrative Code Committee. He said it came about because of the concern as to exactly what MEPA says or does, he said one lawsuit has resulted and there could be more. He said this bill speaks to the question of rule making under the Rule Making Procedures Act.

REP. JOHN SCULLY, District 76, as the next proponent speaker, asked how long we are going to let agencies use substantive rule above and beyond that granted by the legislature. He said if we want them to make substantive rules, it should be specifically delineated by the legislature.

Chairman Sheldon opened the hearing to the opponents.

STEVE PERLMUTTER, Environmental Quality Council, spoke first and a copy of his testimony is exhibit 1. Also given to the committee members was a copy of two editorial pages--one from the Missoulian and one from the Great Falls Tribune--opposed to SB 302. This is exhibit 2. Exhibit 3 is a resume of SB 302 prepared by the EQC.

MCGREGOR RHODES, representing self, said he operates a small farm near Libby Dam. He said an EIS had not been done on Libby Dam and there did develop widespread problems that has adversely affected the community.

JOHN GOERS, representing self, said it is better to cripple your enemy than to kill him--those who enforce environmental laws would be forced if this bill passed to spend time away from the task of enforcement to do a useless impact statement. MEPA would be better repealed, he felt, if this bill were to pass. He said this would result in a shadow bureaucracy which did its work in a closet and that work would never be submitted to public view.

RICHARD KLINGER, representing self, said he had formerly been on the staff for the EQC and with the Department of Health. He said most of his practice has been in the environmental field and he has worked with MEPA. He said this bill is full of red herrings. Mr. Klinger mentioned a recent happening on Prickly Pear Creek where the DNR approved a large application for water because the

applicant met the five criteria and the creek was dewatered. The agency should have had a broader scope of authority so it could deny such a request. Mr. Klinger said agency rule making is not involved. He said the EQC has never maintained that it has mandatory rule making authority.

JIM MURRAY, Executive Secretary of the AFL-CIO, spoke next as an opponent. He said MEPA is a review process that enables us to do future planning and this bill would break down this necessary process. He said they are for development and growth, but they are for planning and control, too. He urged the bill be not concurred in.

JOY BRUCK, League of Women Voters in Montana, spoke next in opposition and a copy of her testimony is exhibit 4.

STEVE GUNDERSON, Montana's Farmers Union, spoke next in opposition. He said this bill would significantly weaken MEPA.

LAURIE BLAZICH, Troy, representing self, spoke next in opposition and a copy of her testimony is exhibit 5.

JAMES A. POSEWITZ, Montana Fish and Game, spoke next in opposition. He said by limiting the scope of this act, you will limit the effectiveness of it. He urged that MEPA be retained as it is written.

SENATOR TOM HAGER, Senate District 30, said he has been on the EQC Council for four years. He said SB 302 seeks to limit the scope of the agency. He said his bill SB 388 addressed the problem in such a way that the agencies would be required to cooperate with each other (bill was killed). He said SB 302 has been written by the legal counsel for the Department of Health and addresses the problems in that area. He said he would leave suggested amendments and urged it be killed if it is not amended.

SARAH IGNATIUS, Northern Plains Resource Council, said they oppose the bill. She felt it could affect the Montana Strip Mining and Reclamation Act. She said the stated intent of the proponents is to clarify, but it could complicate--federal people and the State Lands people have been cooperating on strip mining EIS's--this could require each to make their own. She said one very important part of MEPA is that agencies are to look at alternatives--with this they could only look at things they have specifically been granted permission to look at.

BARBARA COWAN, Troy, representing self, spoke next in opposition and a copy of her testimony is exhibit 6.

PHIL TAWNEY, Environmental Information Center, mentioned that former Senator Darrow, original sponsor of MEPA, wished it expressed to the committee that he opposes this bill. Mr. Tawney said this bill goes at cross purposes to the original intent of the bill. He said this bill narrows the focus and keeps the agency from looking at other impacts. Mr. Tawney said Gov. Judge in 1976 had established a commission on the EQC to adopt model rules for the agency to follow and this has been done. He felt there was no need to come with another bill now and destroy work that has been done.

JIM GOETZ, attorney from Bozeman, said the EQC does not purport to promulgate rules. He said the provision on page 3, sub (4), where the agency is to adopt procedural rules, is a good provision and clarifies agency authority. He objected to the language on page 2, sub (3)--he said this would restrict the Department of Health to only water quality, sewer and solid waste disposal--and on page 3, sub (vi), says the detailed statement must include cost and benefits--what does cost and benefits have to do with water quality, sewer and solid waste disposal. He said the bill would need a drastic rewrite if the intent of the writers of the bill is to restrict the review of the agencies to the existing granted powers. He said the act is workable as it stands now and has had a substantial impact on mitigating environmental effects. He said it would be like putting blinders on an agency if you don't permit them to look at other factors. He said section 5 on page 4 should be deleted. He said passing the bill would be a step backward in the name of rule making.

K. ROSS TOOLE, Professor of History at University of Montana, speaking for self, a copy of his testimony is exhibit 7.

SENATOR TURNAGE made closing remarks. He said the bill was at the request of the governor's office that the administrative code committee introduce legislation on the rule making authority of agencies. He said the bill's sponsors are not here to destroy the environment, but here to solve a real law problem.

SENATOR ROSKIE also made closing remarks. He said they see no problem with procedural rule making--only substantive rule making. He said the authority continues in not only what is necessary, but what is convenient and there lies the problem. He said the legislature should determine what it wants its own council to do--the intent of the legislature should be more clearly spelled out. He said reasonable amendments to the bill would be welcomed.

During questions, it was brought out there had been only two or so law cases, so Mr. Goetz said this was not a big problem. He said there would probably be as much litigation under the new act.

He also said there hadn't been any project stopped that he knew of by MEPA--it perhaps had a favorable impact in that the environmental questions had to be considered. Mr. Goetz said MEPA is no panacea to environmental problems and questions. Mr. Roskie said the bill is to clearly set out that certain procedural rules would be beneficial and permitted, but it would not allow implied authority.

Meeting adjourned at 10:00 a.m.

Respectfully submitted,


ARTHUR SHELDEN, Chairman

EAS