

MINUTES OF THE MEETING  
NATURAL RESOURCES  
MONTANA STATE SENATE

February 10, 1977

The fourteenth meeting of the Natural Resources Committee was called to order by Senator Elmer Flynn, Chairman, at 9:30 a. m. on the above date in Room 405 of the State Capitol Building.

ROLL CALL: Upon roll call all members were present.

Mr. Larry Weinberg, Staff Attorney of the Legislative Council, and Tala Skari of the Environmental Quality Council, were also present.

CONSIDERATION OF SB 302: An Act to amend the Montana Environmental Policy Act to specify that the act does not expand the substantive decision-making authority of state agencies; deleting the requirement that an environmental impact statement be prepared on rules and legislation; authorizing the environmental quality council to review legislation and advise the legislature of potential environmental impacts; requiring state agencies to hold a public hearing on a proposed rule under the Montana Administrative Procedure Act when it has been determined that the proposed rule would constitute a major state action having a significant impact on the human environment.

The proponents of SB 302 were heard on February 1, and at this time the opponents to Senate Bill No. 302 will be heard.

Mr. Steven Perlmutter, Attorney for the Environmental Quality Council, spoke as an opponent. He said the Environmental Quality Council agrees that there are serious problems that need to be addressed. There are ways to address these problems that would not be quite as damaging as in Senate Bill 302. If Senate Bill 302 is adopted it would restrict the scope of an impact statement. Also, if Senate Bill 302 is passed the Department of Natural Resources would have no obligation to discuss water quality at all. The point is, by fragmenting the review you have duplicated. One of the effects of Senate Bill 302 would be to go back to the kind of fragmentation you had before. He said that the effects on mining, and the effects on water resources are not included in the bill and should be. He added that we should try to protect the environment to the fullest extent possible. Senate Bill 302 says, protect the environment with as little as you can get away with. At this time, Mr. Perlmutter explained portions of the bill. (See Attachments #1 & #2.)

Senator Tom Hager, representing District 30, and Chairman of the Environmental Quality Council, stated that there are two points of view on how to implement the Montana Environmental Policy Act.

Senate Bill 302 is one and Senate Bill 388 is the other. One point that concerns me in Senate Bill 302 is where it limits the authority of the Environmental Impact Statement.

Senator Roskie, Sponsor of Senate Bill 302, closed the hearing at this time, by saying that he thinks SB 302 will help make the Montana Environmental Policy Act a little more definitive.

CONSIDERATION OF SB 388: An Act to amend the Montana Environmental Policy Act, clarifying state agency duties in environmental decisionmaking; and providing for judicial review.

At this time, the proponents of SB 388 were heard.

Senator Tom Hager, representing District 30 and Sponsor of Senate Bill 388, spoke as a proponent at this time. He said SB 388 takes this second point of view of how MEPA should be implemented. It is a problem that the Council has struggled with for at least two and one-half years. It takes a broader approach to the problem.

Mr. Steven Perlmutter, Attorney for the Environmental Quality Council, stated that the Environmental Quality Council requested that this bill be introduced. The intent of the bill was to address the problems that we have been talking about. It is an attempt to dealing with those specific problems in a specific way. He briefly explained various sections of the bill. (See Attachments #3 & #4.)

The opponents of SB 388 were heard at this time.

Mr. Sony Hanson, representing the Montana Technical Council and the Montana Association of Planners, stated that they view this as adding substantial paperwork and adding the additional cost involved in it.

Mr. Steve Williams, representing the Anaconda Company, said they feel this will change the Environmental Policy Act. This bill imposes new mandatory requirements on each agency. Also, it would mean considerable delay on a party trying to do business in the State of Montana. This bill puts cumbersome and unworkable requirements on an individual.

Mr. John Ross, Attorney for the Montana Power Company, said this bill would greatly increase the number of government employees and make MEPA a decision making process.

Mr. Steve Brown, Chief Counsel for the Department of Health, and representing the Executive Branch of the Governor's Office, said they neither support nor oppose this bill. MEPA should mean something but the question is, what do you as Legislators want it to mean. The Legislature did not intend it to be substantive. I am

pleading with you to pass one of these two bills. If you don't we will not know when we have properly or improperly considered something. The basic question that SB 302 and SB 388 ask is, who should set the policies. SB 302 says the legislators set the policy when they pass a specific law. SB 388 takes the other approach. It says it is up to the Executive Branch to determine as to what should be the policy. That's the fundamental difference in the two bills. We are caught in this vise of prying and trying to regulate the lives of individuals.

Mr. Steven Perlmutter stated that the major impact of SB 388 would be to encourage coordination and problematic control of activities.

In summary, Senator Hager said, the intent of the bill certainly is not to increase paperwork. The Council did not endorse either one of these two bills. The problem is the Legislature versus the Executive Powers. I think you should pass one of these two bills. The Environmental Policy Act needs direction.

Senator Flynn asked, pertaining to Page 11 where it states "continued review" - wouldn't that be kind of an ongoing procedure. I don't see where that is meaningful.

Mr. Perlmutter said, the purpose is informational and would give the agency data for writing future impact statements.

Senator Flynn said, was there ever a fiscal note requested for this bill.

Senator Hager answered, no.

Mr. Perlmutter said, there would be no additional cost - just writing down reports. There would be quite a bit of variation from agency to agency.

Senator Flynn asked, what is the procedure when a department needs expertise.

Mr. Perlmutter answered, the lead agency would consult with other agencies that have the required expertise.

Mr. Brown added, that it would go beyond that though. We have to go outside the department in many cases.

DISPOSITION OF SB 388: Motion was made by Senator Galt and seconded by Senator Dover that Senate Bill No. 388 DO NOT PASS. After roll call vote motion carried unanimously.

DISPOSITION OF SB 302: Motion was then made by Senator Dover and seconded by Senator Manley that SB 302 DO PASS.

Senator Jergeson then asked if the Committee might withhold action on Senate Bill 302 until Saturday as he had some amendments that he would like to submit.

Senator Roskie said that was agreeable to him.

After brief discussion, it was decided to withhold action on Senate Bill 302 until Saturday.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:00 a. m.

  
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SENATOR ELMER ELYNN, CHAIRMAN

## ROLL CALL

## NATURAL RESOURCES COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2/10/77

[illegible]

SB  
BILL 302 & 388

DATE 2/10/77

(check one)

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: STEPHEN M. WILLIAMS DATE: 2-18-77

ADDRESS: Alacorn Co. 1625 11th Avenue

PHONE: 453-5810

REPRESENTING WHOM? *FINACONDA Co*

APPEARING ON WHICH PROPOSAL: 156202 52289

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS:

NAME:

Steven Perlmutter

DATE:

2/10/77

ADDRESS:

Box 215 Capitol Station, Helena

PHONE:

449-3742

REPRESENTING WHOM?

Environmental Quality Council

APPEARING ON WHICH PROPOSAL:

SB 302

SB 388

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

Written Testimony submitted



# STANDING COMMITTEE REPORT

February 10

1977

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 388

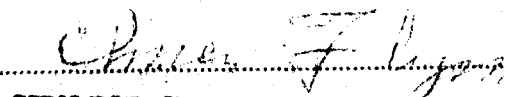
Respectfully report as follows: That SENATE Bill No. 388,

DO NOT PASS

~~DO PASS~~



STATE PUB. CO.  
Helena, Mont.

  
SENATOR ELMER W. VIGN Chairman.

SENATE COMMITTEE NATURAL RESOURCES

Date February 10, 1977 SENATE Bill No. 388 Time 10:45 a. m.

NAME	YES	NO
Flynn, Elmer, Chairman	✓	
Roskie, George, Vice-Chairman	✓	
Devine, John	✓	
Dover, Harold	✓	
Galt, Jack	✓	
Jergeson, Greg	✓	
Manley, John	✓	
Smith, Ed	✓	

Beverly Braut  
Secretary

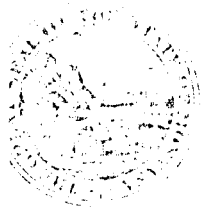
Elmer Flynn  
Chairman

Motion: Motion was made by Senator Galt and seconded by

Senator Dover that Senate Bill No. 388 Do Not Pass.

All members voting for the motion the motion carried.

(include enough information on motion--put with yellow copy of committee report.)



MONTANA ENVIRONMENTAL QUALITY COUNCIL

CAPITOL STATION

HELENA, MONTANA 59601

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To: The Senate Natural Resources Committee

From: Steven J. Perlmutter, Staff Attorney, Environmental Quality Council

SENATE BILL 302: AN ACT TO AMEND THE MONTANA ENVIRONMENTAL POLICY ACT

To Be Heard In Committee: February 1, 1977

SUMMARY:

Requested by the Administrative Code Committee, this bill would restrict the scope of environmental impact statements and limit agency decision making authority under MEPA. The bill would also eliminate the requirement that EISs be written on rule making or legislation, and would authorize agencies to adopt procedural rules for the preparation and distribution of impact statements.

p. 2, lines 17-19

These amendments would eliminate the requirement that agencies prepare impact statements on legislation and rule making. These amendments will be discussed more fully below in connection with the amendments proposed on p. 5 of the bill.

p. 2, lines 21-23; p. 3, lines 1-3

The amendments would limit the scope of an impact statement to the discussion of factors mentioned in the "express provisions of the statute administered by the agency." Thus, in an EIS reviewing a water use permit, for example, the Department of Natural Resources would not have to mention adverse impacts on water quality which might be caused by the proposal. Or in the case of a program initiated and developed by an agency, the agency would not have to consider impacts outside of its traditional expertise. These provisions seem to conflict with the requirements that agencies "coordinate state plans, functions, programs, and resources" (69-6503(a)), and that they "utilize a systematic, interdisciplinary approach" (69-6504 (b)(1)).

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SENATE BILL 302

Testimony of Steven J. Perlmutter;  
Staff Attorney, Environmental Quality Council

BACKGROUND

The primary function of the Montana Environmental Policy Act (MEPA) is to integrate and coordinate the myriad of state policies and programs which affect the quality of the environment. There are no fewer than thirty-four sections, bureaus, and divisions scattered among a dozen departments of state government with responsibilities for policy formulation, program implementation, or permit granting and regulation in environmentally significant fields. These agencies have varying degrees of responsibility, and their actions are subject to varying degrees of coordination. Activities of state agencies range from management of cropland spraying programs, to review of subdivisions, to the granting of oil and gas leases on state lands. Some agencies, such as the subdivision bureau in the department of health, or the reclamation division in the department of state lands, are engaged primarily in permit granting, responding to requests from the private sector (although it may be argued that even these agencies could take a more fore-sighted, planning approach to their responsibilities). Other agencies, such as the department of state lands, have major policy responsibilities in managing the state's resources. Still other agencies, such as the water resources



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February 4, 1977

To: The Senate Natural Resources Committee

From: Steven J. Perlmutter, Staff Attorney

Re: SENATE BILL 388: AN ACT TO AMEND THE MONTANA ENVIRONMENTAL  
POLICY ACT

To be Heard in Committee:

**SUMMARY:**

Requested by the Environmental Quality Council, this bill would clarify agency decision making responsibility under MEPA, require statements of justification for environmentally harmful actions, provide for judicial review of agency actions on MEPA grounds, call for inter-agency programmatic impact statements, and authorize the Environmental Quality Council to review environmental rules adopted by state agencies.



# MONTANA ENVIRONMENTAL QUALITY COUNCIL

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February 10, 1977

## SENATE BILL 388

Testimony of Steven J. Perlmutter  
Staff Attorney, Environmental Quality Council

### NOTE

Much of the testimony submitted to this committee regarding Senate Bill 302 applies to Senate Bill 388 as well. This packet includes some additional material which relates specifically to provisions in Senate Bill 388.