

MINUTES OF THE MEETING
NATURAL RESOURCES
MONTANA STATE SENATE

March 8, 1977

The twenty-fifth 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 except Senator Smith.

CONSIDERATION OF HB 451: Relating to fees for preparation of Environmental Impact Statements by the Department of Natural Resources and Conservation on certain applications for permits or approvals under the Montana Water Use Act; to establish a method for determining the maximum fee payable; authorize that department to contract with applicants for payment of fees and the use thereof; and, authorize that department to utilize various sources of environmental data in preparing environmental impact statements.

Representative Edward Lien, representing District 49, stated that HB 451 is a slight amendment to the Montana Water Use Act. This allows them to set a lesser fee and also allows them to contract a third party. It allows more flexibility and it is a very necessary amendment to the Water Use Act.

Mr. Pat Hooks, Attorney in Townsend, Montana, and representing the Intake Water Company, stated that the fee schedule isn't changed necessarily. It is the view of Ted Doney that he thinks they have this authority under the existing statute but would like to have it put in. If an applicant has gone out and contracted with a third party the department doesn't necessarily have to do it all over if they are satisfied. The full purpose of this bill is to facilitate the granting of this information and to make it less costly.

Mr. Orrin Ferris, representing the Department of Natural Resources and Conservation, and who is neutral on this bill, stated that it is a workable bill. The bill will allow use of other data and will not require a fee for collection of the same kind of data.

Mr. Ward Shanahan, representing Dreyer Bros. Inc., stated that they were also in support of this bill.

CONSIDERATION OF HB 588: An Act to place the enforcement of the Opencut Mining Act in the Attorney General's Office; to provide for the allocation of fines, fees, and penalties; to amend the time frames for

application preview and preparation of environmental impact statements; to provide for bonding at the estimated cost of reclamation; and to provide for an immediate effective date.

Representative Hal Harper, representing District 30, stated that HB 588 amends the Opencut Mining Act to make it consistent. He stated that Section 1 is a new section. This provision is identical to the one that is in the Hard Rock Mining Act so it would bring it more consistent with that one. The minimum fine is reduced from \$500 to \$100. The enforcement of this act is placed in the Attorney General's Office.

Mr. Leo Berry, representing the Department of State Lands, stated that the four changes this bill provides for in the Opencut Act are proposed in direct response to problems encountered by the Department of State Lands in administration of the Act. They should have only minimal effects on operations subject to the Act. (See Attachment #1.) He said that of 1,065 applications we have only done one Environmental Impact Statement. By moving the enforcement to the Attorney General's Office we make it consistent with the Strip Mining Act and Hard Rock Mining Act.

At this time the opponents to HB 588 were heard.

Mr. Steve Williams, representing the Anaconda Company, stated that they do not oppose the provisions that change the penalties, or the moving of the enforcement to the Attorney General's Office, the \$1,000 maximum on bonding, or the new Section 1. We do oppose the provision of the time frame from 30 plus 30 to 365 or more. We feel the delays proposed in HB 588 are unreasonable. The reclamation of disturbed acres will not be improved in any shape or form under this bill. Under this bill miners could submit a complete application on May 1 and not get a permit to operate until the following year. This bill does nothing for reclamation benefits. I would recommend that HB 588 Be Not Concurred In.

Laureen France, representing Montana Mining Association, with a membership of 400, stated that the extended time between an application for a permit and the time for obtaining one is much too long for most small miners. This would create a real hardship for most small miners. Their operations are often carried on only three to four months per year. We are opposed to this type of delay.

Representative Harper, in closing, said to leave the current time provision at sixty days does not seem to make sense unless you want the department of State Government to bust itself to try to do it in sixty days. A year is a very, very, short time. Most of the areas we are talking about are not in mountainous country. I think that that is a common sense amendment. 365 days for an Environmental Impact Statement, I believe, is not unreasonable at all.

Senator Dover stated, that by extending it to a year it might be costly to the miner.

Mr. Bill Sternhagen, Attorney for Anaconda Company, stated that its been stated that this would apply only to large operations. I don't see that at all. Environmental Impact Statements are calculated to try to stop mining. It gives a lot of people input into your business which they have no right to input about. The intent of this law was not to be under MEPA at all. I think it should remain as it was.

Senator Jergeson, questioned the 365 days or more.

Mr. Steve Williams replied, it may be more than the 365 days.

Senator Jergeson asked, does that particular sentence apply to the 365 days or does it apply to the determination of whether the Environmental Impact Statement is required.

Mr. Berry replied, that the Department may extend the time period. He said, it is a constitutional mandate that lands taken must be reclaimed.

Mr. Sternhagen said, these things just don't happen in these time periods.

Representative Harper said, I think Mr. Sternhagen probably should use a third reading bill instead of an introduced bill.

Senator Galt said, you say there has been one Environmental Impact Statement.

Mr. Berry replied, we got a judgment on it and processed it within sixty days. It took us four months to do the Impact Statement and then the permit was granted.

Senator Galt questioned, who determines whether one is needed.

Mr. Berry said, the criteria of whether or not you do an Impact Statement is at MEPA.

Senator Roskie asked Mr. Berry for copy of "The Open Cut Mining Act." (See Attachment #2.)

Mr. Berry presented copy to Committee.

Senator Roskie asked, how many Environmental Impact Statements have there been on strip mining for coal.

Mr. Berry replied, I would say less than a third of the permits have had impact statements. I think we did eight last year.

Senator Roskie asked, what is the relation to coal and coal mining.

Mr. Berry said, the size of the application and number of people involved.

Senator Roskie asked, do you get many 1500 acre -

Mr. Berry replied, in the bentonite field.

Senator Flynn asked, what do you do with a bentonite bed.

Mr. Berry said, there is a lot more acreage disturbed. Some companies we have got good work out of it some are a total loss.

Senator Roskie said, bentonite produces very little if any cover.

Mr. Berry said, the reclamation standards are more strict for strip mining.

DISPOSITION OF HB 588: Motion was made by Senator Dover and seconded by Senator Manley that HB 588 BE NOT CONCURRED IN.

Senator Jergeson said, I think the Committee shouldn't kill this bill but should amend the bill.

Motion was then made by Senator Jergeson that HB 588 BE AMENDED on Page 7, Line 16, Section 4, following "within", Strike 60, Insert 30; and On Page 8, Line 1, Section 4, before word "time" Insert "60 day". Motion was seconded by Senator Devine and carried unanimously.

Senator Jergeson moved that HB 588 BE FURTHER AMENDED, on Page 8, Line 8, Section 4, Following "within", Strike "365" and Insert "120". Motion was seconded by Senator Devine and carried unanimously.

Senator Jergeson further moved to amend his previous amendment to make it 180 days instead of 120 days. Motion was seconded by Senator Devine and carried unanimously.

Substitute motion was then made by Senator Jergeson that HB 588 AS AMENDED BE CONCURRED IN. Senator Devine seconded the motion.

Motion was then made by Senator Roskie and seconded by Senator Devine that HB 588 BE PASSED FOR THE DAY. Upon roll call vote, 4 voting yes, and 3 voting no, the motion carried. (See attached roll call vote.)

DISPOSITION OF HB 451: Motion was made by Senator Dover and seconded by Senator Galt that HB 451 BE CONCURRED IN. Motion carried unanimously.

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


SENATOR ELMER FLYNN, CHAIRMAN

ROLL CALL

NATURAL RESOURCES COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/8/77

[illegible]

HB 451
HB 588
BILL

SENATE

Natural Resources COMMITTEE

VISITORS' REGISTER

DATE 3/5

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOSE

Joe Murphy

Dept. of State Lands

HB 588

X

Sharon M. Van Tassel

Tenneco

451
588

following

Lloyd Chappin

The Drexler Co.

11

X

Gene Spilde

M. W. D. H. & S. P. A.

451

X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: WARD SHANAHAN DATE: 3-8-77

ADDRESS: Box 1686

PHONE: 442-8560

REPRESENTING WHOM? Dreyer Bros. Inc.

APPEARING ON WHICH PROPOSAL: HB 451

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: Oral Statement to the
committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: :

DATE: _____

3-8-77

ADDRESS :

1625 11th Avenue

PHONE :

410-5810

REPRESENTING WHOM?

ANACONDA Co

APPEARING ON WHICH PROPOSAL:

LB-588

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Leo Berry

DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? State lands

APPEARING ON WHICH PROPOSAL: 588

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

JHT Hooks

DATE:

2/6/97

ADDRESS:

Townsend, MT

PHONE:

266-3476

REPRESENTING WHOM?

INTAKE WATER COMPANY

APPEARING ON WHICH PROPOSAL:

H.B. 451

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

ORRIN FERRIS

DATE:

3-8-77

ADDRESS:

32 S Fwing Helene

PHONE:

449-2872

REPRESENTING WHOM?

DNRC

APPEARING ON WHICH PROPOSAL:

HB 451

DO YOU:

SUPPORT?

Neutral

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lauren France DATE: 3/8

ADDRESS: 928 11th Avenue

PHONE: 443-3515

REPRESENTING WHOM? Montana Mining Association

APPEARING ON WHICH PROPOSAL: HB 558

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: The extended time ~~is~~ between an application for a permit and the time for obtaining one is much too long for most small miners - their operations are often carried on only 3 to 4 months per year. We are opposed to this type of delay.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 8

1977

MR. PRESIDENT

NATURAL RESOURCES

We, your committee on

HOUSE

Bill No. 451

having had under consideration

Respectfully report as follows: That HOUSE

Bill No. 451

BE CONCURRED IN

~~DO NOT~~

P.C.

Elmer Flynn
SENATOR ELMER FLYNN

Chairman.

SENATE COMMITTEE NATURAL RESOURCES

Date 3/8/77 House Bill No. 588 Time 11:00 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 Roskie and seconded by Senator
Devine that HB 588 BE PASSED FOR THE DAY. 4 VOTING Yes and 3
VOTING NO, motion carried.

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

ATTACHMENT #1

HR 588

The four changes this bill provides for in the Open Cut Act are proposed in direct response to problems encountered by the Department of State Lands in administration of the Act. They should have only minimal effects on operations subject to the Act.

Section 1 of the bill proposes a new section to create a fund for deposit of all fees, penalties and other monies collected by the Department pursuant to the Act. The fund, available by appropriation only, is identical to a fund currently existing under the Strip Mine Reclamation Act. Also, a similar fund is being proposed (HR 149) for the Hard Rock Reclamation Act and which was approved by the Senate.

Section 3 of the bill proposes to eliminate the bonding maximum of \$1,000 per acre. In some instances, \$1,000 per acre simply is not enough to guarantee reclamation. Operators who are subject to the Act have even told the Department that \$1,000 per acre will not be sufficient in some cases. The Department doesn't feel that this leaves bonding "open-ended" because the Act provides that the bond may not exceed the cost of reclamation.

Section 4 would amend Section 50-1510 to extend the time deadlines for action on an application when an environmental impact statement (EIS) is required. The reason for this change is simply that the Department cannot meet its statutory environmental review obligations within 60 days. The proposed 365-day period is the minimum time in which an EIS can be prepared on a major project. The effects of this change have been exaggerated by those opposed

ATTACHMENT #2

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TITLE 50, CHAPTER 15, R.C.M. 1947

Section 1 (50-1501). This act shall be known and may be cited as "The Open Cut Mining Act."

Section 2 (50-1502). It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state.

Section 3 (50-1503). The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Montana