

February 15, 1979

The House Natural Resources Committee convened on February 15, 1979 at 10:30 a.m., in room 3 of the Capital Annex with Chairman Sheldon presiding and seventeen members present (Reps. Curtiss and Fagg absent) to hear testimony on the following bills.

HOUSE BILL 617

REPRESENTATIVE WILLIAM R. BAETH, District #21, the chief sponsor, said this is the Montana Scenic Resources Act which establishes a mechanism for the nomination and designation of scenic corridors. He passed to the committee a copy of the federal regulations that pertained to this and this is exhibit 1 of the minutes.

HANK GOETZ, Greenough, representing self, said this bill enables local citizens to voluntarily cooperate with state and local agencies to preserve scenic and historical values of their area without imposing additional state controls. He passed out an informational leaflet which is exhibit 2 and part of the minutes.

STEVE LOKEN, Libby, representing self, said he supports the bill. This bill would not preclude any changes in the use of that land --logging would not be diminished but be on slopes and places not usually seen.

CHARLENE WILLIS, gift shop in Hungry Horse, said many of their businesses are tourist related. They would like to encourage the tourists to slow down, stop and enjoy the facilities provided. She said HB 617 would establish a system of state recognized corridors and would help to maintain tourist industry. It would also encourage the highway department to apply for monies available from the federal government.

CONNIE CROWDER, Environmental Information Center, said she was representing three different proponents: The Environmental Information Center; Vic Benson of the Covered Wagon Ranch, Gallatin Gateway (a letter from him is exhibit 3 of the minutes); and Lawrence B. Dodge, Big Sky Magic, Helmville (a letter from him is exhibit 4 and part of the minutes).

JANELLE FALLON, Montana Chamber of Commerce, was the first opponent speaker. A copy of her testimony is exhibit 5 and part of the minutes.

Following Ms. Fallon's testimony, Rep. Baeth said there was a suggested amendment which would change the number of registered voters needed for a designation from 25 to 250.

GARY LANGLEY, Montana Stockgrowers Association, said this would allow for public activity on private land, and so would be an intrusion on private lands. This would interfere with all activity on a ranch. The burden of proof would be on the landowner rather than the other way around.

PETER JACKSON, WETA, said he stood in opposition to this bill. We have to look at priorities--are we going to be a hotdog stand or a region of dollars. He felt there should be a fiscal note as these things cost money.

STEPHEN FOSTER, Anaconda Company, spoke in opposition and a copy of his testimony is exhibit 6 and part of the minutes.

JIM BECK, Department of Highways, said he was neither a proponent nor an opponent. He said he had a few concerns. The route need not be designated as two lanes as there are four lanes that are scenic roads. Their Montana action plan has a flow chart and shows the many steps the highway department goes through. He said contents of this bill are addressed in that plan, so he questioned the need to be concerned about it. Once they get involved it takes five years from conception to finish.

GENE SPILDE, Stillwater Association, Sweet Grass Association, and Montana Water Developers Association, said this would be an interference with people's rights. He said this type of legislation is a harassment of the agricultural people.

DON ALLEN, Montana Petroleum Association, spoke in opposition. He said this is like an anticonsumer bill and not in the best interest of the citizens of the state. Due to the high cost of Canadian gas and the oil supply situation we need to do all we can to find all the oil and gas we can.

During questions Rep. McBride asked of Steve Perlmutter, Coalition for Canyon Preservation, if this bill would be harmful to agriculture and infringe on timber cutting or mining. Mr. Perlmutter responded the bill does not have the mechanism to prevent any of these. It does not have any kind of zoning and does not create any new bureau. He said there would be no impact on private land at all unless there is another program. The bill encourages the private permit applicant to ask for practical mitigated measures that will lead to scenic corridors. If an area is nominated, there is a hearing by the Board of Natural Resources on whether to designate the area. If it is designated, whenever any state agency is contemplating any activity they would have to give added consideration to scenic things in that area. This bill would give them an added set of factors to consider in their planning. He also said there was no intent to create any new permits under this law.

In response to a question from Rep. Harper, Ms. Williams said the idea is to encourage tourism. Rep. McBride asked Mr. Jackson if he considered tourism an industry in Montana. She did not get a direct answer.

In closing Rep. Baeth said he was thinking of Highway 101. He said we need to think about slowing down and he felt the people are demanding more of us in Montana to do something about our scenery. He asked the Committee for a do-pass.

Also signing as opposing were:

Joe Crosswhite, WETA

Gordon Brox, Anaconda Co., copy of his testimony is exhibit 7.

Robert A. Ellis, Helena, self

HOUSE BILL 715

REPRESENTATIVE ROBERT L. MARKS, District #30, the chief sponsor, said HB 715 is a rather simple bill. He said the purpose of the bill is to require the Department and Board of Health to provide ambient air quality standards that are no more stringent than federal standards. He said the purpose is to preclude the shut down of some of our industries in the state. He said he was particularly interested in ASARCO, the aluminum plant in Great Falls and one in Anaconda. He said he felt the federal ambient air standards are good enough to protect Montana. He said this is a concern of a number of people in his district as they make their livelihood working in East Helena. He said after the company has put a great deal of money out to improve the quality of the air there is still a skeleton in the air that they might have to go further than that. He said we need to keep these plants operating and he called on the following witnesses.

J. P. SIEVERSON, ASARCO Inc., East Helena, was the next proponent speaker and a copy of his testimony is exhibit 8 and part of the minutes.

R. D. HEARST, ASARCO Inc., East Helena, was the next proponent speaker and a copy of his testimony is exhibit 9 and part of the minutes.

SENATOR STEVE BROWN spoke as one present to give information and not as a proponent or opponent. He had formerly worked for the Department of Health. He said deciding on this bill comes down to personal philosophies. He said ten years ago when the standards were set they were intended as goals to be met. The federal government's standards are primarily meant to protect public health while Montana's go beyond this primary standard to seek to protect the public welfare also--protect against material corroding, damage to wildlife, crops, etc. One difference is in the federal government's measurement of SO₂--their standard permits a three hour measurement; Montana's is a one hour measurement. This could make a difference in the starting up of a facility as they would have only one hour to dissipate the pollution--more easily done if you have three hours. Senator Brown said this bill would take away the flexibility to set more stringent standards than the federal act. Adopting the federal standards would save time and work for the state and then the state could focus in on areas not covered by the federal act such as fluorides.

Questions were asked of Senator Brown as he needed to leave.

PAUL KLEFFNER, rancher and close neighbor of the East Helena ASARCO plant, said he has been concerned about emissions in the past, but since the installation of the acid plant there have been no more problems with emissions. He said he has a lot of friends that work at the smelter and he would hate to see them out of work. He said losing the plant would be a big blow to East Helena and Helena.

SETTLE, ROBERT C. spoke as a proponent. He was concerned about his job. He said there has been one regulation after another. He said there are 300 people dependent on jobs at the ASARCO East Helena plant.

STEPHEN FOSTER, Anaconda Co., Butte, spoke next as a proponent and a copy of his testimony is exhibit 10 and part of the minutes.

JAMES A ROPISCHEN, Anaconda Aluminum Co., for the Columbia Falls Reduction Plant, said this bill would save substantial amounts of money for the state. He said the state would still set standards for fluorides.

Also signing but not speaking due to lack of time were the following proponents:

Lawrence Zink, Montana Sulphur and Chemical Co., exhibit 11.

Michael J. Mulroney, Great Western Sugar

Tim Schug, Exxon Co., USA, a copy of his testimony is exhibit 12.

R. Blomeyer, Continental Oil Co., a copy of his testimony is ex. 13.

Louis J. Day, Cenex, Laurel, a copy of his testimony is exhibit 14.

JOHN W. BARTLETT, Board of Health, was the first opponent speaker. He said EPA's standards are written to regulate major urban areas and not for Montana which is rather unique in that it starts with clean air. He said within the state are pockets of pollution which are unique and best handled by people who put Montana's best interests first. He said the Board of Health and Department of Health has been both firm and fair. He said when the day comes when the industrial leaders and the environmental leaders say nice things of each other than the need for this bill will arise. He said he was confident this wouldn't happen as it hasn't in the ten years he has been on the Board. He said let Montanans work together for the good of Montana.

RITA SHEEHY, Board of Health, said she backed up the former opponent. She said we want Montana to run her own clean air.

JAN FLAHARTY, representing self, spoke next in opposition and a copy of her testimony is exhibit 15 and part of the minutes.

She then presented testimony for CLANCY GORDON of the University of Montana and a copy of his testimony is exhibit 16 and part of the minutes. She passed out photographs for the committee to view showing what pollution can do to vegetation. She said this is their main opposition--federal standards are not strong enough to protect vegetation.

MIKE ROACH, Department of Health, said copies of the Air Quality's (DHAES) impact statement on Montana Ambient Air Quality Standards Study had been given to each member of the committee. He said standards need to be taken to the specific things that the standards need to protect. He said the main thrust of this bill is what kinds of procedures will be used and how it pertains to Montana. He said the Board of Health has been totally fair in the past. He said the state does have the procedures and the history to come up with a better product as they would be looking at specific facts in specific areas.

DAVID ALBERSWORTH, Northern Plains Resource Council, stated their opposition to the bill. A copy of his testimony is exhibit 17 and part of the minutes.

WILLIAM TOMLINSON, representing self, spoke in opposition and a copy of his testimony is exhibit 18 and part of the minutes.

CINDI WILLIAMS, Environmental Information Center, said they oppose the bill and a copy of her testimony is exhibit 19 and part of the minutes.

ELLEN DITZLER read testimony presented by Frank Crowley of Missoula. A copy of this testimony is exhibit 20 and part of the minutes.

Also signing as opposing the bill were:

Richard Steffel, representing self, a copy of his testimony is ex. 21
Dawn A. North, League of Women Voters of Montana

Questions were asked by the committee.

Rep. Marks closed. He said he felt this was a basic problem and that problem was to survive, and to do this we need jobs. He said he felt there comes a point in time and economics beyond which the decision has to be made as to how much we can clean up the air and still have a viable industry. He said it may be true that in certain cases the EPA standards are not satisfactory. He had no problems with the EPA standards. This would be a way of saving tax dollars.

HOUSE BILL 716

REPRESENTATIVE DANIEL KEMMIS, District #94, the chief sponsor, said the bill was introduced at the request of the Department of Health and Environmental Sciences. He said it amends the Montana Clean Air Act in a number of ways. He said recent amendments require the imposition of noncompliance penalties for noncompliers. He said if the state does not do this then the federal government will do so and any money collected will go to them. The bill would raise the penalty from \$1,000 to \$25,000 a day, broaden the power of local governments, and it allows local governments to assess local fees.

MIKE ROACH, Department of Health, said the main thrust the department looks at when faced with the new standards is how Montana can do its

own act, and limit as much as possible federal intervention into state affairs. He said if they do not collect the fee for review and future review the EPA has the authority to collect it and then the money will go into the US Treasury. Noncompliance penalties would be assessed on any that was not meeting emission standards. This penalty would have to equal whatever economic advantage they had over their competitors by noncomplying. The federal act would require the states to do the program but the program must be implemented. The reason they set the penalty at \$25,000 is that if EPA determines the penalty is not sufficient it can come in and levy a higher penalty then the state--he said ours has been \$1000 and the federal's \$25,000 a day.

LINDA RUPRECHT, Missoula, representing self, said she supported the bill with a suggested amendment. A copy of her testimony is exhibit 22 and part of the minutes.

LEE LOSHER for David Feffer, Missoula City County Health Department, read his statement of support. A copy of this testimony is exhibit 23 and part of the minutes.

STEVE FOSTER, Anaconda Company, said they support the bill with several amendments, which he said are mostly agreeable to the Air Quality people and Rep. Kemmis. A copy of his testimony is exhibit 24 and part of the minutes. They feel the penalty should be \$5,000 rather than \$25,000.

KAREN ZACKHEIM, Missoula, spoke in support and a copy of her testimony is exhibit 25 and part of the minutes.

DENNIS LOPACH, Montana Power, spoke as an amender. He read his suggested amendment and a copy of it is exhibit 26 and part of the minutes.

BOB LOHMEYER, Conoco, Billings, spoke neither as a proponent or an opponent. He said they do prefer to deal with state officials rather than the federal.

MARTIN PERGA, Cenex, spoke as an amender. He said on page 5, line 12, the 30 day prenotice has been eliminated--felt it was useful and should be retained.

During questions Rep. Scully suggested all amendments be put in written form by Monday morning.

In closing Rep. Kemmis said since this is granting rule making authority he had prepared a suggested statement of intent (exhibit 27).

Also leaving statements of support as the time did not allow for them to speak were:

Dawn a North, League of Women Voters

Northern Plains Resource Council, exhibit 28.

John Miles, Environmental Information Center, exhibit 29.

Chairman Sheldon recessed the meeting at 2:15 p.m.

The Committee reconvened at 7:30 p.m. in room 20 of the Capital Annex, to consider the following bills: All members were present.

HOUSE BILL 684

REPRESENTATIVE BILL HAND, District #82, the chief sponsor, said this is an effort to update the Hard Rock Mining law.

FRANK DUNKLE, Montana Mining Association, introduced the following proponents:

D. L. REBER, Montana Mining Association, said they had met with State Lands people and other citizen groups to discuss possible changes in the Hard Rock laws. He said things they thought unfair and wanted changed were: a small miner might have to build a road to his property--built to state or federal regulations and this road becomes a part of his five acre exclusion; and to be able to work two different mines so they could be employed all year--one mine could be high in the mountains and one in the lowland.

TED DALE, Dillon, Montana Mining Association, said he concurs with what the previous speaker has said on having two mines and the five acre exclusion. A copy of his testimony is exhibit 30 and part of the minutes.

GUY E. MAYCUMBER, Kalispell, Montana Mining Association, said he was a small miner and concurs with Mr. Reber and Mr. Dale.

VICTOR D. WRIGHT, representing self, Triangle Mine and MMA, Superior, said he was one of the small miners that could be major in other operations. He felt some of the regulations of the forest service and state were duplications.

ART ROBERTS, Radersburg, Montana Mining Association, said this bill simplifies the wording of the law so it cannot be as easily misconstrued. He said it has more reasonable time limits for the small miner.

CLAUDE O. DALE, Sam Bear Gold Co., Twin Bridges, said he agrees with all that has been said on the bill. He said other people had been present at the afternoon meeting to testify in support. Due to the bill being held over they had been unable to wait. They had signed witness sheets and their names are:

Don C. Detton, Dillon, S.W. Mont. Mining Assoc. and self
John R. Detton, Dillon, S.W. Mont. Mining Assoc. and self
Charles T. Pritchett, S.W. Mining Assoc. and self from Dillon
Jessie Gindici, Montana Mining Assoc., Dillon
Carl Gindici, Dillon, Montana Mining Assoc.
S. E. Whitworth, Dillon, S.W. Montana Mining Assoc. & self

PETER JACKSON, WETA, said they support the bill. He said if you have a disturbance 16 feet wide and a mile long or if you have a road of 2 1/2 miles there is your five acres.

LEO BERRY, State Lands, said they support the bill with two exceptions. A copy of his testimony is exhibit 31 and part of the minutes.

BILL MACKAY, Jr., Northern Plains Resource Council and on behalf of the Stillwater Protection Association, said this bill would significantly weaken the Hard Rock Act. A copy of his testimony is exhibit 32 and part of the minutes.

Mr. MacKay left testimony from DOUGLAS N. LAMONT, President of the Beartooth Ecological Council. This testimony is exhibit 33 of the minutes.

JACK SCHMIDT, representing self, said he was a staff hydrologist and spoke in opposition. A copy of his testimony is exhibit 34 and part of the minutes.

GEORGE M. ROSSETTER, Fishtail, spoke in opposition. He said he ranches on the base of the Beartooth Mountains. A main concern of his with this bill is the lack of reclamation of the roads. He felt it very important this be done. A copy of his testimony is exhibit 35 and part of the minutes.

STEVE LOKEN, Libby, said he certainly has nothing against small miners but he had a bone to pick with the reclamation in this law. He spoke of five drainages that have been disrupted and one that wasn't reclaimed thirty years ago is now ecologically dead.

DON SNOW, Stevensville, spoke in opposition and a copy of his testimony is exhibit 36.

CHARLES VAN HOOK, Environmental Information Center, spoke in opposition and a copy of his testimony is exhibit 37 and part of the minutes.

WILLA HALL, League of Women Voters, did not speak because of time limitations but signed as opposing the bill.

During questions from the committee, Mr. Berry said they inspect the small miner once a year. It appeared it was difficult to describe a small miner.

REP. HAND said in closing that on federal lands it is already required that the land be reclaimed.

HOUSE BILL 280 and HOUSE BILL 829

REPRESENTATIVE JOHN SCULLY, District #76, said these bills are an attempt to come up some amendments to the Montana Facility Siting Act. He said he and Rep. Bardanoue were taking their two bills and trying to come up with one bill that would improve the Facility Siting Act. He said the time limitation is a problem. He said about his bill that no major categories have been stricken but he had agreed to leave out the laundry list and let the state through its rule making authority

do this. He said he had also agreed to leave out consideration of time limit.

REPRESENTATIVE FRANCIS BARDANOUVE, District 6, chief sponsor of House Bill 829, said they had been well aware that some parts of the MFSA needed changing--that there was dead wood and some cumbersome procedures. He said he supports the concept of the Siting Act and does not want to see it destroyed or made a worthless piece of legislation. He said he had consulted with state departments for several months on this. He said they would try to combine the two bills in such a way that at least a segment of the utilities could accept it. He said basically the concept of this bill is to streamline the hearing process by prefiling testimony, prehearing conferences and a deadline. The bill would require the attorney general to become a party. Another important procedure is to combine the Board of Health hearing and the Board of Natural Resources hearing. The fee could be paid 20% down and the rest in installments. He felt this would help utilities in financing and not tie up unnecessary capital. Another concept would be that if a utility company makes a real careful study of the project in the early beginning before the application and if they submit a real valid study prepared by a reputable company which is qualified to make a study the department could accept that without doing it again. This would encourage a top notch job on the part of the utilities. He said they would like to streamline the process and expedite the whole time frame process in the bill.

During questions from the committee, Rep. Scully said they would not add anything to the new bill that isn't already in the two bills.

MIKE MELOY said HB 829 had been drafted by the DNR&C and it represented three months of negotiations with all who had an interest in the Siting Act. He said the bill streamlines the Act without hurting its effectiveness. He said sitting in on the compromise talks showed him the gentlemen were a lot closer now that they knew what each other's intent was.

TED DONEY, Director of DNR&C, said he would discuss HB 829 as it is the bill the department had requested. He said the department several months ago started getting with utilities and anybody interested in the Act to streamline it. He said they are not interested in amendments that would weaken the Act or gut it. He felt it should be streamlined--the application expedited and also the hearings. He felt HB 829 in conjunction with HB 280 could remedy the difficulties they see with the present Act. He described the main points of the House Bill 829.

JEFF RIMS, Headwaters Alliance, said he supports HB 829 but opposes HB 280. A copy of his testimony on HB 280 is exhibit 38 and part of the minutes. A copy of his suggested amendment is exhibit 39.

BILL MACKAY, Jr., Northern Plains Resource Council, said he has sat in on some of the compromise meetings. He said they know the Siting Act is not perfect and it needs some cleaning up, but is the most important act we have on the books bar none. He said they are faced with a proposed BPA transmission line study which would require if installed seven corridors, 210 megawatts, for 150 Colstrips 3 and 4s. He said we are in need of a strong Act. They don't support all the amendments being talked of. He agreed with the maximum time limits on hearing and the combining the hearings before the two boards and avoiding the duplication of EISs to the extent that they are valid, and the paying of the fee in installments.

ROD HANSON, Montana Associated Utilities, spoke in support of HB 280. A copy of his testimony is exhibit 40 and part of the minutes.

PAT MCKITTRICK, REAs, said he had participated in the conferences being held on the two bills as well as the conferences held by the DNR&C over the past three months. He said in 1973 when Rep. Bardanoue carried the bill he supported it. He said it is a pioneer piece of legislation. He felt this is an attempt to create a bill that will help Montana and help the Act.

PETER JACKSON, WETA, said this is a bill that will affect all walks of life and they have been keeping close tabs on it. He said he was at the compromise meetings and was particularly pleased that it was agreed to the bonding in SB 208. He hoped the committee would give this bill the priority it should have.

CAROL BASS, Nuclear Vote Board, said they were opposed to HB 280 in its present form as it would restrict the people's participation. She said the voltage could be changed from 50 megawatts to 1000 megawatts at the discrepency of the applicant without a public hearing. Also the location of the facility could be changed by a discussion with no public hearing.

WARD SHANAHAN, Dreyer Brothers, said he had some suggested amendments dealing with the need question, paying the fee in advance and arbitrary assessment of fees (exhibit 41).

ALLEN CHRONISTER, Attorney General's Office, speaking on HB 829 in support but to amend. He said the inclusion of the Attorney General's Office in the hearing process will have a significant effect on their office. He asked if they could come up with a statement on this by the first of the week.

MICHAEL DALUM, Student at Missoula, said he essentially agreed with the people who spoke for Nuclear Vote and Headliners on allowing the courts to offer surety bond.

JOHN ROSS, Montana Power Company, said they support HB 280 and would like to see HB 829 amended. Copies of his suggested amendments to HB 829 is exhibit 42 of the minutes. He said they had been unaware

of the proposed compromise bill and had not sat in on the meetings. He said part of the amendments would deal with making a change after they have the certificate--they don't want to go through the whole process again--and the change might be an accommodation to the landowner. Secondly, the question of using the filing fee--he said it is their position it should only be used to process and monitor their facility and should not be used by the department for its general use. He said the public should speak for itself and not have the attorney general or any other office speak for them. He said as far as the role of the Board of Health--the decision they reach on the air and water should stand. Also he said the amendments put a time schedule on the process--big objection is to the unpredictability of how long the review process will take. He said a lot of study should be done before the filing of the application.

RON POGUE, AERO, spoke in opposition to HB 280 and a copy of his testimony is exhibit 43 and part of the minutes.

MR. WALSH, EIC, suggested a small change in HB 829 on page 6, line 17, to delete the word "general."

Grace Edwards, League of Women Voters, signed a statement opposing HB 280.

Chairman Sheldon said Reps. Bardanouve and Scully will prepare a committee compromise bill using HB 280 and HB 829 and any amendments presented today will be given to them to work with.

Meeting adjourned at 10 p.m.

Respectfully submitted,


ARTHUR H. SHELDEN, Chairman

Emelia A. Satre, Secretary