MINUTES OF THE MEETING
NATURAL RESOURCES
STATE SENATE

February 16, 1979

The twelfth meeting of the Natural Resources Committee was called to order by Senator George F. Roskie, Chairman, at 12:45 P.M., on the above date in Room 405 of the State Capitol Building.

ROLL CALL: Upon roll call, all members were present with the exception of Senators Dover, Story and Thiessen who all arrived shortly after the meeting began.

Mr. Jim Lear, Staff Attorney from the Legislative Council, was also present. See attached visitors' register for the names of visitors present.

CONSIDERATION OF SB 480: "An act establishing direct access to sunlight as a property right protected by law and authorizing permit systems for use and application of solar energy."

Chairman Roskie called on Senator Tom Towe, District 34, to present SB 480 to the Committee. Senator Towe told the Committee that SB 480 addresses the question of solar energy and solar easements. He said that if someone invests in solar panels to heat their home, they should not have to worry about someone building next to them in a few years that would block them from receiving the sun's rays. Senator Towe summarized the definitions in SB 480 as well as the other restrictions that would be imposed by this bill. He then proposed some amendments to SB 480 (see attachments). He then pointed out that the first proposed amendment should read "at noon on the winter solstace" instead of "during 6 hours of any winter day."

Chairman Roskie called for any other proponents to SB 480. Keith Babcock said he is presently building a solar energy home and wants to know that he is protected as well as lower income people who would like to build a home using solar panels.

Mr. Ronald Pogue, Alternative Energy Resources Organization, spoke in favor of SB 480 and gave a history of property heights and how it has been handled in the past.

Chairman Roskie then suspended the hearing on SB 480 temporarily in order to accommodate some witnesses present who also had to testify at another hearing.

CONSIDERATION OF SB 453: "An act to generally revise the metal mine reclamation laws; amending sections 82-4-303, 82-4-305, 82-4-331, 82-4-332, 82-4-334, 82-4-335 and 82-4-337, MCA: AND REPEALING SECTION 82-4-333, MCA."

Chairman Roskie called on Senator Manley, District 14, to present SB 453 to the Committee. Senator Manley submitted his comments in written form (see attachment). Senator Manley then asked Mr. Frank Dunkle, Montana Mining Association, to call on the other proponents to SB 453. Mr. Dunkle introduced Mr. Duane Reber, President, Montana Mining Association to the Committee. Mr. Reber said that it had been the desire of the Department of State Lands and the Montana Mining Association as well as some public interest groups to submit one bill to the Legislature that they could all support and SB 453 was the result. He also reiterated the statements made by Senator Manley that the main concerns of small miners were roads, the claim situation and the response from state government.

Mr. Dunkle then introduced Mr. Tad Dale, Montana Mining Association, who submitted his comments in writing (see attachment).

Mr. Leo Berry, Department of State Lands, also spoke in favor of SB 453 and submitted written testimony (see attachment).

Chairman Roskie then called for any opponents to SB 453. Hearing none, Chairman Roskie called on Senator Manley to make his closing comments. In his closing comments, Senator Manley asked Mr. Berry to again state for the record if he was a proponent or an opponent to S B 453. Mr. Berry said he was a proponent to SB 453 with the exception of the three areas he pointed out in his testimony. Senator Manley said the three areas Mr. Berry took exception to were the three areas the miners were most concerned about and that were necessary for their livelihood. For that reason, Senator Manley asked that Mr. Berry be recorded as an opponent to SB 453.

Chairman Roskie then opened the hearing to questions from the Committee and several questions were directed to Mr. Reber and Mr. Dale regarding the reclaiming of roads.

Chairman Roskie then closed the hearing on SB 453.

CONSIDERATION OF SB 449: "An act to clarify the County Board of Welfare's authority to appoint a supervisor of the County Welfare Department; amending Sections 53-2-301 and 53-2-304, MCA."

Chairman Roskie called on Senator George McCallum, District 12, to present SB 449 to the Committee. Senator McCallum stated that he submitted SB 449 at the request of the County Commissioners from Sanders County and asked to call on them to further elaborate on SB 449. With the Chairman's permission, Senator McCallum introduced Mr. George Wells, County Commissioner from Sanders County. Mr. Wells said SB 449 was an attempt to save the taxpayers some money by eliminating the position of Director of the County Welfare Department

if the position was not really necessary. Mr. John Muster, County Commissioner from Sanders County also spoke in support of SB 449 and said that in Sanders County, a class 4 county, they presently have 3 full-time positions and 2 part-time positions to give away money in the Welfare Department and that he does not see the need for a Director.

Mr. Norm Resler, County Commissioner from Sanders County, also spoke in support of SB 449 and said he did not want to see a small county put into the same class as a large county.

Mr. Mike Stephens, Montana Association of Counties, spoke in support of SB 449 and said there is a continuing need to maintain flexibility of choice at the local level of government.

There being no other proponents to SB 449, Chairman Roskie called for the opponents.

Mr. Lee Tickell, Department of Social and Rehabilitation Services, spoke in opposition to SB 449. Mr. Tickell said the Department cannot see any substantive change being made by the bill. He said the selection of a county director of Welfare does rest currently under the law with the County Commissioners and the Department would like to see more county combinations take place to save money. He pointed out there is a strong need for someone to be in charge because of the extremely complicated programs that are being handled and a county director lessens the burden of the County Commissioners. He also pointed out that a county director can save the county money by knowing the operations of the system.

There being no other opponents to SB 449, Chairman Roskie called on Senator McCallum to make his closing comments. Senator McCallum closed by addressing some of the comments made by Mr. Tickell.

Chairman Roskie opened the hearing to questions from the Committee and there were none.

DISPOSITION OF SB 449: Senator Manley moved that SB 449 receive a DO PASS recommendation. Senator Dover seconded the motion. The motion carried unanimously with those present. Senators Thiessen and Brown were absent during this vote.

CONSIDERATION OF SB 469: "An act to permit a local governing body to adopt a stricter building code than the state with respect to energy conservation standards; amending section 50-60-301, MCA."

Chairman Roskie called on Senator Fred VanValkenburg, District 50, to present SB 469 to the Committee. Senator VanValkenburg said there is some need for uniformity with respect to building codes, but this would authorize some flexibility at the local level if the locality wants stricter restrictions than the state code provides for.

Chairman Roskie then called for any other proponents to SB 469. Mr. William Boggs, City of Missoula, spoke in favor of SB 469. He said this bill was asking the Legislature to give the local officials the legal authority to run an effective energy conservation program and the building codes is an integral part of that. He said the 45th Legislature took away the power of a local municipality to adopt more restrictive codes than the state building codes, and the present uniform building codes do not address energy conservation. Mr. Joe Durham, City of Missoula, also spoke in favor of SB 469 and agreed with the comments made by Mr. Boggs.

There being no other proponents to SB 469, Chairman Roskie called for the opponents. Mr. W. James Kembel, Building Codes Division, Department of Administration, was opposed to SB 469 and submitted a prepared statement (see attachment).

Sanna Porte, Helena Environmental Information Center, spoke in favor of SB 469 and agreed with the comments made by Mr. Boggs.

Mr. Lloyd Cripplin, Anaconda Company, was opposed to SB 469 and submitted a prepared statement (see attachment).

Mr. H. S. "Sonny" Hanson, Montana Technical Council, also spoke in opposition to SB 469, and said he was against prescriptive projects to accomplish energy conservation.

Mr. Ronald Pogue, Alternative Energy Resources Organization, said he was neither for nor against SB 469, but submitted some proposed amendments to SB 469, which would enable him to completely support SB 469 (see attachment).

There being no other opponents to SB 469, Chairman Roskie opened the hearing to questions from the Committee and several questions were addressed to Mr. Boggs.

Senator VanValkenburg closed by saying that we may have come to the point of saying the federal people know best and so we don't want to give any people on the local level any authority, and he felt this was unfortunate.

Chairman Roskie then closed the hearing on SB 469.

CONSIDERATION OF SB 44: "An act to modify the requirements for dedication of parkland for subdivisions; allowing a portion of park money to be used for maintenance of existing parks; and amending section 76-3-606, MCA."

Chairman Roskie called on Senator Dover, District 24, to explain the history of SB 44 to the Committee and to present the proposed amendments agreed upon by the subcommittee. Senator Dover summarized SB 44 and presented the proposed amendments by saying they would allow a local committee to set up what they felt is necessary to develop their parks.

Chairman Roskie then called for any other proponents to SB 44. Mr. Cliff Christian, Montana Association of Realtors, spoke in favor of the proposed amendments to SB 44 and said they offer an excellent alternative to the present situation. He said he did question the 50 lot limit on subdivisions before being allowed to defer payment of the park and recreation assessment and asked the Committee to look at that figure again. Senator Dover addressed the concern expressed by Mr. Christian and told the Committee how the figure of 50 had been arrived at.

There being no other proponents to SB 44, Chairman Roskie called for any opponents. Ms. Barbara McGregor, Billings-Yellowstone City-County Planning Board, spoke in opposition to SB 44 and submitted a prepared statement (see attachment). Mr. Douglas Dean, Billings-Yellowstone City-County Planning Board, also spoke in opposition to SB 44 and submitted a prepared statement (see attachment).

Mr. Mike Stephens, Montana Association of Counties, also spoke in opposition to SB 44 and stated there still remains the concern for maintenance of parks at the county level.

Senator Dover then pointed out that Mr. Jim Richards was also present to answer any questions as he had helped on the subcommittee.

Senator Dover then closed by addressing some of the concerns expressed by Ms. McGregor.

Chairman Roskie then opened the hearing to questions from the Committee and several questions were addressed to Mr. Dean and Ms. McGregor.

Chairman Roskie then recognized Mr. Jim Richards to explain the intent of the subcommittee and address the concerns expressed by Ms. McGregor.

DISPOSITION OF SB 44: Senator Lowe moved that SB 44 receive a DO PASS as amended recommendation and Senator Dover seconded the motion.

Senator Brown proposed that SB 44 be further amended to address the concerns expressed by Ms. McGregor. Senator Dover suggested that SB 44 be left as already amended and an amendment could be proposed on the floor if it seemed necessary after looking into it a little further.

Chairman Roskie then called for the vote on Senator Lowe's motion. The motion carried unanimously.

CONSIDERATION OF SB 467: "An act to amend section 70-30-102, MCA, to restrict the exercise of the right of eminent domain for water reservoir sites."

Chairman Roskie called on Senator Greg Jergeson, District 3, to present SB 478 to the Committee. Senator Jergeson summarized SB 478 for the Committee and presented a map illustrating the type of situation this bill would address. Senator Jergeson presented his comments in written form (see attachment).

Senator Jergeson then called on Steve Doherty, Northern Plains Resource Council, to comment further on SB 478. Mr. Doherty stated that the question we are facing is equity. The farmers and ranchers cannot deal with corporations on an equal footing, and SB 478 is a reasonable approach to a very serious problem by attempting to delineate when eminent domain can be used for water reservoir sites.

There being no other proponents to SB 478, Chairman Roskie called for any opponents to SB 478.

Mr. Les Loble II, representing Coal Company and Intake Water Company, spoke in opposition to SB 478. He stated that the supposition that you are always able to condemn land under any circumstances is incorrect and he does not know of anyone that has condemned land for water reservoir rights.

Mr. Gannon, Montana Power Company, spoke in opposition to SB 478 and stated that currently if a landowner knows that he can be awarded more by a jury in court than the condemnor has offered, he can take the condemnor to court and the condemnor is obligated to pay for all court expenses and attorney fees for both he and the landowner. He also pointed out that this law would take away the right of a private utility to develop a reservoir for public use.

There being no other opponents to SB 478, Senator Jergeson closed by addressing some of the comments made by Mr. Gannon.

Mr. Bill McKay, Jr., was then recognized by Chairman Roskie and given an opportunity to speak. Mr. McKay, rancher from Roscoe, Montana, and Chairman of the Northern Plains Resource Council, spoke in favor of SB 478 and said he was opposed to a private company taking private property for private profit.

Chairman Roskie opened the hearing to questions from the Committee and a brief discussion occurred.

Chairman Roskie then closed the hearing on SB 478.

DISPOSITION OF SB 469: Senator Lockrem moved that SB 469 receive a DO NOT PASS recommendation and the motion was seconded by Senator Dover. All Senators voted in favor of the motion with the exception of Senators Jergeson and Brown.

DISPOSITION OF SB 453: Senator Dover moved that SB 453 receive a DO PASS recommendation. The motion carried unanimously with Senator Brown abstaining.

DISPOSITION OF SJR 18: Senator Etchart moved that SJR 18 receive a DO PASS recommendation. The motion carried unanimously.

Senator Jergeson moved to amend SB 478 by inserting "a regulated utility or" on page 2, line 17, following "by" and also on page 3, line 16. Senator Dover seconded the motion. The motion carried unanimously.

Senator Jergeson then moved to amend SB 478 by inserting subsection (d) on page 3, following line 2, and on page 4, following line 1, which would read: "(d) energy conversion facilities owned solely by the rural electric cooperatives or by utilities regulated by the public service commission."

Senator Dover seconded the motion. The motion carried unanimously.

Senator Jergeson moved that SB 478 DO PASS as amended. Senator Story made a substitute motion that SB 478 DO NOT PASS as amended. Senator Dover seconded the motion and there was further discussion.

ADJOURNMENT: Senator Etchart moved the Committee adjourn. Senator Roskie accepted the motion and the Committee adjourned at 2:30 p.m. without taking action on Senator Story's motion.

George F. Roskie

Senator George F. Roskie, Chairman

Date 2/16/79

ROLL CALL

Natural Resources COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
ROSKIE, George F., Chairman	✓		
DOVER, Harold L., Vice-Chairman	✓		
BROWN, Steve	✓		
ETCHART, Mark	✓		
JERGESON, Greg	✓		
LOCKREM, Lloyd C., Jr.	✓		
LOWE, William R.	✓		
MANLEY, John E.	✓		
STORY, Pete		✓	
THIESSEN, Cornie R.		✓	

Each Day Attach to Minutes.

SENATE

STANDING COMMITTEE REPORT

February 16, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 453

Respectfully report as follows: That Senate Bill No. 453

DO PASS GA.

Senator George F. Roskie, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 16, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 449

Respectfully report as follows: That Senate Bill No. 449

DO PASS

Senator George F. Roskie Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 16, 1979

MR. President

We, your committee on Natural Resources

having had under consideration Senate Joint Resolution Bill No. 18

Respectfully report as follows: That Senate Joint Resolution Bill No. 18

DO PASS

GD.

STATE PUB. CO.
Helena, Mont.

Senator George F. Roskie, Chairman.

STANDING COMMITTEE REPORT

February 16 19 79

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 469

Respectfully report as follows: That Senate Bill No. 469

~~DO PASS~~
DO NOT PASS

SU.

STATE PUB. CO.
Helena, Mont.

Senator George F. Roskie Chairman.

STANDING COMMITTEE REPORT

February 16, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 44

Respectfully report as follows: That Senate Bill No. 44,
introduced bill, be amended as follows:

1. Title, line 7.
Strike: line 7 in its entirety

2. Title, line 8.
Following: line 7
Strike: "OF EXISTING PARKS; AND"
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 7-16-2324 AND"
Following: "MCA"
Insert: "; AND REPEALING SECTION 76-3-607, MCA"

DO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

3. Pages 1 and 2
Strike: all of the bill following the enacting clause
Insert: "NEW SECTION. Section 1. Local regulation of subdivision park and recreation assessment--land dedication in lieu of assessment. (1) Before October 1, 1979, each governing body shall specify in its local subdivision regulations an amount of cash to be paid by subdividers of residential subdivisions for which application for local approval is made after July 1, 1979, not to exceed $250, to be assessed per lot for park and recreation purposes. The money must be placed in a park fund to be used exclusively for the purchase of additional lands or for development of parks and recreation areas.

(2) When a subdivision contains 50 or more lots, the subdivider and the governing body may enter into an agreement to defer, for a period of up to 2 years, payment of not more than 75% of the park and recreation assessment if the subdivider provides security for the deferred portion. The agreement must specify the form and conditions of the security and the period of deferment and may specify terms for remittance of the deferred portion of the assessment through a series of partial payments.

(3) Upon written agreement between the subdivider and the governing body, land may be dedicated to the public for parks and recreation areas in lieu of all or part of the cash assessment if the dedication would enhance existing parks or recreation areas or comply with an adopted park plan or policy statement. The amount of land dedicated for parks and recreation areas must be equivalent in value to the cash assessment based on the fair market value of the subdivided land.

(4) In lieu of all or part of the cash assessment, land may be deeded to a property owners' association for use as parks or recreation areas upon written agreement between the subdivider and the governing body. The amount of land deeded for parks and recreation areas must be equivalent in value to the cash assessment based on the fair market value of the subdivided land. The agreement between the subdivider and the governing body must include a provision requiring written approval of the governing body before the property owners' asso-

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

ciation may convert the deeded land from its use as parks or recreation areas or convey title to the land.

(5) Whenever land within a proposed subdivision is the subject of proceedings under the laws of eminent domain contained in Title 70, chapter 30, the land must be separated from the proposed plat and those proceedings may not delay action on the remainder of the plat beyond the time limits specified in this chapter."

Section 2. Section 7-16-2324, MCA, is amended to read:

"7-16-2324. Sale, lease, or exchange of dedicated park lands.

(1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under ~~76-3-606-and-76-3-607-or-a-similar~~ statute or pursuant to any instrument not specifically conveying land to be a governmental unit other than a county are deemed to be county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under this section and part 25 of chapter 8.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease, or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under part 25 of chapter 8.

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

February 16 19 79

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in ~~76-3-606 and 76-3-607 for cash received in lieu of dedication~~." [section 1]."

Section 3. Section 76-3-606, MCA, is amended to read:

"76-3-606. Dedication of land to public~~//cash donations~~.

~~(1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.~~

~~(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.~~ If a dedication of land is contemplated by a subdivider to satisfy the requirements of [section 1], the governing body shall review the plat of the proposed residential subdivision to determine that the plat accurately reflects the terms of the agreement between the subdivider and the governing body made pursuant to [section 1]."

Section 4. Codification. Section 1 is intended to be codified as an integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, apply to the provisions contained in section 1.

Section 5. Repealer. Section 76-3-607, MCA, is repealed.

And, as so amended,
DO PASS

STATE PUB. CO.
Helena, Mont.

George F. Roskie, Chairman.

SB 449
SB 453
SB 469

SENATE Natural Resources COMMITTEE

BILL SB 480

VISITORS' REGISTER

DATE [illegible]

SB 49? [illegible]

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Muster	Sanders Co.	449	✓	
LARRY GRAHL	City of Billings	469		
NORM RESLER	SANDERS CO	449		
Ronald Pogue	Alternative Energy Resources organ.	480	✓	
[illegible]	Sanders Co	449		
Sandra Muster	Sanders Co.	449		
[illegible]	EQC			
Jim Parker	Montana HRDC Directors	480	✓	
Ted Dale	Montana Mining Assoc	453	✓	
[illegible] Dale	Sun River Mill Co	453	✓	
David D. Carrington				
Bob [illegible]	[illegible]	[illegible]		✓
[illegible]	City of Missoula	469		
William Boge	City of Missoula	469	X	
[illegible]	[illegible]	480	✓	
Bill Young	[illegible]			
[illegible] Barry	State Lands	453	[illegible]	
[illegible]	S.R.S.	449		X
[illegible] Carlson	"	"		X
[illegible]	[illegible] / SRS	"		X
Robert Nolte	Mad. Co.	453	✓	
Mrs. Robert Nolte	" "	"	"	
Frank Griffin	[illegible] Helena, Mont.	453	✓	
Ronald Pogue	Alternative Energy Resources Organization	469		✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE ________________ COMMITTEE

BILL ____________ VISITORS' REGISTER DATE ________

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Steve Doherty	NPRC	453		✓
"	"	478	✓	
William Kendall	[illegible] Dept. [illegible]	469	—	
H S Hanson	Mont Technical Council	469		✓
Barbara McGregor	Billings-Yellow. City-Co. Plng. Bd.	44		✓
Jeanne [illegible]	Billings-Yellowstone CCPB	44		✓
Douglas C. Dean	Billings - Yellowstone CCPBd	44		✓
Sanna Porte	Helena - EIC	469-470	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Keith Bakeman DATE: Feb 16 19

ADDRESS: 3700 Red Mountain Road

PHONE: 948 6762

REPRESENTING WHOM? HRDC 015 #7 Self

APPEARING ON WHICH PROPOSAL: Bill 480

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ronald Pogue DATE: 2-16-79

ADDRESS: 726 Power Block

PHONE: 443-4582

REPRESENTING WHOM? Alternative Energy Resources Organization

APPEARING ON WHICH PROPOSAL: SB 480

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

COMMENTS: Some type of legislation is needed to ensure the owner of a solar system the continued availability of direct sun-light. We also support Sen. Towe's amendments as proposed.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: D. L. Peters DATE: 1-7-11

ADDRESS: P.O. Box 3994 Missoula MT 59806

PHONE: 549-8272 - 735-7312

REPRESENTING WHOM? Montana Mining Assn.

APPEARING ON WHICH PROPOSAL: SB 453

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

COMMENTS: Small miners like this bill

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: TAD DALE DATE: 2/16/79

ADDRESS: P.O. Box 682, DILLON, Mt

PHONE: 683-5759

REPRESENTING WHOM? MONTANA MINING ASSOCIATION

APPEARING ON WHICH PROPOSAL: SB 453

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

COMMENTS: Bill is needed for language clean-up and also as an assist to the small miner. A small miner should not be penalized for building a road to his mineral property because:
1) Many times a public agency requires a road to be built to their specifications.
2) A small miner can consume his entire 5 acres just building a road to his property.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Leo Berry DATE: _____

ADDRESS: _____

PHONE: 2074

REPRESENTING WHOM? Lt. Levels

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: [illegible]

ADDRESS: [illegible]

PHONE: 741 3541

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: [illegible]

DO YOU: SUPPORT? ✓ AMEND? ____ OPPOSE? ____

COMMENTS: ____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Mueller DATE: Feb 16

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Sanders Co Commissioners

APPEARING ON WHICH PROPOSAL: 449

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: [illegible]

ADDRESS: [illegible]

PHONE: [illegible]

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: [illegible]

DO YOU: SUPPORT? [illegible] AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mike Stark DATE: 2-16-29

ADDRESS: 1802 11th Ave. Hln

PHONE: 442 5209

REPRESENTING WHOM? MT Assoc. of Counties

APPEARING ON WHICH PROPOSAL: SB 449

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

COMMENTS: There is a continuing need to maintain flexibility & choice at the local level of government.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JEE TICKELL DATE: 2-16-79

ADDRESS: STATE CAPITOL S.R.S

PHONE: 4-5622

REPRESENTING WHOM? S.R.S.

APPEARING ON WHICH PROPOSAL: SB 449

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: WILLIAM BOGGS DATE: 2/16/79

ADDRESS: 404 Woodford Missoula

PHONE: 549-8489

REPRESENTING WHOM? City of Missoula

APPEARING ON WHICH PROPOSAL: SB 469

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Joe R. Durham DATE: 7/8/75

ADDRESS: 251 West Lucas Missoula

PHONE: 549-4055

REPRESENTING WHOM? City of Missoula

APPEARING ON WHICH PROPOSAL: Building Code Prop.

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

COMMENTS: Support change in Code to allow us to be more restrictive than codes

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: W. JAMES KEMPF DATE: [illegible]

ADDRESS: [illegible]

PHONE: 449-3923

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: SB 463

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

COMMENTS: [illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 3/6/09

ADDRESS: [illegible]

PHONE: [illegible]

REPRESENTING WHOM? The Nature Co.

APPEARING ON WHICH PROPOSAL: SB 46.9

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: H. S. [illegible] DATE: 3/16/79

ADDRESS: Helena

PHONE: 449-5500

REPRESENTING WHOM? Mont. [illegible] Council

APPEARING ON WHICH PROPOSAL: SB-469

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? ✓

COMMENTS:

1. Need Our [illegible]
2. [illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ronald Pogue DATE: 2-16-79

ADDRESS: 226 Power Block

PHONE: 443-4582

REPRESENTING WHOM? Alternative Energy Resources Organization.

APPEARING ON WHICH PROPOSAL: SB 469

DO YOU: SUPPORT? neither support nor oppose? AMEND? X OPPOSE?

COMMENTS: We support the concept intended by SB 469 but wonder if SB 469 meets that intent. To suggest the attached amendment.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Barbara C. McGregor DATE: 2-16-23

ADDRESS: B: Wings

PHONE: 656-3679

REPRESENTING WHOM? R: Wings - No Montana City Co Planning Board

APPEARING ON WHICH PROPOSAL: SB 44

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

COMMENTS: Statement Submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Douglas Sandberg DATE: 3/4/09

ADDRESS: P.O. Box 1178 Billings MT

PHONE: 248-7211 Ext 221

REPRESENTING WHOM? Billings - Yellowstone City-County Planning Board

APPEARING ON WHICH PROPOSAL: 4H

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

COMMENTS: prepared statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mike Stephens DATE: 2-16-79

ADDRESS: 1602 11th Ave Helena

PHONE: 442-5209

REPRESENTING WHOM? MT Assn. of Counties

APPEARING ON WHICH PROPOSAL: SB 44

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

COMMENTS: There still remains the concern for maintenance of parks at county level.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Steve Delaney

ADDRESS: [illegible]

PHONE: 443833

REPRESENTING WHOM? Montana P[illegible]

APPEARING ON WHICH PROPOSAL: SB47[illegible]

DO YOU: SUPPORT? ✓ AMEND? [illegible]

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS

NAME: Bob Gannon DATE: 2-16-79

ADDRESS: 40 E. Broadway

PHONE: _____

REPRESENTING WHOM? Montana Power

APPEARING ON WHICH PROPOSAL: SB478

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Cindy E. Maxwell DATE: 2-16-79

ADDRESS: 217 LaSalle Rd., Kalispell, MT.

PHONE: 257-2777

REPRESENTING WHOM? Montana Mining Ass'n.

APPEARING ON WHICH PROPOSAL: SB 453

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

COMMENTS: This is a Bill that would be of Benefit to the Small Miners of Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 2-15-79

ADDRESS: [illegible]

PHONE: [illegible]

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: [illegible]

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

COMMENTS: [illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: Feb 18 99

ADDRESS: [illegible]

PHONE: [illegible]

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: SB 153

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

COMMENTS: [illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thomas Weldon DATE: 3-16-79

ADDRESS: Lund & Clark Co Helena, Mont

PHONE: 442-2023

REPRESENTING WHOM? L & C Co Mtl.

APPEARING ON WHICH PROPOSAL: SB 447

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] Cook DATE: 2-16-79

ADDRESS: [illegible]

PHONE: 993-7990

REPRESENTING WHOM? Private citizen

APPEARING ON WHICH PROPOSAL: LB 920

DO YOU: SUPPORT? ✓ AMEND? ______ OPPOSE? ______

COMMENTS: This is sound legislation that will allow people [illegible] reasonable chance to develop a system that will allow them to become somewhat self-sufficient. The new business in the state will develop as a result of this bill & the benefits from this bill will be far greater than any adverse effects.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: James Parker DATE: 2/16/79

ADDRESS: Room 514 Power Block

PHONE: 443-3518

REPRESENTING WHOM? Montana HRDC Directors Association

APPEARING ON WHICH PROPOSAL: Solar Access Rights SB-180

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

COMMENTS: Over the past 4 years Montana's HRDC's have installed in excess of 410 low cost solar devices on the homes of low income and elderly Montanans. Monitoring of these devices indicates that they pay for themselves in fuel savings in 3 to 7 years. Because of this HRDC's are very much in favor of expanding the use of low cost solar devices. HB 180 would help to insure that the capability of low cost solar devices to buffer elderly and low income Montanans from the effects of rising energy costs is protected from being blocked by new construction.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STATE PUBLISHING CO., HELENA, MONTANA

STANDING COMMITTEE REPORT

February 16 19 79

Journal

MR. President

We, your committee on Public Health

having had under consideration Senate Bill No. 480

Respectfully report as follows: That Senate Bill No. 480,

introduced bill, be amended as follows:

1. Page 3, line 10.
Following: "boundary"
Insert: "during 6 hours of any winter day"

2. Page 3, line 11.
Following: line 10
Insert: "(3) Any solar right accruing after the effective date of this act will not be effective unless all property owners within 150 feet of the proposed location of the solar collector over which the line of sight path from the sun travels have been notified and given 30 days within which to object. Any such property owner may object by filing with the county clerk and recorder a notice of intention to build a structure on his property that would interfere in whole or in part with the solar right so long as the dimensions, height and distance to the property line are set forth in the notice."

And, as so amended,

DO PASS

FOR: John Manley

RE: Senate Bill 453

Senate Bill 453 is a bill requested by the small miners of this state to assist them in 3 problems.

1. All roads are counted as acrages against their 5 acre claims. Just one mile of road would use up their total amount of 5 acres for that miner on a small claim.

2. For the operation of 2 noncontiguous claims so that the miner could work a summer claim and a winter claim. This is a very normal sort of process.

3. Requiring the Department of State Lands to review an application and promptly asses it then tell the applicant if the application is complete. If they do not give them the answeres and tell them what is needed then after 15 days the permit must be issued as soon as the miner acquires the sufficiant bond as required by the state.

Page 1 - line 21
This was deleted by general agreement by the State Lands and the Mining Association.

Page 2 - line 2
Roads - all roads should be excluded from the notation of distrubed lands and that it would not count against the miners 5 acres. The reason for this is that many of the roads that are built on Forest Survice, Bureau of Land Management or State land and the requirements are fairly high and many times the State, Federal and County would like to have the road for use. Often timber sales are let and these roads are used for that. It is unfair that the miner should be charged for this acrage.

Page 3 - line 1 - section 8
Definition of noncontiguous claims. This was agreed between the Montana Mining Association and State Lands.

Page 4 - section 11
Definition of a small miner. Excludes the 35,500 tons. Making it one who is operating only under a small miner permit. Allows for the operation of two noncontiguous claims.

Page 6 - line 8
This wording was excluded in working with State Lands because just a regular map was quite acceptable. Notations on line 21, 23 and 25 were clean up language, essentially doing away with the fact that there would be no development permit.

Page 7
Same where permit is taken out, this was done because there would be no development permit. This was a recommendation of the State Lands people.

Page 8
Again the word development were taken out and the word may was taken out and the work shall was put in. It is clearer using the work shall. Again, this is doing away with the development permit so State Lands felt it was just not needed.

Page 9

Again with a development permit. Line 16, this law is now in effect so this wording is of no consequence. State Lands requested wording insurted on line 19.

Page 10

This was deleted because this was part of the application. The miner was unable to comply because it was part of the application and could not be completed until the application was approved.

Page 11 - lines 10 - 25

This is strictly time period and a determination that the government must be responsive. They have had less than 2 applications a month. It is felt that 15 days (45 days on line 20) would be adequate for responsive government to let a applicant know if the application was in order. State Lands agreed to this change in wording except they want 30 days instead of 15.

Page 12 - line 1 - 4

The department agreed with the Montana Mining Association that the department should notify the applicant very promptly about the bond and it was agreed by both parties that no permit should be issured until a bond is submitted. Part C - merely reitterates that if the department has not notified the permitee within 15 days that he has the permit, as perscribed in the other portions. This was agreed to by State Lands.

Page 12 - line 24

Again, speeking to responsive of state government on extentions.

Page 13 - line 1 - 2

Permit cannot be issure until the bond is received. This was a recommendation of State Lands.

The Montana Mining Association worked closely with State Lands people. Most of the changes are a reflection of the needs of the state to clean up the law to make it more useful and more responsive to the needs of the miners. The State Lands people did not agree to the shorter time period to approve an application. They do not like the 2 noncontiguous claims that could be worked summer and winter nor do they agree that the roads should be taken out of the 5 acres, however this bill is for the miners. When they have to meet so many restrictions on the roads, on using their claims it becomes difficult for a miner to make it. They employ a lot of people. The roads are built to standards not necessary for just his use so it seems unfair that he should not be allowed these opportunities.

TESTIMONY

Department of State Lands

SB 453

With three exceptions, the Department of State Lands supports SB 453. These three exceptions are the proposed changes in the definition of small miner, the exclusion of all roads from the definition of disturbed land, and an extreme tightening of the time frame for permit review.

A series of meetings were held in recent months between representatives of the mining industry, representatives of public interest groups, and the Department to discuss changes in Montana's Hard Rock Mining Act. The meetings were held specifically at the request of the Montana Mining Association which asked the Department to arrange them. The Department agreed to support any changes that both parties agreed upon but agreed not to support those points upon which the parties disagreed. A bill similar in many respects to this one has been introduced in the House by Representative Bill Hand. The Department also anticipates a third bill that would revise the Hard Rock Act to be introduced in the House by Representative Harrison Fagg.

This bill (page 2, line 2) would delete roads from the reclamation requirements of an exploration license or an operating permit, and from the acreage disturbance allowed a small miner. This provision would leave more land disturbed and unreclaimed than currently allowed by the Hard Rock Act.

A second proposed change (p. 4, line 11-13) would delete the 36,500 maximum tonnage requirement that a small miner may remove during a calendar year. The definition of small miner (p. 4, lines 13-20, and p. 6, lines 8-10) would also be changed to allow a small miner to have two noncontiguous, 5 acre operations. Eighteen existing operators would probably qualify as small miners should the annual tonnage limitation be deleted from the definition of small miners. Those 18 operators would not be required to obtain a permit and could leave the land unreclaimed.

The committee should be aware, that any enlargement of the area that a small miner need not reclaim may subject the Hard Rock Act to a constitutional challenge. Article IX, Section 2 of the Montana Constitution provides that all land disturbed by mining shall be reclaimed.

A third proposed change drops the definition of (p. 1, lines 21 and 22) and provisions for a development permit (Sections 3, 4, 5 and 8) from the Act. This is a little used, and unnecessary provision of the Act. The Department supports its deletion.

A fourth change (p. 8, line 20) requires that the Department allow the postponement of reclamation when an operator agrees to include acreage disturbed during exploration as part of his operating permit reclamation plan. This proposed requirement is currently discretionary on the part of the Department. The Department has no objection to the change.

A fifth change (p. 9, line 19) adds a clarification that an operator first receive a permit before disturbing land in anticipation of mining. This change is necessary if development permits are dropped and is supported by the Department.

A sixth change (p. 10, lines 23-25, p. 11, lines 24-25, p. 12, lines 1-4 and p. 13, lines 1 and 2) drops the requirement that a reclamation bond be part of an application but retains the requirement that no permit may be issued until sufficient bond has been submitted. This change is supported by the Department.

The last proposed change occurs in Section 7 of the bill (p. 11-13) and represents a tightening of the time frames allowed the Department for permit review. This section requires that the Department notify an applicant within 15 days of an application's completeness. The changes also require the Department to make a decision on the adequacy of a complete permit application within 15 days.

Because the Department's Hard Rock Bureau operates with a staff of only 4 people, 3 of whom are continually on the road during most of the field season, we feel the proposed time frames are too restrictive. We support, however, a change to 30 days for notification of completeness and 30 additional days for notification of adequacy, which amounts to the current 50 day time frame.

NORTHERN PLAINS RESOURCE COUNCIL

Main Office
419 Stapleton Bldg
Billings, Mt. 59101
(406) 248-1154

Field Office
P.O. Box 886
Glendive, Mt. 59330
(406) 365-2525

TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL ON SB 453

February 16, 1979

1. The time frames for review of applications are significantly shortened. There is inadequate time for an adequate review.

2. The definition of noncontiguous land is vague and open to many interpretations.

3. Roads will not be defined as disturbed lands, hence there will be more unreclaimed land in the State of Montana due to hard rock mining.

4. The small miners exclusion is significantly broadened. This exclusion is already of doubtful constitutionality. The small miners exclusion is doubled in size according to acreage.

5. Concurrent activity would be allowed on noncontiguous small miners claims.

6. The tonnage limitation for small miners is struck. The acreage limitation has doubled and the limitation on tonnage for small miners is eliminated, all for an already hazy constitutional exclusion.

For the reasons above Northern Plains Resource Council opposes SB 453.

Steve Kelly

2/16/79

SB 469

Allow local government to adopt more stringent energy codes.

a. Climatic conditions across Montana are fairly consistent, therefore, we see no need for more than one statewide code.

b. With 126 cities and 56 counties in Montana, we have a potential of 182 energy codes. This would definitely tend to fragment code enforcement. In addition, cost of construction would be increased.

c. If more stringent codes are desired, they should be applied statewide.

d. Presently state law requires local government ot use state adopted codes. We are not aware of any local governments that have adopted the present state energy code.

e. The present state energy code was drafted in cooperation with the Federal Government and its adoption encouraged by them. To date, 39 states have adopted the code with 12 states considering the adoption. This being the case, industry has geared itself accordingly and needed products for compliance are available. We can pass anything we want, but if products are not available to obtain compliance, the requirements mean nothing.

f. To our knowledge, no more stringent energy code than the one presently adopted is available. Therefore, to draft a more stringent energy code, money and staff would be needed.

James Kembel
BUILDING CODES DIV.

STATEMENT OF THE ANACONDA COPPER COMPANY

IN OPPOSITION TO

SENATE BILL 469

This bill gives to the municipality or county the authority to adopt building codes in the interest of energy conservation which could preclude an industrial or commercial establishment from conducting or continuing its operations. It could also result in restrictions on residential construction which would make the cost prohibitive.

We believe that energy conservation should be governed by the state and not local governments because it is a problem involving the entire state and cannot be solved by any local governmental action.

We respectfully urge that this committee recommend that Senate Bill 469 be given a DO NOT PASS.

- - -

Chairman Roskie -
Senators Brown + Van Valkenburg
R.E. SB 469.

If the added language to the codes would read as follows - I could totally support SB 469. It would then allow Missoula & Helena to adopt alternative codes yet alleviate my fear of unprogressive local govt's adopting ridiculous "prescriptive" standards that have high cost yet minimal energy conservation value.

50-60-301, MCA Section 1 ~~subsection~~ (2)
" ..... except that to further ~~the purpose~~ the purpose enumerated in subsections (5) and (6) of 50-60-, a local governing body may adopt building Regulations based on comprehensive energy conservation performance standards which

~~require standards~~ which are equal to or higher than those of the state building code."

Ronald Pogue
AERO
2-16-79

Amendments to Senate Bill No. 44

1. Title, line 7.
Strike: line 7 in its entirety

2. Title, line 8.
Following: line 7
Strike: "OF EXISTING PARKS; AND "
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 7-16-2324 AND"
Following: "MCA"
Insert: "; AND REPEALING SECTION 76-3-607, MCA"

3. Pages 1 and 2
Strike: all of the bill following the enacting clause
Insert: "NEW SECTION. Section 1. Local regulation of subdivision park and recreation assessment--land dedication in lieu of assessment. (1) Before October 1, 1979, each governing body shall specify in its local subdivision regulations an amount of cash to be paid by subdividers of residential subdivisions for which application for local approval is made after July 1, 1979, not to exceed $250, to be assessed per lot for park and recreation purposes. The money must be placed in a park fund to be used exclusively for the purchase of additional lands or for development of parks and recreation areas.

(2) When a subdivision contains 50 or more lots, the subdivider and the governing body may enter into an agreement to defer, for a period of up to 2 years, payment of not more than 75 percent of the park and recreation assessment if the subdivider provides security for the deferred portion. The agreement must specify the form and conditions of the security and the period of deferment and may specify terms for remittance of the deferred portion of the assessment through a series of partial payments.

(3) Upon written agreement between the subdivider and the governing body, land may be dedicated to the public for parks and recreation areas in lieu of all or part of the cash assessment if the dedication would enhance existing parks or recreation areas or comply with an adopted park plan or policy statement. The amount of land dedicated for parks and recreation areas must be equivalent in value to the cash assessment based on the fair market value of the subdivided land.

(4) In lieu of all or part of the cash assessment, land may be deeded to a property owners' association for use as parks or recreation areas upon written agreement between the subdivider and the governing body. The amount of land deeded for parks and recreation areas must be equivalent in value to the cash assessment based on the fair market value of the subdivided land. The agreement between the subdivider and the governing body must include a provision requiring written approval of the governing body before the property owners' asso-

ciation may convert the deeded land from its use as parks or recreation areas or convey title to the land.

(5) Whenever land within a proposed subdivision is the subject of proceedings under the laws of eminent domain contained in Title 70, chapter 30, the land must be separated from the proposed plat and those proceedings may not delay action on the remainder of the plat beyond the time limits specified in this chapter."

Section 2. Section 7-16-2324, MCA, is amended to read:

"7-16-2324. Sale, lease, or exchange of dedicated park lands.

(1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under ~~76-3-606-and-76-3-607-or-a-similar~~ statute or pursuant to any instrument not specifically conveying land to be a governmental unit other than a county are deemed to be county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under this section and part 25 of chapter 8.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease, or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under part 25 of chapter 8.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in ~~76-3-606-and-76-3-607-for cash-received-in-lieu-of-dedication.~~" [section 1]."

Section 3. Section 76-3-606, MCA, is amended to read:

"76-3-606. Dedication of land to public//cash-donations.

~~(1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.~~

~~(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.~~ If a dedication of land is contemplated by a subdivider to satisfy the requirements of [section 1], the governing body shall review the plat of the proposed residential subdivision to determine that the plat accurately reflects the terms of the agreement between the subdivider and the governing body made pursuant to [section 1]."

Section 4. Codification. Section 1 is intended to be codified as an integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, apply to the provisions contained in section 1.

BILLINGS - YELLOWSTONE

CITY-COUNTY PLANNING BOARD

P. O. Box 1178 | 4th Floor, Library Building, 510 North 28th, Billings, Montana 59101 | Phone: 248-7511

SECTION 1
Clause 1

The Planning Board finds the proposed wording in this section totally unworkable. In rural subdivisions, subject to resubdivision in the future, much less will be contributed at $250.00/lot with lots at a minimum of one acre. A major problem in the Billings area is related to the Department of Health requirements for minimum one acre lot size for subdivision not served with water or sewer or both. Those subdivisions in and around Billings which are filed with large lots will someday be resubdivided when served with water or sewer, or both. At that time, the density of the subdivision could increase greatly depending upon the zoning requirements, and in relationship to the future needs for parks in that area, the amount contributed will not really carry its full share for other park development, which parks would be utilized by residents of the subdivision.

The Planning Board agrees with the concept of your last sentence, that "The money must be placed in a park fund to be used exclusively for the purchase of additional lands or for development of parks and recreation areas."

Conversely, a small multi-family subdivision would be required to contribute much more than those with a small number of large lots. Higher density development would be penalized. The Planning Board feels this formula would discourage high density development and encourage sprawl. The Planning Board also finds the proposed wording unworkable in that at the time of preliminary plat review the number of dwelling units is unknown, particularly in subdivisions in a variable density zone. The ultimate number of dwelling units is not known until they are constructed.

Clause 3

The Planning Board finds the statement that if land is dedicated in "lieu of all or part of cash assessment if the dedication would enhance existing parks or recreation areas or comply with an adopted park plan or policy statement" is completely unsatisfactory. This would in fact eliminate land dedication in rural areas, or subdivisions which lie outside the jurisdictional area. In planning for future growth, it is imperative that park land be acquired now. Once that land is subdivided, the opportunity to acquire land for public use is <u>extremely</u> unlikely.

The Planning Board does approve of the proposed change which would give the governing body the option of accepting a cash donation in lieu of <u>all or part of</u> the dedication of land.

Clause 3 & 4 — The existing statement in SB 44, "The governing body, in conjunction with the Planning Board having jurisdiction and in conformance to any park plan adopted by the governing body, may determine suitable location for such parks and playgrounds," is essential for proper park locations and should be included in this bill.

Clause 4 — The Planning Board in past decisions regarding private parks has added a stipulation that such park or recreation areas shall exist in perpetuity or be dedicated to the governing body as public park in the event of dissolution of the homeowner's association.

SECTION 3 — Dedication of land to public (Section 76-3-606). This statement gives the subdivider the responsibility to determine whether land or cash should be given. This responsibility lies with the Planning Board and the governing body, in relationship to future growth of the community, and in compliance with existing park plans.

The Planning Board is confident in the process contained in the current law and recommends that this process not be changed.

Respectfully submitted,
Billings - Yellowstone
CITY-COUNTY PLANNING BOARD

Barbara G. McGregor
Vice President

BILLINGS - YELLOWSTONE
CITY-COUNTY PLANNING BOARD

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BILLINGS, MONTANA 59101

February 15, 1979

COMMENTS OF BILLINGS-YELLOWSTONE CITY-COUNTY PLANNING BOARD
Factual Evidence

CONCERNING SB44

Presented to the Natural Resources Committee
February 16, 1979

The following information documents the amount of land dedicated for parks and playgrounds and the amount of cash given in lieu of land since the enactment of the Subdivision and Platting Act.

Acres of Land Dedicated		Cash in Lieu of Land Deposited in Park Fund	
1973 -	91.078 acres	1973 -	$ 43,147.92
1974 -	16.813 acres	1974 -	14,087.85
1975 -	23.417 acres	1975 -	4,653.65
1976 -	20.778 acres	1976 -	10,057.49
1977 -	0 acres	1977 -	16,427.93
1978 -	80.65 acres	1978 -	19,872.48
	232.736 acres		$108,347.33

Dollar Amount Spent from Park Fund to Purchase Land

1975 - $55,000	Total Price $110,000 for	52 acres
1975 - $40,000	Total Price $240,000 for	60 acres
1976 - $26,000	Total Price $ 50,000 for	51 acres
		163 acres

Acres of Land developed = 0 acres

These figures are for Yellowstone County, exclusive of the Laurel jurisdictional area.

The method of dedication has worked very well to provide park lands and funds to acquire additional park land. However, the obvious problem has been the

development of the park land once it has been acquired. The proposed legislation to allow the formation of special improvement districts for the purpose of development and maintenance of parks will take care of the existing problem (SB42). The use of cash in lieu of dedicated park land should not be used for maintenance of parks since the one-third of the amount obtained annually would serve little purpose.