

MINUTES OF THE MEETING OF THE NATURAL RESOURCES COMMITTEE  
JANUARY 23, 1981

The House Natural Resources Committee convened in Room 437 of the Capitol Building on Friday, January 23, 1981, at 12:30 p.m. with CHAIRMAN DENNIS IVERSON presiding and fifteen members present (excused were REPS. NORDTVEDT and ABRAMS and absent was REP. BURNETT).

CHAIRMAN IVERSON opened the hearing on HOUSE BILL 277.

HOUSE BILL 277 REP. CARL SEIFERT, chief sponsor, gave the presentation of the bill. Currently an operator must submit a reclamation plan with a contract and obtain a performance bond. HB 277 would streamline the enforcement procedures by eliminating the criminal fine and providing a civil penalty for both operating without a contract and violation of contract. Would not allow the Department of State Lands to assess fines itself.

Another proponent of the bill was PAT WILSON speaking for Montco. A copy of her testimony is attached as Exhibit 1.

JAMES MOCKLER of the Montana Coal Council spoke as a proponent but stated his desire of an amendment. As it is now, the State Lands Department requires defendants to come to Helena for court proceedings. The amendment would allow court proceedings to be held in the area of the defendant. MR. MOCKLER would like this act to read the same as the Hard Rock Act.

JOHN NORTH spoke on behalf of the Department of State Lands in support of the bill. See Exhibit 2. It is not the intention of the Department to shut down the operators, but they need to enforce the act. A great deal depends on the size of the operation and the seriousness of the violation. The same type of enforcement has worked under the Hard Rock Act. Also this bill would help eliminate the conflict of interest faced by some county attorneys. MR. NORTH mentioned that the County Attorneys Association also supports this bill for that reason.

BILL OLSON of the Montana Contractors Association said they are definitely in support of this bill.

There were no OPPONENTS.

REP. SEIFERT closed on the bill by saying he would go along with amendments, if necessary.

During questions from the committee, CHAIRMAN IVERSON asked if on page 1, line 16, "continuous" means from the date of the notice of violation. REP. SEIFERT said it means from the date you were notified of the violation.

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REP. SALES felt the Montco amendment is beyond the scope of the area covered by this bill.

MR. NORTH stated that it is easier for his department to handle the court cases in Helena because it doesn't require a great amount of travel. They do not want to lose the bill on that point, however.

The hearing on HB 277 closed and opened on HOUSE BILL 195.

HOUSE BILL 195 Chief sponsor, REP. AUBYN CURTISS, presented the bill. It would reinstate a section repealed in 1977. The Department of Natural Resources requested that four sections of statute be repealed because they were no longer necessary. Growers have a large problem transporting coniferous trees.

Speaking as a proponent was PETE KLINKE of the Montana Christmas Tree Association. There has been a big increase in the theft of Christmas trees because there is no way to check ownership of the trees during transportation. People are cutting crop trees out of thinned areas.

RUSSELL HUDSON said all of the organizations he deals with support this bill. He felt that page 1, line 11 could be reduced from ten trees to five.

ROBERT HELDING of the Montana Wood Products Company of Missoula spoke in favor also.

REP. CURTISS presented the committee with amendments she would like included with the bill. See Exhibit 3. Also stated that on page 1, line 10, she would like to strike highways and insert roadways.

KEITH OLSON of the Montana Logging Association spoke in support of the bill.

There were no OPPONENTS.

During questions from the committee, REP. QUILICI said police officers have authority to stop vehicles. Could you use weigh stations to check vehicles? MR. KLINKE said a lot of the trees are transported by pickup trucks which do not have to stop at weigh stations.

REP. COZZENS asked how this bill differs from the original one. REP. CURTISS said it is the same as prior to 1977.

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REP. SALES asked why this section was removed in 1977. MR. HELDING replied that the problem wasn't there in 1977, but as timber has become more valuable, the problem has increased.

The hearing closed on HB 195 and opened on HOUSE BILL 306.

HOUSE BILL 306 REP. VERNER BERTELSEN, sponsor, presented the bill. The bill entails changing a typographical error on line 16 of the existing law.

There were no other proponents.

There were no OPPONENTS. Hearing was closed.

EXECUTIVE SESSION HOUSE BILL 306 REP. ASAY moved DO PASS. REP. MUELLER seconded. Motion carried unanimously. REP. MUELLER moved HB 306 be placed on the CONSENT CALENDAR. REP. ASAY seconded and the motion carried unanimously.

HOUSE BILL 16 REP. SALES reported the actions taken by the Sub-Committee. He presented a list of amendments (Exhibit 4) which were agreed upon by all parties to the bill.


REP. QUILICI said the information would be supplied directly from the large distributors leaving the small bulk people out of the reporting.

REP. SALES moved DO PASS AS AMENDED. REP. MUELLER seconded and the motion passed unanimously.

REP. SALES moved that Exhibit 5, the legislative auditor amendment, DO PASS also. Seconded by REP. COZZENS and passed unanimously.

The meeting adjourned at 1:25 p.m.

Respectfully submitted,

  
DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

## VISITORS' REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

195

1/23/81

Date <sup>17</sup>

F LL

SOR

Mueller, Curtiss, Kanduch, etal.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



HOUSE COMMITTEE

Date \_\_\_\_\_

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NSOR

SEIFERT, MUELLER, ET AL.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# MONTCO

House Bill 277

Mister Chairman, my name is Pat Wilson and I am here today representing Montco in the support of HB 277 with the amendments that we will propose (see attached).

We agree on the intent of the bill to change the penalty of the Open Cut Mining Act from criminal misdemeanor to a civil penalty as prescribed under the Strip, Underground, Mining and Reclamation Act however, because the Strip, Underground Mining and Reclamation Act is a permit process, rather than a contract, we have proposed certain amendments to equalize the terms of a Open Cut Mining Act contract to all parties involved.

The Open Cut Mining Act requires that the State Lands Board sign a contract with the party proposing operations under the Act. Since this is a contract rather than a permit, the basic principle of contract law, i.e. mutuality, should be in force. "Mutuality of Contract" means the obligation rests on each party to perform or permit performance of something in consideration of the other party's act or promise; neither party being bound unless both are so bound. Under the present law 82-4-434(7), the contract remains in force until terminated by mutual consent but only gives the board the option to terminate the contract with a 6 months' notice. We propose that either party, can terminate the contract which provides for mutuality under the provisions of the contract.

In accordance with 82-4-427, a person who is aggrieved by a final decision of the Commissioner of State Lands is entitled to a hearing before the board. Under our amendment, a hearing must be ordered within 30 days of the written notice of contract termination not after the termination of the

contract as present law prescribes.

Our reasons for a timely hearing are as follows:

- (1) At the hearing a determination is made of the validity of breaching the contract and if the commission is not convinced there are valid reasons for termination the contract must remain in force.
- (2) A timely hearing gives the plaintiff time for a decision from the board and the opportunity for judicial review before termination of the contract. (Under the rules of administrative procedures only after a decision from administrative hearing is made can judicial review be sought).
- (3) Because termination of the contract may prove otherwise to be unwarranted if a hearing was held, a timely hearing before termination of the contract and shut-down of the operation may facilitate an opportunity by both parties to renegotiate the terms of the contract.

Penalties received from either not obtaining a contract before operations or not honoring the terms of the contract would still be levied.

It is Montco's contention that those who do not adhere to the rules provided for under the Open Cut Mining Contract be prosecuted. If the Open Cut Mining Contract remains a contract rather than a permit process that all parties be treated fairly and equally under the Act. Therefore Montco asks the committee consider the amendments that we have proposed today and recommend a do-pass with amendments out of the committee.



Amendment Proposed to House Bill 277

Amending 82-4-434 to read:

Section 4.

The contract shall become effective when signed by the board and the operator, and shall remain in force until terminated by mutual consent or by the board upon 6 months notice. The contract shall remain in force unless terminated by mutual consent of the parties or by either party giving 6 months notice to the other party. The notice of termination shall be made by certified mail. Either party to the contract who has been served notice of termination may contest the notice by requesting a hearing before the board with 30 days of the date of receipt of the notice of termination. The hearing shall be conducted on the manner as provided in Section 82-4-427 MC.

## HOUSE BILL 277

## TESTIMONY OF DEPARTMENT OF STATE LANDS

The Open Cut Mining Act requires a bentonite, clay, scoria, phosphate rock, sand and gravel operators who remove or intend to remove more than 10,000 cubic yards to obtain a reclamation contract from the Department of State Lands. The operator must submit a reclamation plan with the contract and obtain a performance bond.

Currently the act is enforceable through two procedures: 1) for operating without a contract, criminal prosecution with a fine of \$500 to \$1000 for each day of violation; and 2) for failure to abide by the contract and reclamation plan, an order requiring closure of the operation.

House Bill 277 would streamline these enforcement procedures by eliminating the criminal fine and providing a civil penalty for both operating without a contract and violation of contract. This eliminates the possibility of a contractor acquiring a criminal record and allows the department to enforce the contract without shutting the operation down. Also, the minimum penalty is reduced from \$500/day to \$100/violation and \$100/day. House Bill 277 does not allow the department to assess penalties itself. Should a contractor disagree with the agency that a violation has occurred or disagree with the amount of penalty, a court order must be obtained to collect the penalty.

In addition, House Bill 277 shifts responsibility for enforcement of the act from the county attorneys to the Attorney General. This would eliminate conflicts of interest resulting from the fact that most counties have open cut contracts and that many county attorneys in small counties represent contract holders in their private practices.

AMENDMENT

House Bill 195

Rep. Curtiss

1. Page 2, line 6.

Strike: "or"

Insert: "provided that agent has in his possession a tax receipt or other evidence indicating the section, township, range from which the trees were harvested."

2. Page 2.

Following: line 8

Insert: "(3) Law enforcement officers shall have the authority to stop vehicles carrying trees for the purpose of verifying ownership."

Renumber: subsequent section

PROPOSED AMENDMENTS TO HB 16

1. Page 2:  
Following: line 8  
Insert: "(b) provide for the regular monitoring of energy supplies and demand; however, nothing in this part may be construed to authorize the establishment of an independent state energy forecasting program."  
Renumber: subsequent subsection
2. Page 4, line 16.  
Following: "bulk"  
Insert: "pipeline"
3. Page 5, line 4.  
Following: "classifications"  
Insert: "other than for petroleum products"
4. Page 6, line 1.  
Following: "prime"  
Insert: "petroleum"
5. Page 6, line 2.  
Following: "his"  
Strike: "U. S."  
Insert: "Montana"
6. Page 6.  
Following: line 4  
Insert: "Montana"
7. Page 6, line 8.  
Following: "of"  
Insert: "Montana"
8. Page 6, line 10.  
Following: "bulk"  
Insert: "pipeline"
9. Page 6, line 12.  
Following: "custody"  
Insert: "in Montana"
10. Page 6, line 15.  
Following: "sales"  
Insert: "in Montana"  
Following: "by"  
Strike: "zip code"  
Insert: "standard point locator index, or other method prescribed by the governor."

Proposed Amendments to HB 16  
Page 2

11. Page 7, line 5.  
Following: "(a)"  
Strike: "seek to"

## Amendment to House Bill No. 16

1  
2  
3 Page 8

4 Following: Line 5

5 Insert: "(c) Nothing in this section shall preclude access to such  
6 information by the Legislative Auditor in carrying out his  
7 functions under Title 5, Chapter 3, MCA."  
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