#32

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 20, 1981

SUMMARY OF HB 431 -

Introduced by Rep. Meyer and others, requires the Public Service Commission to approve utility rates based on projected data for a future period. Fiscal note shows the PSC would have to develop a computer capability with staff addition of seven FTE and a fiscal impact for the biennium of $435,000. The Consumer Counsel would need a staff increase of one rate analyst plus 1,000 square feet of additional office space.

HOUSE BILL 725 -

Introduced by Rep. Underdal, revises the law on licensing of professional engineers and load surveyors. Maximum application fees are increased: for engineer-in-training from $30 to $45, for professional engineer from $40 to $60 for those holding an engineer-in-training certificate validated for Montana, from $50 to $75 for those holding a valid engineer-in-training certificate from another state. Raised from $60 to $90 is the fee for issuance of a certificate of registration as a professional engineer. Maximum for a load surveyor-in-training is raised from $30 to $45. Application fee for a land surveyor is raised from a maximum of $40 to $60 for those holding a certificate validated in Montana; fee for a certificate validated in another state is raised from $50 to $75. Maximum fee for registration as both a professional engineer and a land surveyor is raised from $60 to $120 for certificates validated in Montana and from $100 to $150 for certificates from another state. For a land surveyor, minimum education requirement is 40 quarter credit hours in surveying technique and principles. Maximum fee for renewal of a dual license as professional engineer and land surveyor is $90. Any registrant who fails to renew his certificate by December 31 will be charged an additional 50% and if the renewal is delinquent more than one year, the person will be considered a new applicant. This bill coordinates with SB412. If that bill passes fees will be established as provided therein.

NOTE: Title should be amended to add "Land" after "As A" on line 9. on Page 3, line 12, word "transfer" should be stricken and "verification" inserted to conform with usage elsewhere in the bill (Page 2, line 8).

HOUSE BILL 743 -

Introduced by Rep. O'Connell and others, revises the law to permit off-premises wine sales by restaurants.

SUMMARIES FOR February 20, 1981

HOUSE BILL 780

Introduced by Rep. Azzara and others, requires investor-owned utilities to acquire cost-effective energy resources. Covered utilities are those that sold more than 10 billion cubic feet of gas or 500 million kilowatt hours of electricity in the second preceding calendar year. Covered utilities will be required to submit to the Public Service Commission load projections for 10 years and plans describing the resources available to meet projected load. The commission within one year will adopt criteria to define and evaluate renewable energy and conservation measures. Within six months the PSC shall adopt rules similar to those in PURPA to require gas and electric utilities to purchase energy from qualifying conservation energy and renewable energy facilities.

HOUSE BILL 782

Introduced by Rep. Keedy and others, prohibits sale of household cleaning products that contain more than a trace quantity of phosphorous.

HOUSE BILL 778

Introduced by Reps. Harper and Fabrega, adopts the Uniform Arbitration Act, conforms other statutory provisions to it, and provides for its applicability to labor agreements.

HOUSE BILL 802

Introduced by Rep. Menehan and others, revises Montana's insurance law to provide that a motor vehicle liability insurance policy will cover the persons named therein without regard to motor vehicles owned or operated by the insured. The bill strikes the provision of law that required a liability insurance policy to designate all motor vehicles covered.

HOUSE BILL 798

Introduced by Rep. Hannah and others, is a bill to create the "Montana Economic Development Act of 1981" and to establish an economic development authority of seven members informed or experienced in economics with two members appointed by the governor, one appointed by each of the two party leaders in each house of the legislature with the seventh member to be chosen by the other six. (An amendment may be useful at page 4, line 25 to clarify an apparent conflict with 2-15-12¢.) The authority may contract with financial institutions to participate in 10% of a loan, but no single progect may receive a loan from the authority of more than $2 million. The authority is authorized to issue bonds of up to 40 years and notes of up to 5 years not to exceed $150 million. Twenty percent of the interest

earnings from the permanent coal trust fund is allocated to the authority. Obligations of the authority do not pledge the faith and credit of the state. The authority's bonds and notes are tax exempt.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

Rep. W. J. Fabrega, Chairman, called the committee to order in room 129, Capitol Building, Helena, February 20, 1981, at 7:00 a.m. Rep. Ellison was excused, all other members were present. Bills to be heard were HBs 431, 725, 743, 780, 782, 778, 802, 798.

HOUSE BILL 743 -

REP. HELEN O'CONNELL, REP. RICHARD MANNING, and others, co-sponsored HB 743. Rep. Manning explained the bill for Rep. O'Connell. It will permit off-premises wine sales by restaurants or prepared food businesses who hold an on-premises license for beer and wine.

BOB DURKEE, Montana Tavern Association, supports HB 743. It doesn't make sense that an on-premises seller of wine doesn't have the same privilege as a bar. He doesn't have just the beer and wine license, he is also a caterer and has a license and he would be given the same opportunity to sell off-premises.

OPPONENTS: None

QUESTIONS -

Rep. Kitselman asked if a person could take what they had been served home? Mr. Durkee said the city open container law prohibited this.

Rep. Fabrega said this would allow a person to sell on or off-premises. A person could just pick up a bottle of wine without eating.

Rep. Manning closed.

EXECUTIVE SESSION -

Rep. Metclaf moved HOUSE BILL 743 DO PASS, and the motion carried unanimously. Five members were absent.

HOUSE BILL 802 -

REP. WILLIAM MENAHAN, District #90, Deer Lodge, chief sponsor, explained HB 802 is an act to provide for motor vehicle liability coverage of persons, without regard to the motor vehicles owned or operated by the insured. The insurance companies say you can't do that - the laws of Montana are written for the insurance company and not for the consumer. This bill would allow a person to be insured instead of vehicles. A person can only drive one car at a time although he may own several. He thinks you should be able to buy insurance to drive as a driver. The company would pay you an arbitrary amount on the value of the car if it were wrecked or as it gets older and of less value. Would just have to buy driver's insurance. Hoped the bill would be passed.

REP. KEN ROBBINS mentioned he has five mostly antique cars, and has to get insurance and a license and he drivesone only while he is over here. He can't see where you need to have insurance on all the cars owned. You can only drive one at a time.

OPPONENTS:

REP. LES KITSELMAN advised the car insurance Rep. Menahan is aiming at is called liability insurance and comes in two forms - single limit or 25/50/10, bodily injury per person would be $25,000 to $50,000 and property damage coverage would be $10,000 for uninsured motorists - an uninsured person who hits you. If you have two cars there is a 15% discount and if you have three cars, the discount is more because you can only drive one at a time. The question is what car you are driving when. A large deductible makes the premium less. On either one or two year old and on a pickup truck have to go by the book value. A person with $5,000 worth of coverage because he feels his car is worth that, would only be paid the cost of the vehicle or repairs. There is not a lot of money in this. There is an automatic claim sooner or later, and then the question is whether you are going to have enough there when the more expensive car is wrecked.

Categories of insurance vary premiums. You would raise the premium cost to everybody because you will be picking up the cost for those who are not insured. You are insuring the car. Costson medical insurance are nominal.

REP. JERRY METCALF said this bill does not deal with casualty or property insurance. The car would have to be insured for casualty and property damage.

Rep. Kitselman said if you are going to be driving a car with the owners permission, the driver is covered only to the amount of insurance on that car. If that car is licensed under the state the minimum is $50,000 of insurance for liability.

Rep. Menahan was to close when other opponents get here and testify.

HOUSE BILL 782 -

REP. MICHAEL KEEDY, House District #18, Kalispell, chief sponsor, explained HB 782 would place a very severe limitation on the amount of phosphates that can be used in household detergents. He doesn't expect the bill to be considered favorably, but introduced it because the Legislature has to be reminded that there is a serious problem in this area and it is not going to go away, and they should take this seriously. Jobs will not be threatened and it doesn't slow down growth or hurt the economy.

The supply of fresh, clean water in Montana cannot be overemphasized. Flathead Lake and other small lakes are critical to the state. The use of phosphates will have an adverse effect on agriculture, household and industrial use of water. Phosphates hasten the day that lakes will no longer be lakes because of certain growths being speeded up by the phosphates in the water. One of the most commercially feasible and harmless means to avoid this is to restrict the use of phosphates in household detergents. It has

been on the books in other states and Canada. Any degradation of lakes and any other bodies of water will have an effect on tourism near the lake which depends on a clean supply of water. There is a need for advanced waste water cleaning methods. It is used in farming operations. One method would be to restrict issuance of septic tank permits. It would cost about $7 million to adequately upgrade the waste water treatment facility in Kalispell, while limiting use of phosphates would be the cheapest way to do it.

DR. J. A. STANFORD, Director of the University of Montana Biological Station, East Shore, Flathead Lake, Bigfork, Montana, supports HB 782. See his testimony EXHIBIT A. Eight people are working on a study dealing with the capacity of Flathead Lake to assimilate nutrients that causes undesirable growth of nuisance algae. They now know that Flathead Lake is limited in such productivity by the availability of phosphates. Its best attribute is its clarity. It is changing because of the addition of phosphorus, and unless this can be stopped from reaching the lake so we don't go over the borderline, some change will occur in the clarity of the lake.

MARK O'KEEFE, Helena, supports HB 782. Prior to 1946 there was no such thing as detergents. In the old days we used soap made from oils and natural products. It takes 66% more energy to produce phosphate. This is not a regional problem, it occurs in lakes and streams thru the build-up of phosphates floating around on the top of the water. Fifty percent can be stopped before it reaches the treatment plant. This would benefit taxpayers because it would take away costs. Agriculture could benefit by efficiently controlling phosphate usage. It would help stabilize the price; would benefit sportsmen, recreationists. In the 9 other states with similar legislation, the Mann agency did a consumer response to this. The consumers support no phosphate usage by 80%, and were satisfied with the substitutes on the market. There will be no "ring around the collar" by supporthing this bill. It won't harm the consumer.

CAL BESSELL, speaking for himself, said reducing any amount of phosphates would be beneficial to Montana. Ten to fifty percent could be eliminated by this bill. Cost to the consumer would make for good results. Substitutes do not cause any major problems. Cost to the consumer could be avoided through consumer education and awareness. Resources are lacking in other parts of the state to document problems being caused.

STEPHEN MANCINELLI, a sportsman, comes from back east and have seen this type of degradation ruin cold water lakes there. He is very concerned about the future of Montana's cold water facilities. Favor passage of this bill. See EXHIBIT B.

JIM JENSEN, Helena, owned a commercial laundry facility and was operating in three states for six years, and as he became aware of problems, he adopted some old technologies having to do with animal-based soaps and excluded the use of phosphate detergents. This bill doesn't require laundries to be subject to this bill. He thinks it is an excellent bill.

RICHARD BRASCH, Helena, is technically in support.

BONNIE K. ELLIS, UMBS, University of Montana, Bigfork, researcher in biological science, supports HB 782.

OPPONENTS -

JEROME ANDERSON, attorney from Billings, representing the Soap and Detergent Association, opposes HB 782. He also represents Stauffer Chemical Company, Montana Chamber of Commerce, and Montana farmers. See his several EXHIBITS C.

DR. EARL LORY, speaking for Montana as a chemist at the University of Montana, opposes the bill. This bill uses a broadaxe to cut a small twig. Phosphates are most effective in hard water. Thirty-five percent of the phosphates come from sewage plants, and 35% comes in from a point source; 65% will still come in even if you ban all phosphates. There are no other detergents for laundries. A treatment plant costing $382,000 would decrease the amount of phosphates getting into the lake by 4.9%. Most lakes would have only a slight decrease if phosphates are no longer used. The only sensible solution for Flathead Lake is another sewage plant that will take out more phosphates. Phosphates in septic tanks probably don't get very far in the soil. He opposes taking a broadaxe when there would only be a 4.9% decrease if detergents were eliminated in Flathead Lake.

JACQUELINE E. REDDICK, Home Economist, Bozeman, checks on the home-makers. Most waters in Montana are hard. Precipitates are formed and colors shed without the use of phosphates. Clothes wear out faster. Substitutes available reportedly cause repairs because of buildup - washing machines need more repair. Substitutes need hotter water and do nothing to conserve energy. Additional products are necessary when non-phosphate detergents are used. Takes more consumer time in the home. Many families would circumvent by importing phosphates from surrounding states. No surrounding places have a ban. Passage would increase costs. Urged the committee not to consider this legislation any further.

PAT UNDERWOOD, Montana Farm Bureau, Bozeman, opposes this legislation. See her testimony on EXHIBIT E.

R. V. TILMAN, Stauffer Chemicals, Butte, opposes HB 782. He is seriously concerned about such a ban. They manufacture phophate products that are sold in many other states. His opposition is because it might have a deleterious effect on his business in Butte. Flathead Lake has been the subject of a study. Figures given by Dr. Lory were the result of that study. There were eleven recommendations made in the study for steps that could be taken to decrease the phosphate loading in Flathead Lake. None of them recommended a ban on the use of phosphate detergents. As far as stream flow is concerned, the EPA does not consider that a phosphate load problem exists in an area that is 25 miles down the road. The phosphate disintegrates and disappears and is deposited. Phosphate comes from run-off from land, from garbage, from human excrement, from animal excrement. Thirty-five percent of the phosphate comes from sewage disposal, and these problems have been addressed by greater phosphate removal in sewage plants. It would cost about $1.80 per family per year to remove all phosphate from whatever source. The use of alternatives to phosphate detergents results

in some damage to machines. The most widely and most practical non-phosphate detergent has a carbonate base. Phosphate picks up the dirt, keeps it in suspension and removes it in the water. Carbonate detergent precipitates on a washing machine. It is destructive on machines and clothing. She explained EXHIBIT D.

This is a local problem and she doesn't feel it is fair to ban phosphate clear across Montana because of the problems in Flathead Lake.

QUESTIONS -

Rep. Andreason asked if steps have been taken to get a three-stage treatment facility. He was told that was one of the by-products of the Flathead study which is just beginning its 4th year of work in the Flathead area. That would have to be answered by the Health Department.

Rep. Robbins asked if there is something that can be added to the water to neutralize the effect of phosphates. Mr. Stanford said many homes have septic tanks, but the phosphate is locked up or tied up in the system. Much of the ground around Flathead Lake has septic tanks that are not designed properly. If there is such a chemical, he is not aware of it. The data garnered for Flathead Lake was based on two samples taken by the use of helicopter. He feels the data presented today is wrong for Flathead Lake because of the insufficiency of data. He would encourage those talking about Flathead Lake to get their facts correct. It is data for other than Flathead Lake. They have made 1,000 measurements of phosphate coming in and going out. If you do add phosphate to the lake, it is going to change.

Rep. Vincent asked if there are detergents that do not contain phosphates. He was told that some stores carry it and they say that most people who have tried it don't like it. Studies have shown that a large portion of the people are going across state lines to pick them up. Ms. Reddick said the detergents they are buying are of the ionic type and they are good for oil removal, but don't do a very good removal on soil.

Rep. Vincent asked Rep. Keedy - You have said we have a problem, and they in essence said we don't have a problem, or it doesn't have a very big effect - are we looking at a problem that is underneath the surface and when it becomes worse, it is too late to do anything about it? Rep. Keedy didn't think that the phosphate rate in the Flathead water range is really that bad and he didn't know for sure if it will be too late when they do find out.

Mr. Anderson said if there is such a severe problem in Flathead in the near future, people would be looking at the removal of phosphate detergents and also all of the other products. Thirty-five percent is caused by phosphate detergents - 65% of which comes from other sources. That's more phosphate entering from a point source for reasons other than the phosphate detergents. The next step they are going to have to address is putting in a system to take care of the phosphate.

Rep. Vincent said there is never any problem that you solve with one action - need to address it in many ways. This is probably the quickest

way to start improving the situation. There has been a study on the use of phosphates throughout the U.S., and the study of a ban is not over. There is not a ban in the state of Montana. Every little rung of the ladder has an effect one way or another on the total ladder. If they have a problem, they ultimately will be required to put some additional facility on their sewage system. This is a way to address that problem the quickest.

Rep. Keedy closed hoping the committee will give it a Do Pass recommendation. There is an ample number of substitutes on the market of phosphate-free detergents. His wife uses non-phosphate to wash clothes for 10 years, and has not had any problems with the washing machine or clothese. It may be necessary to take more radical steps to protect Flathead Lake. A three-stage plant would be unacceptable at the present time. It is a non-renewable mined natural resource, and it might help to take it out of the farmers hands. Stauffer Chemical Company own the phosphate plant that manufactures it, but that plant is used for making fertilizers, and it doesn't wind up in detergents. This is an opportunity to start to address a significant problem. We can decide now and consider whether the convenience of the home maker is worth the possibility that we will have a dead lake. He urged support.

HOUSE BILL 725 -

REP. MELVIN UNDERDAL, District #12, sponsored HB 725 which is an act to revise the licensing laws for professional engineers and land surveyors. It raises the registration fees which may not be exceeded and that might not be charged up to the maximum allowed. This is an increase of 50% all along. It is necessary because costs are increasing at a fast rate.

BERNICE LUCK, Board of Professional Engineers and Surveyors, said the raise in fees was practically ordered by the budget office because they were just surviving, and had had to get a budget amendment because of the increase in all of their costs. They hoped not to raise them as much as the limitations allow, but they asked for this amount since they would rather not come back next session.

OPPONENTS: None

QUESTIONS -

Rep. Robbins asked what the current requirements are. Rep. Underdal said the old fees are stated in the bill. This is for the land surveyor and engineer in training. They have various license fees and also they have dual licensing of the professional engineer and land surveyor.

Rep. Pavlovich asked how much money will be generated by this act. There have been bills to eliminate store licenses and now are asking these people for higher license fees.

Rep. Harper asked if fees and charges have been discussed by the board, and he was advised the budget office is aware of this. They are not trying to make money. They have to be self-supporting. Previous to the new law in 1976, there were no academic requirements, but because of all the problems with the land surveyors, it became very evident that academic requirements

were necessary. Ms. Luck said no academic requirements were made before. A land surveyor has to have six years of land surveying experience working under the supervision of a registered land surveyor, and that was not enough. They were not knowledgeable enough out in the field.

Rep. Schultz asked what provisions there are for the grandfather clause for those that were in the business. Ms. Luck said they are licensed for as long as they are active in the field. Rep. Fabrega said if they are already registered, they just renew.

Ms. Luck wished the committee could be aware of the cost and time element required in their busy office to take care of renewals of licenses that are overlooked by those having them. A late payment fee is now charged and she said it is remarkable how well they remember to renew on time now.

Rep. Underdal closed saying the renewals are bi-enniums. He hesitates to bring in a bill that raises the price of something. They are self-supporting and have to pay for all the paper, exams, and examinations are very necessary. This is a maximum rate and they will charge only what is necessary to cover their costs.

HOUSE BILL 780 -

REP. JAMES AZZARA, District #96, Missoula, chief sponsor, explained HB 780 asks utilities to compare all economic factors of new plants with other types of thermal energy and asks that they purchase the cheapest form of energy. Covered utilities will be required to submit to the Public Service Commission load projections for 10 years and plans describing the resources available to meet projected load. The Commission within one year will adopt criteria to define and evaluate renewable energy and conservation measures. Within six months the PSC shall adopt rules similar to those in PURPA to require gas and electric utilities to purchase energy from qualifying conservation energy and renewable energy facilities.

A utility would invest a great deal of money to weatherize homes, and that investment would be allowed to be figured into the rate base, and the utility would receive a little back on that as it would with other rate base investments. The amount invested is up to the initiative of the consumer who would have an energy audit done on his home and the utility would pay for the cost of such weatherization required.

Utility rates will be lower because the energy the utility has to purchase will come from less costly energy producing sources. The utility will benefit because it takes less energy to conserve than to build large thermal plants. This promotes labor intensive jobs to install renewable energy forms. The basic philosophy of HB 780 is that capital invested for the benefit of the public should be invested in the most cost-effective manner available. Rep. Azzara went through the bill and explained it to the committee.

Covered utilities are those that sold more than 10 billion cubic feet of gas or 500 million kilowatt hours of electricity in the second preceding calendar year. The utilities are MPC, MDU, and PP&L.

JAMES NYBO, natural resource economist, elected member of the City of Helena, spoke on behalf of AERO and himself and not for the City of Helena. He spoke very strongly for HB 780. He feels conservation has a major role to play in the state and nation and should be considered on a comparable basis with fossil fuels. The City Commission has just developed an energy plan appraisal and found people in the Helena area are spending $55 million per year for the purchase of energy, of which perhaps $20 million could be saved. There are very positive effects for moving towards conservation. He encouraged use of natural gas and in the country the use of wind energy. Extra energy produced could be tied into existing lines. Methane gas could be mixed with natural gas delivery system. The City of Helena is looking at the feasibility of waste-to-energy conversion to steam to heat the Veterans Hospital and also producing electricity. A local solar dealer is fostering use of more renewable resources. Wood smoke is a problem, but the people who are heating with wood are heating insulated homes.

REP. JENSEN TOOK OVER AS CHAIRMAN -

Mr. Nybo thinks it is very important that conservation and renewable resources have an opportunity to be compared with additional power that the utilities would have to build to produce more energy.

HANK SMIT, Smit Construction, Helena, builds solar panels and solar homes. Solar energy is very cost effective. He supports HB 780.

BOB FITZGERALD, U. S. Winpower, intends to put up a 90 megawatt wind-powered plant and others all over the country. Wind power is economical and operational. A. U.S. Winpower plant in Great Falls could be done and on line supplying energy sooner than a thermal could be on line. Their machines have a 50 kilowatt generator driven by a 50' blade on a 60' high windmill. He hopes the bill is supported.

LEO BERRY, Director of the DNRC, said the department would support HB 780, and had assisted in developing the bill. The department is involved in all of the various aspects in this bill. They are responsible for the state's renewable energy program and Facility Siting Act which is a permit process for power plants. It is more in line for the PSC to determine the need for additional power facilities rather than the DNRC. A need analysis and determination as to whether facilities should be built should rest with the PSC rather than the DNRC.

MARGARET McDONALD, NPRC, Billings, supports HB 780. It represents a forward looking approach to the future energy needs of this state and the least expensive means of supplying those needs. Under the BPA bill, Pacific Northwest, Montana, Idaho and Oregon are faced with regional energy planning. Montana stands to lose its authority. This aspect of the federal legislation is undermined by guaranteed purchases, but the BPA has some extremely expensive power which could include nuclear power plants with still rising costs. Montana has established an interstate system within the state. We need to know the end use of our energy needs. HB 780 has the potential for meeting and exploiting those needs, and could facilitate and strengthen our position.

This bill goes into the area of natural gas. This should be brought into the PSC to see what is necessary for the state of Montana. The Public Utility Regulatory Policy Act has some language in it to balance small producers. The term "avoidable cost" needs definition. The PSC is in the process of adopting some rules for setting rates for small power producers and that should be looked at in connection with this legislation. MPC has currently placed conservation costs in its rate base. This bill includes that in and it makes sense. Proposals like this bring jobs into the state and foster economic conditions in the state. They are estimating that a $1.6 billion investment loan guaranty would produce 400,000 jobs and that is many more than would be generated by other methods.

JIM PAINE, Montana Consumers Counsel, Helena, supports the concepts of HB 780, specifically, the conservation part of it. The other aspects of the bill are not limited to the utilities.

MARC WILLIAMS, student at the University, representing himself, from Hobson Montana, supports HB 780. See his testimony attached for specific details of conservation studies he has done.

GENE PHILLIPS, Pacific Power and Light, Kalispell, supports the concept of this legislation. Their company has been doing this for some time. They operate in a six-state area. A number of years ago they audited the energy efficiency of consumer's homes. They told them then if you won't spend the money, we'll loan you the money at no interest and it can be paid back when the house is sold. A new program came out and recommended installations that will save energy. Through this conservation practice, they are buying kilowatts from their customers cheaper than they could by building new plants. They are also purchasing back energy from customers who are generating energy. Some places they do not track with FERC - who will come up with an energy conservation plan for the Northwest region, and what will be required by to be done under FERC is not yet established. He thinks this should all be meshed into this bill.

EILEEN SHORE, PSC, Helena, Staff attorney, supports this bill. It will give the PSC important new tools with which to pursue new concepts.

MARK CLARK, MPC, said HB 569 would extend tax credits. MPC has such an energy conservation plan. The bill has two distinct parts - it picks up the Northwest forecasting and the Regulatory Policy Act as it relates to co-generators and small power producers. There are inconsistencies between this and BPA bill and PURPA. Forecasting provisions of this bill are inconsistent with BPA in that it isn't known what benefits may be available to consumers in Montana, and this won't be known for a long time. He suggested the bill's definitions and procedures for forecasting should be exactly the same as BPA. The boundary is extended to the eastern boundary of Montana. They will be participating with BPA to try to get this matter resolved. He hopes HB 780 will have no barriers with what BPA proposes.

There are some definitial differences as it relates to this bill and the policy act. HB 780 may need to be amended to make it clear that the

incentives being allowed are applicable to alternative and renewable energy and allowed to utilities. That it be clear as to what kind of costs are allowed. HB 780 carries a fiscal note of $500,000 - the PSC would need more funding than that to handle forecasting under this bill. The costs that we are talking about for alternative and renewable energy generation may be higher now. They are asked to pay a higher price for that resource than for conventional generation.

PHYLLIS A. BOCK, Montana Power to the People, Helena, likes the concept that the utilities' capital will be used to weatherize homes rather than to build expensive new projects.

JIM JENSEN, LISCA, Helena, supports the bill because of its relative effect on low income people. A significant difference is in the purchases involved in Rep. Azzara's bill. Have much better incentives because of guaranteed purchase of generation.

MIKE MALES, Environmental Information Center, Helena, said the bill is quite flexible and it doesn't require a large investment. Implementation of the plan by the elected PSC opens it up for understanding. HB 780 maybe needs to be fine tuned, but believes it should start the process. Do Pass.

MICHAEL DAHLEM, ASUM, Helena (Associated Students of Montana) said the Montana University System requested and received $2 million above what had been budgeted for energy costs. He would support any bill that would be a benefit in lower rates to the taxpayers through lessening of state expenses. He supports HB 780.

JOHN ALKE, MDU (Montana Dakota Utilities), Helena, thinks the Commission should seriously consider this for those primarily using electric energy. In many areas of the state homes are heated solely by natural gas, but the Act treats them the same. If you do not heat your home with electricity, the pricing provisions in the bill program it back into its rates. Natural gas is almost used exclusively for heating. There are two ripple effects on the natural gas side of the bill. You plug in 25% conservation measures and you will lower the amount of gas the utility will have to use in expensing out its cost of production, also conservation will be piggy-backed on that. This will have a substantial immediate rise in the price of natural gas in the short run. You might want to specify different treatment in this bill when heating with natural gas and electricity. MDU has not been able to do this because of the ripple effect. Might want to consider special treatment for natural gas.

OPPONENTS: None.

QUESTIONS -

Rep. Meyer asked why plastic bags are used for the city garbage, and Mr. Nybo explained they can now make one collection a week. There is a labor trade-off also.

Rep. Azzara told Rep. Andreason the natural gas question Mr. Alke raised is a complex problem but he thinks it can be worked out. It is a legitimate concern and has to be dealt with.

Rep. Jacobsen thought there was a lot of authority being delegated to the PSC. The bill is not very specific since it deals with a lot of different things. Rep. Azzara said the bill attempts to be as specific as it can. The amount of rule making authority that is being granted isn't specifically set out at this time, but the utilities would prefer to be bound by a flexible rather than statutory requirement.

In answer to Rep. Kessler, Mr. Phillips said there are problems with matching with the BPA because it isn't known what they are going to come out with, and there will be a problem if HB 780 doesn't agree with what the BPA says. They want the bill to match with the FERC recommendations at the present time.

Rep. Jacobsen is in complete agreement with the intent of the legislation, but a lot of authority is being given to the PSC. It is all left up to rule making.

Mr. Opitz, PSC Director, said FERC makes for a lot of rule making. He thinks the federal government has already granted this authority to the states.

Rep. Harper asked if Montana has a law like this there may be a better chance of having the better part of the say if we establish a strong statement like this. There is a representative to be appointed from each of the regions. Mr. Phillips thought there might be.

Rep. Wallin asked how much of this information is already done. Mr. Phillips said this mandates other companies in the state to do the things they have been doing already. Their system is different than ours and costs are different. Because it works for them doesn't mean it would necessarily work for MDU. Have to case by case with different utilities.

Rep. Azzara closed saying you have heard the unlikely alliance today. We are all commonly bound by interests in attempting to achieve our energy needs economically and environmentally. Legitimate concerns will be worked out. The Facility Siting Act would have to be amended as it is passed. The determination of need would have to be established, and this determination would be transferred from the DNRC to the PSC, since regulatory agencies could establish need.

HOUSE BILL 798 -

REP. TOM HANNAH, House District #67, Billings, co-sponsor with many others, explained HB 798 is designed without getting the state of Montana into the banking business, and without taking large sums of Montana money out of the state, to attempt to make Montana more competitive in the commercial aspect of loans. When interest rates are 21-22%, there aren't very many businesses that can survive at that rate. The bill is designed to allow people to capitalize small businesses. It is a well written bill.

DR. WILLIAM CROWLEY, G. T. Murray & Co., Helena, a registered security firm, and a member of the Municipal Security Loan making board, also teaches economics, is president of the G. T. Murray & co. He is here to support this bill. It is necessary to get legislation in place before they can work with Montana. He thinks HB 798 is the necessary enabling legislation to allow marketing of taxexempt bonds which are sold at a lower interest rate because the interest rate is not taxable to the bond holders. As a result, many projects will become feasible because the cost of financing will be less, and funds will be available to stimulate the economy.

There are three issues that relate to this bill. You compete with thousands of other entities and large corporations, small companies, and with individuals desiring to borrow money. The simple law of supply and demand controls - demand is growing and supply of money is restrictive. The cost of money will increase, and so more and more projects become unfeasible. This affects all industries in Montana - commerce, manufacturing, recreation, tourism. There is a need for maintaining and stimulation of economic activity in the state.

Lower interest rates will stimulate activity. Profits will be plowed back into the business, increased employment, increased earnings, increased spending will ensue. Five hundred permanent jobs will become available because of passage of this bill. It will have a multiplier effect which could be in the area of 3-4. That is, $1 invested in a business will generate $4 in the community. There is a time lag between conception and implementation. This is applying a financing concept that has had good results in other states - development of industrial revenue bonds. Results would be achieved at no costs to the state because costs to the authority would be paid by the borrowers. This will not set up a state bank. Financial institutions will process all applications and will be paid a service fee of 10% of each loan. They will screen all applications, process all loans and won't be paid a fee for doing this work. The projects will be self-sufficient. Loans will stand on their own merit. There would be a limit of $150 million outstanding notes and bonds at any one time. The credit of the state is not pledged. These loans will stand on their own merit.

The bonds have a taxexempt status, but the projects financed by issuance of these bonds will be subject to taxation.

CLARK PYFER, Montana Chamber of Commerce, as a practicing CPA representing himself, supports HB 798. It will provide investment capital for the state of Montana. This is the area we need to provide a climate of financial capital such as this. He supports this bill very much as it would help a capital strangled state that Montana is.

GREGOR T. AFURRNY, G. T. Murray & Co., thought Dr. Crowley had given the committee a good overview of the bill. What he says is that out there there is a great deal of competition. He thinks this bill is a position statement to all state banking firms that Montana is on the move. Their job is to get those instructions to the place where it is needed and to get the money in there.

REP. HARRISON FAGG, speaking as a person in the construction business, supports HB 798. He said a basic business in Billings that had been in business for 40-50 years just went bankrupt. Because of gas curtailment, he had to shut his production down and when it was re-started, it blew up, and it never got started again. He couldn't get financing, but the banks would have picked up the 10% as in the bill. Capital means a lot of small businesses that can participate. There are many, many good points about this bill. It will bring jobs and industry. It is very difficult to attract money into Montana - people want to place their money into other more metropolitan areas rather than in Montana.

REP. ROBERT ELLERD, District #75, Bozeman, likes this bill very much and hopedthat the sponsor would give him the opportunity offered on line 20, page 1 to include all phases of agriculture and the livestock industry. That would include all the other three bills floating around here. Dollarwise it is enough to purchase farms and he thinks maybe the bill could be worked out for everybody involved. He thinks it is a very fair bill and will support it 100%.

OPPONENTS: None

QUESTIONS -

Rep. Kitselman explained that other bills include agriculture. HB 798 is to pump money into our economy.

Rep. Wallin asked if this is similar to the SBA program. Rep. Fagg said the SBA doesn't have enough money. It provides for blended money - if we could get SBA money and some other money, it would make for relatively reasonable capital. Banks would participate 25-30%. They would no longer be tax exempt bonds and so that is why we lowered it to 10%.

HOUSE BILL 778 -

REP. HAL HARPER, District #30, Helena, and Rep. W. J. Fabrega were sponsors of HB 778 which Rep. Harper explained is identical to the bill that Rep. Fabrega introduced to the committee last week with the exception his bill said that it would not apply to labor disputes and this bill does. You can't agree to submit future controversy to arbitration and expect that to be binding and enforced by a court of law unless you are involved in interstate commerce. Interstate contracts can't be enforced. If we are going to allow commercial arbitration, there is no reason to submit future disputes to arbitration.

GREG McCURDY, Montana Arbitrators' Association, an association of professional arbitrators, of which he is president, Avon said this is essentially a neutral bill. It is sponsored by arbitrators. There are approximately 40 states in the U.S. which presently have this bill or something very similar. He explained the bill in detail. The intent is to provide a board of uniformity. The existing system is a hodgepodge of legal entanglements. It would provide a relatively cleancut proceeding whereby people who agree to arbitrate have a proper place and the guideline to arbitrate. It is designed to be extremely expeditious and fair in keeping with the intent of arbitration processes. See EXHIBIT G - Arbitration in Montana and the Need For New Legislation.

DAVID SEXTON, Montana Education Association, Helena, advised this does not compel arbitration - it simply provides procedures and guidelines that are applicable if they want arbitration. Section 3 is the pertinent section. This act will only apply if the employee and employer agree to arbitrate unless otherwise stated in the bargaining agreement. He supports the opportunity for those parties who want to have a set of guidelines in determining the responsibilities and authorities for awards.

JIM HUGHES, Mountain Bell Telephone, said he is not a labor expert. They are in favor of this type of legislation. It provides a viable tool and this is a satisfactory capability to have available.

WAYNE BUCHANAN, Montana School Boards Association, Helena, is probably neutral on it. The bill applies not only to people in the private sector, but also in the public sector and they have some particular problems in the public sector. School boards are statutorily controlled and have to act under certain laws.

REP. FABREGA RETURNED TO COMMITTEE CHAIRMANSHIP .

Mr. Buchanan recommends that arbitration awards should be able to be vacated if one or both parties having to perform an act contrary to law or public policy is required by the award. This would be an important addition to the law. Since they are strictly governed by their budgets, they need to be able to vacate awards as set out in section 15, subsection (2), page 8, line 14-16. An arbitrator should not be able to enforce something that a court would not or could not perform. This is a flaw in the bill and perhaps should be deleted. Need to clarify that section.

Page 3, line 15, Section 6 - appointment of an arbitrator. He questioned the difficulty of getting an arbitrator. The first one to get there could go to a judge who is a conservative or liberal judge, he appoints the arbitrators and if the other person goes to a conservative judge - he feels it is better to have some sort of an adversary procedure. He feels these are minor adjustments. It is a good bill and gives them a system they can go by and know what to expect.

LEROY SCHRAMM, said he appeared as a proponent, but now he is neutral since he takes exception to two sections. Section 22 on page 12 would be all that is necessary. It is a very good section in this bill. Section 10 allowing for subpoenaes is good. The rest of the bill he takes a neutral position on.

OPPONENTS -

KEVIN CAMPANA, IUOE #400, Helena, is a labor law attorney for the operating engineers. The Uniform Arbitration Act system currently works and that is why the operating engineers and AFL-CIO is here. They have had no complaint that the union system is breaking down. The union will say we will go to arbitration process and live by that decision. There are very few breakdowns in the process at the present time. Two major breakdowns

is when the employer says he will not go to arbitration. The federal court can be asked for and can get an order to arbitrate, and would go into the federal court if the employer wouldn't comply. This is not in response to some problems. Shouldn't fix something if it isn't broken. This overlies the system. Takes service requirements, depositions, appeals. Page 1, section 5 - getting a stay of arbitration - a trial arbitration would add further delay to this process. Under HB 778 wouldn't have to deal with depositions or witness fees and other things according to section 4. Section 22 should be amended. A flow chart for this bill was almost impossible to make. He feels there is a real potential for abuse. With the exception of Section 22, he recommended killing the rest of this bill.

DON JUDGE, AFL-CIO, said the current system is working. Urge HB 778 be given a Do Not Pass or amend everything out of it except section 22.

QUESTIONS - None

Rep. Harper closed.

HOUSE BILL 431 - Continuation of hearing -

The fiscal note says it will cut about $435,000 from the capital outlay.

OPPONENTS - (See witness sheets attached)

JIM PAINE, Montana Consumers Counsel, Helena, opposes HB 431.

CARL J. DONOVAN, MAP, Great Falls, spoke against the bill for Power to the People and Low Income persons.

BILL OPITZ, Executive Director for the PSC, thinks HB 431 should be tabled. There were computer costs that were not shown on the fiscal note.

JIM JENSEN, LISCA, Helena, stood in opposition to the bill and supports the motion to table.

QUESTIONS: None

EXECUTIVE SESSION:

Rep. Meyer moved HOUSE BILL 431 BE TABLED. Motion carried unanimously.

REGULAR MEETING CONTINUED -

HOUSE BILL 802 was now again under consideration and open to testimony.

PROPONENTS: They had been heard previously today.

OPPONENTS -

PAUL KELLER, Helena attorney, said this will allow a person to purchase insurance and cover many other automobiles which he doesn't declare and for one premium on one automobile and insure many others. It allows him to drive many other vehicles that aren't insured. They could be in someone else's ownership and not in his and he could drive them permanently. It would drive up the rates for all of us. It increases the exposure to the extent that it would be impossible to tell what it would do. There is no history. It would iron out in about five years the industry says to where the average person would pay considerably less and the low income groups would pay more. It would go up about $100 on this alone without taking into account inflation. A person with bad credit rating might not be able to get insurance. You couldn't tell what the average young person would have to pay for insurance. He was not sure what this bill is driving at, but it creates more problems than the present insurance law. It will create a lot of problems. He represents insurance agents.

R.W.PEDERSEN, Claims Manager with United Pacific, said the bill makes no distinction between private passenger cars and commercial vehicles. Everybody is going to pay a little bit of commercial insurance rates. We would run into another problem with a lack of accordance with other states. Policies in them are all similar. There is no way to rewrite in the contracts with other states. Presently there is a pretty consistent policy. This would establish a rate level that everybody pays much closer to the same rate. Those who have single cars or good driving records will pay more and those who have five cars and bad driving records will pay less.

NORMA SEIFFERT, Deputy Commissioner of the Insurance Department, feels complaints made by Keller and other opponents are very, very good. She thinks this would shut down control that has been developed. If the law passes, it will be an extra burden on their office and she asked to have the privilege of attaching a fiscal note to this. Insurance groups will say they won't insure any more policies in Montana. She asked that a fiscal note be considered before it is OK'd.

ROBERT JAMES, State Farm Insurance, Great Falls, doesn't really understand the bill and doesn't think it accomplishes the purpose it raises. Public policy has been to provide more protection to the public by mandatory insurance law. Under this bill we will have less protection and a higher cost. How are you going to enforce it? The law requires proof of insurance. There are a number of drivers who don't own automobiles - how are you going to be sure they have insurance. If I loan my car to someone who is uninsured, it would appear that there is no coverage then. There would be a lot of disputes about coverage. There will have to be all new policies and rate schedules approved by the Commissioner of Insurance's office. A company may insure 20 vehicles covering the company vehicles, but they may have to terminate that policy and put a new name on it. Farmers kids drive grain trucks. Grain handling will be much more expensive. Doesn't think there is any overriding need for this.

QUESTIONS

Rep. Harper asked if this doesn't put the decision on whether the car

is dangerous or not. Mr. Pedersen said that depends on the driver. The safety factor is the person driving the car.

Rep. Robbins said he can't see why it would increase rates so much. He favors this bill because he has five antigue cars. Mr. Seiffert mentioned that a driver might have more insurance than the person who owns the car.

Rep. Meyer closed.

Meeting adjourned at 12:15 p.m.

REP. W. J. FABREGA, Chairman

Josephine Lahti, Secretary

VISITORS' REGISTER

HOUSE [illegible] COMMITTEE

BILL [illegible] Date [illegible]

SPONSOR [illegible]

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
[illegible]	[illegible]	[illegible]	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

VISITORS' REGISTER

HOUSE ______________________ COMMITTEE

BILL [illegible] Date 2/[illegible]

SPONSOR ______________________

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
[illegible]		[illegible]		
[illegible]		[illegible]		
[illegible]		[illegible]		
R. [illegible]nes	Great Falls	State Farm Ins.		✓
Roger McGlenn	Helena	[illegible]		✓
Mike McCoy	Helena	MTLA	✓	
[illegible]	[illegible]			✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

VISITORS' REGISTER

HOUSE ______________________ COMMITTEE

BILL 782 Date 3/20

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Janelle Fallon	Mont Chamber - Helena			✓
[illegible]	1127 [illegible]	[illegible]		✓
[illegible]	[illegible]	[illegible]		✓
Cliff Jackson	Helena	Mont Food Dist. [illegible]		✓
[illegible] Ellis	[illegible]	[illegible]	✓	
Richard [illegible]	Helena	Self	✓	
Mark O'Keefe	Helena	Self	✓	
[illegible] Mancinelli	318 Clarke, Helena	Self	✓	
Dr. Jack Stanford	Biological Station Bigfork		✓	
[illegible]	Butte Mont	[illegible]		✓
Jim Jensen	Helena, MT.	Self	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

Exhibit A

COMMENTS ON HB 782
to
HOUSE BUSINESS AND INDUSTRY COMMITTEE
by
Dr. J. A. Stanford
Director
University of Montana Biological Station
East Shore, Flathead Lake
Bigfork, Montana 59911

1) Productivity and, hence, the processes of eutrophication in Flathead Lake and other western Montana lakes is limited by a paucity of biologically reactive phosphorus.

   a) Based on world data, N:P > 7:1 indicates phosphorus limiting situation.

   b) N:P ratio in Flathead Lake is 17.2:1 on average basis in the water column. Inflowing waters from all sources 18:1.

   c) Most of the P entering Flathead Lake comes from natural sources (ca. 75 percent). About 25 percent is derived from cultural sources. Of the cultural sources, the easiest point to control P additions is in domestic sewage.

   d) Seven to 12 percent of mass of detergents is P.

2) The present status of Flathead Lake is border-line oligotrophic and has probably changed from oligotrophic status in recent times.

   a) .37 g P $m^2 yr^{-1}$ would be maximum loading rate to maintain oligotrophy, based on world data.

   b) .36 g P $m^2 yr^{-1}$ is presently flowing into Flathead Lake.

   c) A perceptible (to the public eye) change in water quality will occur if increase loading rate by 30 to 50 percent.

3) Any feasible means that will prevent additional P from entering Flathead Lake will help alleviate a trend toward undesirable blooms of nuisance algae.

Reduction In Phosphorus Loading Which Would Occur In The 16 Montana Lakes Studied In The U.S. National Eutrophication Survey Conducted By The Environmental Protection Agency If Detergent Phosphates Are Banned

Lake	Total Phosphorus Entering Lake (lbs/yr)	Phosphorus Loading With A Detergent Phosphate Ban (lbs/yr)	%Phosphorus Loading Reduction With A Detergent Phosphate Ban
Canyon Ferry Reservoir	726,000	725,000	0.1
Georgetown Lake	1,700	1,660	2.4
Hebgen Lake	53,300	53,250	0.1
Mary Ronan Lake	2,500	2,490	0.4
Swan Lake	37,400	37,360	0.1
Lake McDonald	20,600	20,545	0.3
Whitefish Lake	12,900	12,860	0.3
Nelson Reservoir	16,800	16,790	0.1
Seeley Lake	7,450	7,420	0.4
Tiber Reservoir	70,800	67,400	4.8
Tongue River	294,000	294,000	0.0
Koocanusa Reservoir	58,600	57,200	2.4
Yellowtail Reservoir	2,311,000	2,311,000	0.0
Flathead Lake	382,400	363,700	4.9
Tally Lake	6,000	5,990	0.1
Clark Canyon Reservoir	44,000	43,995	0.1

Distributed by: Jerome Anderson, Barry Hjort, Chad Smith

Representing: The Soap and Detergent Association
Monsanto

In opposition to HB 782.

Exhibit B

Testimony For HB 782 February 20, 1981

Mr. Chairman and members of the committee,

My name is Stephen Mancinelli, a private citizen.

The point I would like to address is the problem of phospate pollution in Montana' water resources. There has been studies done in other areas of the country(Wetzel, 1975) establishing the relationship between phosphate and euthropication of surface waters(euthropication refering to enriching the productivity of an aquatic system). The sources of phosphates are many; household cleaning products, partially treated sewage, and fertilizers to name a few.

I do not konw the extent to which phospate is a water pollutent in Montana. I do not know how much of this available phospate comes from household cleaning products. I do konw that this bill would lessen the potential amount of phospate as a pollutent. We have learned what a problem phospate pollution is in other states, so we should act before it is a problem here in Montana. Therefore, I favor passage of this bill
Thank you.

Sincerely,

Stephen Mancinelli

I am a fisherman and enjoy Montanas' water resources. I am concerned about water quality, and its part in maintaining these water resources.

NAME Jerome Anderson BILL No. 282

ADDRESS Billings Mont DATE 2/20/81

WHOM DO YOU REPRESENT Soap & Detergent Ass.

SUPPORT ______ OPPOSE ✓ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

Exhibit C

Review of Technical Data on the Lakes in Montana

For a clear understanding of why a ban on phosphate in laundry detergents would not perceptibly improve the water quality of the lakes in Montana, it will be useful to review the lakes individually, and to examine each one's distinct pattern of phosphorus loading.

The Canyon Ferry Reservoir is one of the three largest water impoundments in Montana (the other two being Flathead Lake and Fort Peck Lake). It is located in the western counties of Lewis and Clark and Broadwater, close to the capital city, Helena. Canyon Ferry Reservoir is a eutrophic lake, and is nitrogen-limited. According to a U.S. EPA National Eutrophication Survey (NES)[1], more than 99% of the phosphorus loading into this lake is from non-point sources. The sewage treatment facility at Townsend contributes only 0.4% of the phosphorus loading into this lake. It is the only point source within a 40 km distance of the lake. In addition to this point source, it has been estimated that septic tanks in the area contribute less than 0.1% of the total phosphorus loading. The present phosphorus loading of 2.27 $g/m^2/year$[1] is twice that proposed by Vollenweider[2] as a eutrophic loading. Since more than 99% of this loading is from non-point sources, removal of the phosphorus contribution due to detergents could have absolutely no effect on the overall water quality of this reservoir.

Georgetown Lake, in the far western part of Montana, is located in both Deer Lodge and Granite Counties. It is a nitrogen-limited eutrophic lake. There are no point sources located on or near the lake. The NES survey[3] performed on this lake indicates that 7.0% of the phosphorus loading is attributable to septic tanks in the area. If one assumes that 35% of the septic tank contribution is due to detergent phosphates, then only ~2.5% of the total phosphorus loading into the lake is from detergent origin. Thus, a detergent phosphate ban could not be expected to significantly alter the trophic status of Georgetown Lake. The NES report states that the submarine springs which feed the lake are probably the major contributors of phosphorus into the lake; however, this contribution cannot be accurately quantified at this time. Nevertheless, approximately 93% of the measurable loadings of phosphorus into Georgetown Lake are due to non-point sources and thus would remain unaffected by a detergent phosphate ban.

Clark Canyon Reservoir in Beaverhead County is in the southwestern corner of Montana. There are no known point sources on this lake. It is classified as eutrophic, and over 99% of the total phosphorus loading is attributable to land run-off, precipitation, and tributary contributions. It is estimated that septic tanks in the area contribute less than 0.1% of the total phosphorus loading. A detergent phosphate ban would not appreciably reduce the phosphorus loading into the Clark Canyon Reservoir, nor could it have any beneficial effect on its trophic status.

Hebgen Lake is located in the southern border county of Gallantin, very close to Idaho. This lake has been classified as meso-eutrophic[4] and is nitrogen-limited.

---

1 U.S. EPA, NES, Working Paper No. 790, 1977

2 Vollenweider, R. A. and P. J. Dillon, The application of the phosphorus loading concept to eutrophication research. Natl. Res. Council of Canada Publ. No. 13690, Canada Center for Inland Waters, Burlington, Ontario. 1974.

3 U.S. EPA, NES Working Paper No. 793, 1977.

4 U.S. EPA, NES Working Paper No. 794, 1977.

Less than 0.3% of the total phosphorus loading is attributable to septic tanks, and the lake has no point sources. More than 99% of the phosphorus loading is due to non-point sources, and would be unaffected by a detergent phosphate ban.

Mary Ronan Lake is located in Lake County in the northwest area of Montana. It is very similar to Hebgen Lake, being meso-eutrophic and nitrogen-limited.[5] Approximately 98.7% of the phosphorus loading is due to non-point sources, mainly its tributaries. About 1.8% is estimated to come from area septic tanks. There are no point sources on Mary Ronan Lake. Also located in Lake County is Swan Lake. It is mesotrophic and nitrogen-limited for most of the year.[6] During July and September, the lake may be phosphorus-limited. Approximately 99.7% of the phosphorus loading into Swan Lake is due to non-point sources, with the remaining 0.3% contributed by area septic tanks. Neither Swan Lake nor Mary Ronan Lake would be affected with respect to water quality or trophic status by a ban on detergent phosphates.

Lake McDonald, Tally Lake and Whitefish Lake are all located within the northwestern county of Flathead. Whitefish and McDonald are oligotrophic lakes,[7,8] and Tally Lake is classified as oligo-mesotrophic.[9] All have very good overall water quality. None of them has any point source discharge of phosphorus. (Until 1976, Lake McDonald had a single sewage treatment plant discharging into it. The contribution of phosphorus from this plant was calculated to be ~2.1% at that time. Currently, the discharge from this plant has been diverted and no longer impacts on the lake). Lake McDonald receives no septic tank input of phosphorus. Septic tank phosphorus loadings into Tally Lake and Whitefish Lake are calculated to be 0.2% and 0.9%, respectively, of the total phosphorus loading into each lake. Therefore, better than 99% of the phosphorus loading into these three Flathead County lakes is due to non-point sources. A detergent phosphate ban would have no perceptible benefit for either the water quality or the already excellent trophic status of any of these lakes.

Nelson Reservoir is in Phillips County, a north-central county on the Canadian border. It is a nitrogen-limited eutrophic lake, which receives 99.8% of its total phosphorus-loading from non-point sources.[10] The remaining 0.2% is attributed to septic tanks in the area. There are no point-sources on the lake. Therefore, a detergent phosphate ban could have no perceptible effect on the trophic status of the Nelson Reservoir.

Seely Lake, in Missoula County, is in the southwestern part of Montana. It is classified as being meso-eutrophic and nitrogen-limited.[11] There are no point sources on this lake, and only 1.2% of the total phosphorus loading into Seely Lake has been attributed to septic tanks. Since 98.8% of the phosphorus-loading into this lake is from non-point sources, a detergent phosphate ban could neither slow nor reverse the current trend to a eutrophic status. In addition, the NES report states that poor circulation in the southern areas of the lake is likely responsible for a substantial accumulation of nutrients in the lake (Ref. 11, pg. 2), which would be independent of any controls applied to the current point and non-point sources of nutrients.

---

5 U.S. EPA, NES Working Paper No. 796, 1977.
6 U.S. EPA, NES Working Paper No. 800, 1977.
7 U.S. EPA, NES Working Paper No. 804, 1977.
8 U.S. EPA, NES Working Paper No. 797, 1977.
9 U.S. EPA, NES Working Paper No. 801, 1977.
10 U.S. EPA, NES Working Paper No. 798, 1977.
11 U.S. EPA, NES Working Paper No. 799, 1977.

Tiber Reservoir is located in both Liberty and Toole Counties, on the central northern border of the state. It is limited by both phosphorus and light, with the latter being the usual controlling factor. When turbidity in this lake periodically decreases, light is no longer the limiting factor to algal growth, and phosphorus becomes the limiting nutrient. The Tiber Reservoir is classified as meso-eutrophic.[12] It has as the single point source a sewage treatment plant in Shelby. It has been estimated that this plant contributes 13.7% of the total phosphorus loading into this lake. The rest comes from non-point sources. A ban on detergent phosphates could reduce the current phosphorus loading by only 4.8%, and most probably would have a very minimal effect on the overall water quality and the trophic status of the lake.

The Tongue River Reservoir in Bighorn County is on the south-central border of Montana close to Wyoming. It is a nitrogen-limited lake of eutrophic status.[13] The only point source which impacts on this lake is a sewage treatment plant in Sheridan, Wyoming which discharges into the Tongue River about 20 miles away from the Reservoir. The contribution of this plant to the total phosphorus loading into the Reservoir is calculated to be 11.1%. The remainder comes from non-point sources. Since the only point source to this lake is in Wyoming, a detergent phosphate ban in Montana would cause no reduction in the phosphorus loading to the Tongue River Reservoir.

The Koocanusa Reservoir is located in both Lincoln County, Montana and British Columbia, Canada. According to an NES report[14], 86% of the drainage area of this lake lies in Canada. The survey calculated phosphorus loadings solely from U.S. sources. The Koocanusa Reservoir is nitrogen-limited and mesotrophic. Approximately 93.1% of the U.S. phosphorus loading into this lake is fron non-point sources. The remaining 6.9% is from the single U.S. point source which impacts on the lake, a sewage treatment plant in Eureka. A detergent phosphate ban could reduce the U.S. loading by a maximum of 2.3%, which is probably negligible when viewed relative to the Canadian point and non-point source contributions to the phosphorus loading into the Koocanusa Reservoir.

The Yellowtail Reservoir is located in both Montana and Wyoming. It crosses through Bighorn and Carbon Counties in Montana, and is also in Bighorn County, Wyoming. The Yellowtail Reservoir is eutrophic in Wyoming, progressing to meso-eutrophic in southern Montana, and then becomes mesotrophic at its northern end.[15] Presently, 0.8% of the total phosphorus loading is from four sewage treatment plants around the lake. The rest is contributed by non-point sources. The present yearly phosphorus loading into the Yellowtail Reservoir would have to be reduced by nearly 93% to just equal the eutrophic loading (Ref. 15, pg. 3), according to the U.S. EPA report. Such a reduction would clearly require non-point source control. A detergent phosphate ban would have no perceptible effect on the trophic status of this lake.

Flathead Lake, in the northwestern counties of Lake and Flathead, is probably the most extensively studied of all the lakes in Montana. It is an oligotrophic lake and is probably phosphorus-limited during most of the year, although data on this subject are not always in agreement (Ref. 16, pp 1-2; Ref. 17, pg. 9). The overall water quality is excellent, as evidenced by the abundance and diversity of

---

12 U.S. EPA Working Paper No. 802, 1977.
13 U.S. EPA Working Paper No. 803, 1977.
14 U.S. EPA Working Paper No. 795, 1977.
15 U.S. EPA Working Paper No. 894, 1977.

fish species in the area, as well as the documented surveys of the major water quality parameters.[16,17,18]

The only point sources of phosphorus are five sewage treatment plants with discharges which impact on Flathead Lake. The largest of these is the plant at Kalispell (~9 miles up the Flathead River) which serves a population of approximately 10,500 and has a mean flow of about 1.5 MGD. It discharges ~15,270 kg P/year, or about 8.8% of the total phosphorus loading into Flathead Lake. The community of Whitefish (~20 miles up the Whitefish River) has a sewage treatment plant which serves a population of approximately 3,400. The mean flow of this plant is 0.3 MGD. It discharges ~ 3,855 kg P/year, or about 2.2% of the total phosphorus loading into Flathead Lake. The third largest sewage treatment plant on Flathead Lake serves the community of Columbia Falls (population ~2,000), which is located ~ 20 miles up the Flathead River. The mean flow for this plant is ~0.2 MGD. It discharges 2,270 kg P/year, or about 1.3% of the total phosphorus loading into Flathead Lake. The treatment plant which serves the community of Big Fork (population ~500) has a mean flow of 0.2 MGD and discharges ~ 2,400 kg P/year directly into Flathead Lake. This amounts to 1.4% of the total phosphorus loading into the lake. None of these plants practice phosphorus removal by chemical treatment. The reamining point source of phosphorus is the treatment facility at the Yellow Bay Biological Station. This plant serves an average population of 125 (350 during the summer months and only 12 during the winter months). Mean flow is very low, ~ 35,000 gallons per day, although this figure must be much higher during the summer months. The plant does practice chemical removal of the phosphorus in its wastewater, and contributes only ~ 5 kg P/year to Flathead Lake, which is much less than 0.1% of the total phosphorus loading into the lake. The combined phosphorus contribution of all five point sources amounts to only ~ 13.7% of the total phosphorus loading into the lake. Detergent phosphates represent only 35% of this point source contribution, or ~4.8% of the total phosphorus loading.

There are 465 septic tanks in the vicinity of Flathead Lake. They contribute an estimated 0.3% of the phosphorus loading into the lake. Only 35% of this figure can be attributed to detergent phosphates, bringing the total phosphorus contribution to Flathead Lake from all detergent origins to ~ 4.9%. A detergent phosphate ban would therefore be expected to decrease the phosphorus loading into this lake by less than 5%. The result would be an insignificant decrease in the overall phosphorus concentration in the lake.

Septic tanks have been estimated to contribute phosphorus to nearly all the Montana lakes. To date, however, no studies have been performed in Montana to demonstrate whether or not this is true. A brief review of the published literature concerning phosphate removal in soils adjacent to septic tanks will yield some perspective on this question.

Most soils are capable of fixing very large amounts of phosphorus. The mechanisms of phosphorus fixation include: adsorption, precipitation reactions with iron, aluminum and calcium, and replacement reactions involving a change in

---

16 U.S. EPA NES Working Paper No. 792, 1977.

17 Flathead Drainage 208 Project, Executive Summary, 1978.

18 Caufin, A.R., G. W. Prescott and J.F. Tibbs, Limnological Studies of Flathead Lake, Montana: A Status Report, April, 1976. EPA-600/3-76-039. EPA Ecol. Res. Series.

crystalline structure. In addition, phosphorus present in the soluble orthophosphate form may be converted by certain bacteria to insoluble forms.[19] In hard water areas, the likelihood of significant phosphate transport from septic tank systems to the surface waters is greatly reduced by the presence of calcium carbonate in the soil, which reacts to form insoluble phosphorus precipitates.[20] Even though phosphorus may be found to be present in septic tank effluents in concentrations of 20 mg/l (as phosphate), it is usually not present in significant concentrations in ground water adjacent to the system.[21] The Michigan Department of Health has conducted a study of nutrient transport from septic tanks to ground water [21], and reports that very little phosphorus migrates from septic tanks to local ground waters in their study area. Childs[22], in a study of septic tank systems in the Houghton Lake area in Michigan, concludes that 98% of the phosphorus present in septic tank effluents is adsorbed into the soil within the zone of saturation. He further concludes that the adsorption capacity of soil can be as great under water saturated conditions as under aerated conditions.

Given the above information, it is possible that the contribution of phosphorus from septic tanks to the surface waters of Montana is not as great as estimated in the U.S. EPA NES studies (maximum to any given lake is 7.0%), and may actually be non-existent. If the septic tanks are indeed contributing phosphorus to the surface waters, it is likely that bacterial, viral and nitrogen contamination are also occurring. If this is the case, a ban on detergent phosphates will not solve the other potential more serious pollution problems presented by the septic tanks. Upgrading the condition of the septic tanks and tile fields would seem to be a more appropriate solution.

To summarize, while eutrophic problems do exist in some of Montana's lakes, these problems are <u>without exception</u> due to non-point source discharges of nutrients. Detergent phosphates do <u>not</u> represent a significant contribution to the point-source phosphorus loading of any of the studied lakes. In addition, although the phosphorus loading from septic tanks around the Montana lakes has not been accurately quantified, the maximum contribution by this route from detergent phosphates is 2.5% in one lake, and less than 1% in all the others.

The water quality studies performed on sixteen Montana lakes support the statement that a detergent phosphate ban will have no perceptible effect on the water quality or eutrophic status of Montana lakes.

---

19 Dudley, J.G. "Nutrient Enrichment of Ground Water From Septic Tank Disposal Systems", Master's Thesis, University of Wisconsin, 1973.

20 Lee, G.F. and R.A. Jones. "Septic Tank Wastewater Disposal Systems as Phosphorus Sources for Surface Waters". Occasional Paper No. 13, Center for Environmental Studies, University of Texas at Dallas, 1977.

21 Polta, R.C. "Septic Tank Effluents. Water Pollution by Nutrients: Sources, Effects and Control". Paper presented at the 1969 Annual Meeting of the Minnesota Chapter of the Soil Cons. Soc. of America. Univ. of Minn. Water Resources Research Center Bulletin 13: pg. 53-57.

22 Childs, K.E.. "Migration of Phosphorus Wastes in Ground Waters", Geological Survey Division, Michigan Department of Natural Resources, 1974.

Circulated by Jerome Anderson, Barry Hjort, Chad Smith

Lobbyists for The Soap and Detergent Association
Monsanto
In opposition to HB 753

Exhibit C

Why A Detergent Phosphate Ban Is Not In The Best Interest Of Montana Citizens

Review of all important factors in the State of Montana indicate that a detergent phosphate ban could have no possible effect on water quality within the State and will lead to poor detergent performance and exorbitant consumer costs. The ban on detergent phosphates in the State would cost residents over $14 million annually with no possibility of any perceptible benefit.

Based on:

I. A ban of detergents containing phosphate will have no perceptible effect on the water quality in Montana lakes. The maximum contribution of phosphorus from detergents to any single lake in Montana is 4.9% of the total phosphorus entering the lake. Detergent phosphates contribute less than 0.22% of the total phosphorus entering the majority of lakes studied in Montana by U.S. EPA and Montana 208 Planning Commissions. Therefore, in every Montana lake studied it has been shown that the very small contribution of phosphorus from detergents can have no perceptible effect on water quality.

II. A ban of detergents containing phosphate will not serve to prevent the eutrophication of Flathead Lake (as has been suggested) because:

   A. The combined phosphorus contribution of all five point sources (municipal sewage discharge) around Flathead Lake amounts to only 13.7% of the total phosphorus loading into that lake. (It is interesting to note that point source contribution of phosphorus to Canyon Ferry Reservoir is only 0.4% of its total phosphorus loading.)

   B. Phosphorus from detergents comprise only 35% of the total phosphorus present in municipal sewage.

   C. Phosphates in detergents currently contribute only 4.8% of the phosphorus entering Flathead Lake from point sources, and an additional 0.1% if septic tank systems are considered. (In Canyon Ferry total detergent phosphorus contribution would be only 0.1%).

D. There is no scientific evidence that phosphorus from septic tank fields can be a significant source of lake phosphorus loading. In fact, documented scientific studies show exactly the opposite; that is, phosphorus is rapidly absorbed to soil particles in tile fields.

E. There is no scientific evidence supporting the proposition that all phosphorus loadings entering tributaries upstream from a lake ultimately reach the downstream lake. In fact, U.S. EPA has considered phosphorus sources no further than 25 miles from a lake in studies conducted on Montana lakes.

F. If direct discharge of sewage into the lake occurs from households, the sanitary hazard is far more serious than the small additional amount of phosphorus entering the lake.

Note: The Summary of the Flathead Drainage 208 Project proposes that promotion of centralized urban growth, upgrading of sewage treatment systems and promotion of adequate septic tank design, installation and maintenance will be needed to prevent water degradation due to urban growth. Of the toal eleven action items proposed in this report, a detergent phosphate ban was not mentioned.

Chemical treatment at sewage plants will effectively remove more than 90% of all the phosphorus in sewage influent at a reasonable cost. This will provide a much more effective measure to prevent eutrophication. Cost for the removal of detergent phosphorus would be approximately $1.80 per family annually. Existing sewage treatment plants could add phosphate removal facilities at an estimated cost of from $20,000 to $30,000 per plant.

III. A ban of detergents containing phosphates would have a significant negative impact on the cleaning performance of detergents available to Montana citizens because:

. Fifty-eight percent of the people of Montana are employed in jobs involving hard, physical work producing high levels of particulate dirt and body soil that will be ground into fabrics. Any deficiencies in the laundry detergent used (reduced cleaning performance, poor soil suspension) will not only add to

the burden but will be readily recognized by these Montana people.

. Montana is a hard water state with 69% of the population having hard to very hard water. Hard water impedes detergent products in doing their work of removing dirt and holding that dirt in the wash water so that it will not settle back on the clothes. The harder the water the more difficult these tasks become.

. The soil removal and soil suspending capabilities of phosphate detergents have not been matched by any of the non-phosphate laundry detergents presently being offered for sale. This is true even in soft water.

. Carbonate, the primary material being used as the replacement for phosphate, combines with hardness minerals in water to form harsh insoluble residues. These insoluble residues cause serious problems both in terms of limiting cleaning ability and causing damage to fabrics and washing machines.

. Heavy duty, unbuilt liquid laundry detergents, which are also non-phosphate detergents, are no match for phosphate detergents. While they offer some benefits on oily/greasy soil, they will not do as good a job of removing particulate and body soils nor of holding them in the wash to prevent them from redepositing on the clothes.

IV. Consumers recognize the problems associated with non-phosphate detergents. In areas of the country where phosphate bans have been imposed consumers report appreciably more laundering problems to detergent and appliance manufacturers.

V. During the past two years no ban on phosphates has been adopted by any legislative body in the United States. The State of Ohio and the Virginia Water Quality Board rejected such proposals during this time as did Washington D.C. and Atlanta, Georgia. There are two bills presently pending in the Indiana legislature to repeal anti-phosphate statutes which are now in effect in that state.

VI. Detergent phosphate bans require that consumers make costly adjustments in laundering habits to compensate for the lower overall performance of the non-phosphate products in order to achieve satisfactory results. Consumer surveys have shown that the following corrective measures are being practiced:

. Increased use of laundry detergents

. Increased use of such laundering aids as packaged water softeners, pretreating products, presoak or detergent booster products, bleaches, fabric softeners

. Pretreatment of more items

. Presoaking of clothes

. Rewashing of clothes not satisfactorily cleaned

. Extra rinsing in an attempt to remove residues

. Special treatments such as a vinegar rinse to remove residues (involving risk of damaging porcelain tubs)

. Installation of household water softening system

Experience has shown that in locations where phosphate bans have been instituted consumers have been required to use more and hotter water for laundering purposes. This results in waste of water and increased use of energy.

VII. Consumers prefer phosphate detergents. Market surveys in the Rocky Mountain States where both phosphate and non-phosphate detergents are available and consumers have a free choice, show that four out of five consumers select phosphate detergents.

VIII. A ban on detergents containing phosphates will have a significant economic impact on the consumers in Montana. The average annual cost to consumers will be about $55 per household, due to the above adjustments and service calls on washing machines and increased rate of clothing replacement. Based on the estimated households in Montana, a detergent phosphate ban would cost this State's residents fourteen and a half million dollars annually, a high price to pay unless definite rewards can be justified by fact rather than wishful thinking.

Distributed by: Jerome Anderson Barry Hjort Chad Smith

Representing: The Soap and Detergent Association Monsanto

IN OPPOSITION TO HOUSE BILL 782

Exhibit C

Facts About Home Laundering In Montana

The purpose of this paper is to review, emphasize and explain the reasons why the proposed ban on phosphate in laundry detergents would inflict a real and needlessly costly hardship on the people of Montana.

The Impact of the Montana Economy

A major segment of the work force of Montana is involved with work which results in difficult laundering problems. A quick review of the major industries vital to the economy of the State demonstrates this fact. It also emphasizes the point that a law which would reduce the performance of laundry detergents would be a disservice to Montana residents primarily responsible for the State's economic vitality.

Major Industries (Figure 1) (Reference 1)

Agriculture accounts for more than half of the value of goods produced annually in Montana. The agricultural industry in the State is composed of two major segments:

- Crop production with hard winter wheat of primary importance and hay a close second. Sugar beets, beans, corn, oats, barley and potatoes are also important. Both the valley regions of the mountains and the plains are productive crop-wise.
- Livestock production includes not only the predominant cattle for beef and sheep for wool but dairy cattle and hogs which are also important to the State's economy.

Forestry represents one of the fastest growing areas of economic activity.

Mining is carried out in almost every county in the State and accounts for about one-fifth of the value of goods produced.

Manufacturing provides more than one-fourth of the value of Montana's products. Largely this is devoted to the processing, refining, or fabricating of the products of Montana's own farms, forests and mines.

This says something about the people of Montana. They surely are an industrious lot, and not afraid of hard work. To be specific, here are some statistics on Montana's working people:

Types of Work Done by Montana People (Figure 2) (Reference 2)

According to the latest census data (1975), this is how the Montana population breaks out by type of employment:

Types of Workers	Number of Workers Male (14 years and older)	Female (14 years and older)	Total	%	
	229,000	163,000	392,000		
White Collar	74,000	91,000	165,000	42%	
Blue Collar	96,000	11,000	107,000	27%	
Service	20,000	51,000	71,000	18%	58%
Farm	40,000	9,000	49,000	13%	

Another way of saying this is that 58% of the people of Montana are employed in jobs involving hard, physical, dirty work. This in turn translates into dirty clothes. Let's look at a few examples:

Farmers - one can't work a back yard garden without getting dirty - let alone plowing, planting and harvesting crops from a 2000 acre farm in the dusty plains.

Ranchers - managing cattle and sheep roving over thousands of acres is not easy. While the work entailed in handling these animals may be romanticized in fiction, in fact it is rigorous and dirt producing.

Miners - wresting ore, any ore, from the ground would scarcely qualify as a clean occupation. The work clothes will be permeated with a variety of earthy types of dirt with coal dust being among the worst.

These and many of the other occupations will generate high levels of particulate dirt that will become embedded or ground into fabrics. Beyond the dirt associated with the various jobs, the level of ground in body soil will be high as a result of physical exertion. This means that the task of laundering in Montana under the best of conditions will not be easy for many of the people. Any deficiencies in the laundry detergent used (reduced cleaning performance, poor soil suspension) will not only add to the burden but will be readily recognized by these Montana people.

Montana Water Hardness (Figure 3) (Reference 3)

Compounding the problems of laundering is the fact that Montana is a hard water state. The presence of minerals, primarily calcium and magnesium, in water constitutes water hardness.

Figure 3 shows the precent of people in Montana having soft, moderately hard, hard and very hard water.

Water Hardness Ranges As defined in U.S. Geological Surveys, U.S. Department of Interior		Water Hardness Distribution By % Population on Public Water Supplies (419,535 people)	
Soft Water	(0-3.5GPG; 0-60PPM)	10%	
Moderately Hard Water	(3.6-7.0GPG; 61-120PPM)	21%	
Hard Water	(7.1-10.5GPG; 121-180PPM)	41%	69%
Very Hard Water	(Over 10.5GPG; Over 180PPM)	28%	

Of the remaining 45% of the population, many will likely be using well water, much of which will probably be quite hard. Thus the 69% figure representing the population having hard or very hard water is very likely a conservative figure.

Hard water impedes detergent products in doing their work of removing dirt and holding that dirt in the wash water so that it will not settle back on the clothes. The harder the water the more difficult these tasks become. However, detergents differ in their ability to handle water hardness and soil, so let's now turn our attention to the detergents themselves and how they work.

Detergents and How They Work (References 4 and 5)

While a laundry detergent has several important ingredients, each included to improve some aspect of overall performance, the two major ingredients common to most laundry detergents are the surfactant and the builder.

Surfactants (Figure 4, What Surfactants Do)

The surfactant or surface active agent is the primary cleaning ingredient. Its functions are to:

- Make water wetter and go to work faster
- Loosen and remove dirt - with the help of the washing action
- Hold removed dirt in the wash water - with help from the builder

The most effective surfactants are inhibited by water hardness minerals in performing some of these functions, hence the need for help from an ingredient known as the builder.

Builders (Figure 5, What Builders Do) (References 4,5,6)

The primary function of a builder is to soften water, but it is too simplistic to stop the definition here or to imply that all builders perform in the same manner. There are non-precipitating builders which sequester or tie-up hardness minerals in soluble form and there are precipitating builders which combine with hardness minerals to form insoluble residues. These insoluble residues cause serious problems both in terms of limiting cleaning ability and causing damage to fabrics and washing machines.

The Benefits of Phosphate

Phosphate is a superior sequestering or non-precipitating builder, thus it ties up calcium, magnesium, and other minerals and holds them in solution thereby avoiding undersirable deposits. It also:

- Increases surfactant efficiency
- Contributes to good cleaning for clay, mud, dust, body soils and stains
- Has good soil suspending ability
- Provides a free flowing, easy to dissolve product.

The soil removal capabilities of the phosphate formulas have not been matched by any of the non-phosphate laundry detergents presently being offered for sale. The deficiencies of the non-phosphate products in cleaning will be evident on body soils, such as mud, clay or dust and in the removal of many stains commonly found in the home laundry.

Compounding the cleaning inadequacies will be the lesser ability of all of such non-phosphate laundry detergents to suspend removed soil in the washing solution. This results in increased redeposition of soil on fabrics which leads to fabric discoloration -- the greying of whites, the dinginess of colors.

What is the alternative to phosphate? Carbonate!

Carbonate and Its Limitations

Sodium carbonate has been the primary replacement builder because of its availability and feasibility from a cost standpoint. However, it has serious drawbacks:

- Softens water by precipitating the hardness minerals

- Forms harsh, insoluble limestone residue
- Has limited cleaning ability
- Has poor soil suspending ability
- Causes finished product to cake, lump and dissolve slowly

Problems Created by Carbonate (Figure 6) (References 4,5,6,7,8,9a & b, 10a & b, 11,12,13)

Deposits of insoluble precipitates create problems for both automatic washers and for fabrics.

In automatic washers calcium carbonate can build-up in the pump, in hoses, around perforations in the wash basket, and in the collector tub. In time this can cause machines to malfunction. In fact it has already done so in phosphate ban areas.

On fabrics the build-up of precipitates:

- Masks colors causing the fabrics to look faded
- Makes the fabrics feel stiff and scratchy
- Makes sewing threads in elastic waist bands or sock tops brittle causing them to break
- Makes zippers and grippers hard to operate
- Speeds up abrasion of shirt collars, trouser creases, edges, hems, cuffs, etc., causing items to wear out faster

Up to now considerable emphasis has been placed on the relative performance of these builders in hard water. However, it should be stressed that sodium tripolyphosphate offers very real benefits in soil removal and suspension in soft water.

Figure 7 illustrates the relative ability of the various builders mentioned to remove particulate soils by themselves (no surfactant present) in soft water. Notice that sodium tripolyphosphate surpasses all of the others on the three fabric types tested: polyester/cotton blend, a 100% cotton and a 100% polyester, all of similar fabric construction.

Unbuilt Laundry Liquid Detergents

In any discussion of detergents it should be noted that some liquid laundry detergents do not contain a builder. Instead, they rely on the surfactant system to do the whole job. Logically, a high level of surfactant is used in these products. Generally these products offer particular benefits in removal of oily/greasy soils. They will not do as good a job of removing particulate and body soils, nor of holding them in the wash solution. And remember, particulate and body soils will be a major problem for many people in Montana.

Consumer Recognition of Problems (References 7,8, 10a)

The problems associated with non-phosphate detergents that have been pointed out here are real. They have happened in the laboratory and in people's homes in Indiana; New York State; Minnesota; Dade County, Florida; Chicago, Illinois or wherever phosphate bans have been enacted. We know this because people voluntarily communicate their problems to detergent manufacturers.

For example, let's contrast consumer complaints received by one major detergent manufacturer for all granular laundry products from Minnesota (the nearest state to Montana to enact a ban and one that is reasonably similar in many ways) for 1977, the year after the ban went into effect versus 1976 when there was no ban. In 1977 total consumer complaints were two and one half times higher than in the preceding year. In 1978 complaints tripled in contrast to 1976. In other words the complaints continue to rise.

Further evidence of this perception of negative detergent performance by consumers is found in the results of a survey done by an independent research firm in the State of Indiana. The 1975 survey was conducted across five major cities among 1500 women selected at random. Results showed that 5% of all respondents purchased detergents outside the State. Important to consider, is that 3½ years after the phosphate ban became effective, many residents in the State accepted this inconvenience and the fact that they were violating the intent of the law to obtain a phosphate-containing detergent.

Consumer Adjustments to Non-Phosphate Detergents (Figure 8) (References 6,8,15,16)

Consumers must and do adjust the way they normally do laundry to compensate for the lower overall performance of non-phosphate products. The reduced cleaning, increased redeposition of soil and deposition of insoluble residues will necessitate one or more of the following corrective measures:

- Increased use of laundry detergents
- Increased use of such laundering aids as packaged water softeners, pretreating products, presoak or detergent booster products, bleaches, fabric softeners
- Pretreatment of more items
- Presoaking of clothes
- Rewashing of clothes not satisfactorily cleaned
- Extra rinsing in an attempt to remove residues
- Special treatments such as a vinegar rinse to remove residues (involving risk of damaging porcelain tubs)
- Installation of household water softening system
- Increased rate of replacement of washable garments
- Increased rate of repair and/or replacement of the washing machine

All of these adjustments cost consumers money.

Total Cost Per Montana Household - $55.13 (References 9a & b, 10b, 12, 13, 15, 16)

The "bottom line" figure given above ($55.13) is the estimated cost per family per year of a detergent phosphate ban in Montana. The factors that comprise this total figure are:

- Increased cost of cleaning products - $4.78. The cost listed here, $4.78, represents about a 10% increase in a family's annual cleaning products budget. It is based on market surveys of product purchases in demographically similar phosphate ban and non-ban areas.
- Shortened wear life of washable clothing - $34.15. This figure is based on laboratory studies which have measured decrease in wear life using carbonate-

based detergents and U.S. Government figures on the average annual dollars spent by households for clothing.

- Increased washing machine service calls - $2.45
- Washing machine parts replacement costs - $13.75. Service and replacement costs are based on actual service call records of two major washer manufacturers.

Review of all important factors in the State of Montana indicate that a detergent phosphate ban will lead to poor detergent performance and exorbitant consumer costs. Based on the current number of estimated households in Montana, a detergent phosphate ban would cost this State's residents fourteen and a half million dollars annually, a high price to pay unless definite rewards can be justified by fact, not wishful thinking.

Circulated by:

Jerome Anderson
Barry Hjort
Chad Smith

Lobbyists for:

The Soap and Detergent Association
Monsanto

In opposition to HB 782

Reference Documents

1. Data source for Montana industries; World Book Encyclopedia.

2. Data source on Montana workers; 1975 census data, Bureau of Census, U.S. Department of Commerce (latest available data issued July 1978).

3. Water hardness data source; "Chemical Analysis of Municipal Water Supplies", Water Quality Bureau, Montana Department of Health and Environmental Sciences.

   Population data source; Census data updated in several instances to 1975 as published in the Rand McNally Atlas.

4. B. J. Rutkowsky, Senior Research Chemist (Whirlpool Corp.) "Performance characteristics of Currently Available Laundry Detergents". Whirlpool research as presented in testimony March 15, 1978, to the Energy and Environment Committee, Ohio House of Representatives and at hearing of the Michigan Department of Natural Resources, Lansing, Michigan, December 8, 1976.

5. A.Lyng (Procter & Gamble Co.) testimony presented at a hearing of the Minnesota Pollution Control Agency, Roseville, Minnesota, February 13, 1975, and for the Vermont House of Representatives' Natural Resources Committee, July 1, 1975).

6. Dr. M. E. Purchase (Cornell University), testimony for the Conservation Committee, Vermont House of Representatives, regarding H.492, February 10, 1976.

7. Dr. M. E. Purchase (Cornell University), letter to H. A. Tanner, Michigan Department of Natural Resources, December 1, 1976.

8. J. Schrage (Whirlpool Corp.) "Powdered Non-phosphate Detergents, Major Effects on the Consumer", testimony presented March 15, 1978 to the Energy and Environment Committee, Ohio House of Representatives.

9a. General Electric Company research report, "Carbonate Detergents and Their Effect Upon Clothing and Home Laundry Equipment."

b. R. Schuck (General Electric Co.), testimony for Public Hearing on HB882 Regarding Phosphate Ban in the State of Ohio, presented to Energy and Environment Committee, Ohio House of Representatives, March 13, 1978.

10a. A. Olson (Speed Queen), Consumer Problems with Non-phosphate Detergents, testimony presented at a hearing of the Minnesota Pollution Control Agency, Roseville, Minnesota, February 13, 1975.

b. D. M. Schultz (Speed Queen), testimony presented February 28, 1978 to the Committee on Natural Resources and Tourism, Wisconsin Senate.

11. M. Ross (Frigidaire), testimony presented to Energy & Environment Committee, Ohio House of Representatives, March 15, 1978.

12. M. A. Morris and H. H. Prato (University of California, Davis), Fabric Damage During Laundering, California Agriculture, 30 (12), 9, 1978, also Edge Abrasion of Durable Press Cotton Fabric During Laundering with Phosphate and Carbonate Built Detergents, Textile Research Journal, pgs. 395-401, May, 1975.

13. K. A. Jansen (University of Wisconsin), Effect of Detergent Type on Wear Life of an Apparel Item Varying by Fiber Content, doctoral dissertation, School of Family Resources and Consumer Sciences, University of Wisconsin, Madison, Wisconsin, 1975.

14. W. Olson (Agricultural Extension Service, University of Minnesota), Using Non-phosphate Detergents in Machine Laundry, Fact Sheet, Home Economics Family Living, No. 38-1976.

15. Homemaker Testing Corporation, Cost of Home Laundry, Phosphate vs. Non-phosphate Detergent in Kansas City, Kansas and Indianapolis, Indiana, October, 1976.

16. Walker Research, Inc., Phosphate Detergents Ban Effect on Indiana Housewives, 1976. Summary prepared by H. S. Wilcox, Inc. 1976.

Major Montana Industries

- Agriculture
  - Crop production
  - Livestock
- Forestry
- Mining
- Manufacturing
  - Processing of Montana's raw materials

Podolnik Exhibit D

Types of Work Done by Montana People

Types of Workers	Number of Workers (14 years and older) Male	Female	Total	%	
	229,000	163,000	392,000		
White Collar	74,000	91,000	165,000	42%	
Blue Collar	96,000	11,000	107,000	27%	
Service	20,000	51,000	71,000	18%	58%
Farm	40,000	9,000	49,000	13%	

Source:
Bureau of Census, U.S. Department of Commerce, 1975

FIGURE 3

Montana Water Hardness Distribution

Water Hardness Ranges As defined in U.S. Geological Surveys, U.S. Department of Interior		Water Hardness Distribution By % Population on Public Water supplies (419,535 people) *	
Soft Water	(0-3.5GPG;0-60PPM)	10%	
Moderately Hard Water	(3.6-7.OGPG;61-120PPM)	21%	
Hard Water	(7.1-10.5GPG;121-180PPM)	41%	69%
Very hard Water	(Over 10.5GPG;Over 180PPM)	28%	

* Data covers 162 communities constituting 55% of total Montana population. Estimated population for 1978 - 763,800

Source:

Water Hardness Data: Chemical Analysis of Municipal Water Supplies
Water Quality Bureau
Montana Department of Health and Environmental Sciences

Population Data: Census Data updated to 1975; Rand McNally Atlas

What Surfactants Do

- Make Water Wetter
- Loosen and remove dirt with help of the washing action
- Hold removed dirt in the wash water - with help of builder

What Builders Do

Phosphate	Carbonate
• Softens water by sequestering No residues form	• Softens water by precipitating Forms harsh, insoluble limestone residue
• Good cleaning ability for clay, mud, dust, body soil, stains	• Limited cleaning ability for clay, mud, dust, body soil, stains
• Good soil suspending ability	• Poor soil suspending ability
• Provides free flowing, easy dissolving product	• Causes product to cake, lump, dissolve slowly

FIGURE 6

Problems Caused by Carbonate

In Automatic Washers

- Builds up in

  Pumps
  Hoses
  Under the agitator
  In wash basket
  In collector tub

- Causes parts to fail faster

- Increases service calls

On Fabrics

- Masks colors - Makes fabrics look faded

- Makes fabrics stiff and scratchy

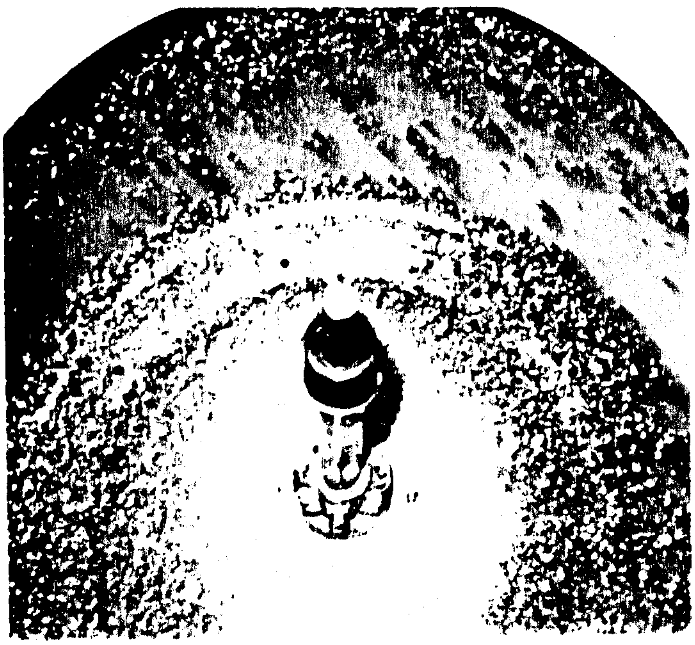
- Makes sewing threads in elastic areas brittle-break easily

- Makes zippers and grippers hard to operate

- Makes garments wear out faster; Speeds up abrasion on creases, edges, hems, collar points, cuffs

PHOSPHATE DETERGENT EFFECT ON WASHING MACHINE PARTS

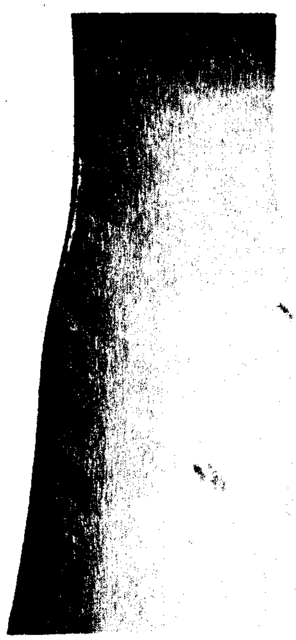
(AFTER 5 YEARS' TOTAL SERVICE)



[illegible]

Tub

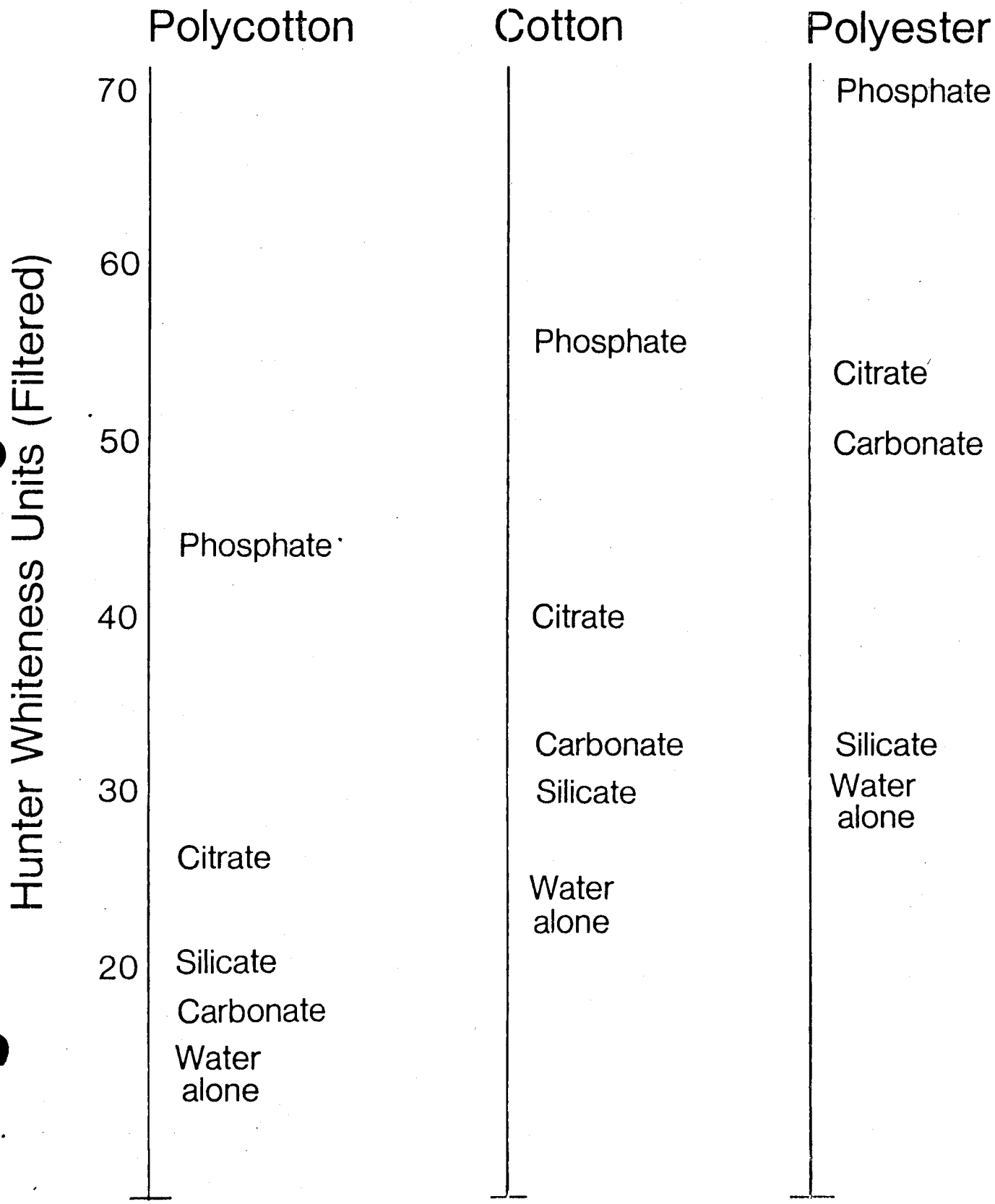
Tub



Hose

Particulate Soil Removal by Free Builders

100°F, no hardness present, 300 ppm. builder concentration (the level present at recommended usage of a 6.1% P detergent).



Consumer Adjustments to Non-Phosphate Detergents

- Increased use of laundry detergents
- Increased use of such laundering aids as packaged water softeners, pretreating products, presoak or detergent booster products, bleaches, fabric softeners
- Pretreatment of more items
- Presoaking of clothes
- Rewashing of clothes not satisfactorily cleaned
- Extra rinsing in an attempt to remove residues
- Special treatments such as a vinegar rinse to remove residues (involving risk of damaging porcelain tubs)

Annual Consumer Costs

Increased cost of cleaning products	4.78
Shortened wear life of washable clothes	34.15
Increased washing machine service calls	2.45
Washing machine parts replacement	13.75
Total cost per family per year	$55.13

Total annual cost to all Montana families	$14,500,000

WITNESS STATEMENT

NAME Pat Underwood BILL No. HB782

ADDRESS Box 1207 Bozeman, MT. DATE 20 Feb 81

WHOM DO YOU REPRESENT

SUPPORT OPPOSE ✓ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The womens (state) committee of the Montana Farm Bureau became interested in this subject 2 yrs ago. From data obtained from the Indiana Farm Bureau which has a ban on phosphates and the Natural and Environmental Resources Div. of the American Farm Bureau - We do not feel this is a state wide problem. The Indiana Farm Bureau is working hard to repeal the ban in their state, based on RURAL FARM consumer concern.

Hard water on Montana farmsteads and women who WASH TONS OF REAL DIRTY clothes is enough of a problem. We don't feel we need or can afford to compound this problem with use of a nonphosphate detergent which costs more, ruins your washing machine and we can find very LITTLE SCIENTIFIC evidence to support such a Ban

FORM CS-34
1-81

VISITORS' REGISTER

HOUSE _____ COMMITTEE

BILL 125 Date 3/12

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
[illegible]	[illegible]	[illegible]		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

VISITORS' REGISTER

HOUSE _____ COMMITTEE

BILL HB 780 Date 2 20 81

SPONSOR AZZARA

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Wilmarth	Helena	AERO	✓	
Ellen Shea	Helena	PSC	✓	
Hank Smit	HELENA	SMIT CONST.	✓	
[illegible]	[illegible]	[illegible]	✓	
Mike Mules	HELENA	ENV. [illegible]	✓	
Leo Berry	"	DNRC	✓	
[illegible]	"	Mont. Coal Council	✓	
Jan Konigsberg	"	DNRC		
Mike Dahlem	"	ASUM	✓	
[illegible]	Helena	MT'S POWER TO THE PEOPLE	✓	
Jim Jensen	Helena	LISCA	✓	
Carl J Donovan	GT. Falls	MAP	✓	
[illegible]	[illegible]	[illegible]	✓	
[illegible]	[illegible]	[illegible]		
[illegible]	Great Falls	MPP	✓	
[illegible]	[illegible]	[illegible]		
Bill Opitz	Helena	PSC	✓	
John Alke	"	MDU		✓
[illegible]	KALISPELL	Pacific Power & Light	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33
1-81

STATEMENT OF INTENT – HB 780

The intent of this bill is to insure that the energy needs of Montana consumers are supplied at the lowest possible cost. It is based on the observation that specific energy needs can be met through a variety of resources, not strictly limited to conventional fuels. The most cost-effective resource should be obtained first. If insulating an individual residence saves more energy per dollar invested than is produced by a new coal thermal plant, then the utility should invest in insulating the house. Energy from electricity and natural gas is currently supplied only by regulated utilities; this bill provides the mechanism whereby those utilities can ~~supply energy~~ from conservation and renewable resources in a manner which is predictable, economical, and which provides the utility financial encouragement to do so. Rulemaking may be used to expedite the development of smaller, more dispersed types of resources.

NAME R. Marc Williams BILL NO. # HB-780

ADDRESS Box 616 / Hobson, Montana DATE 19 February, 1981

WHOM DO YOU REPRESENT Myself

SUPPORT HB 780- Azzara OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1) Co-authored research paper with Jean Meschke - "Conservation--an Alternative to Generation"
2) Focused on Electrical consumption in residential sector in state
3) Addressed several conservation options doing a B/C analysis on each
4) Survey Montana Insulating Contractors association for current prices on insulation - state wide
5) Tried to get a good combination for around #1000 w/payback time under 3 years.
6) Combination chosen cost #1095 with average payback of 1.6 years
7) Options included (1) cold water wash (2) shower flow restrictor (3) clock thermostat w/automatic set back (4) insulating the rim joist (5) raising the R-value of ceiling to R38 (6) Insulating floor to raise R-value to R-19 (7) putting insulating jacket on water heaters
8) If applied to 69,000 homes w/electric H_2O heaters and 8,000 homes (all electric) (1970 census) we found it was able to generate 38 mega watts of electricity through conservation
9) This is as much or more generating capacity as Holter or Rainbow Dam
10) Through our conservation scenario we would in essence be building a generating facility for #264/KW generating capacity
11) Water Power Resource Service - Fort Benton Reformulation Newsletter Issue #2 shows estimated costs for Ryan Dam to Blackhorse Lake pump/storage scheme would cost #906/KW generating capacity and Low Carter Dam and Afterbay costing #2,653/KW generating capacity.

FORM CS-34
1-81

over

12) These few figures begin to show how conservation is a viable alternative to new generating facilities.

13) In addition to the above paper, some other projects concerning fossil fuel conservation I am involved in is a passive solar-conservation retrofit of the Bernira Sewing Center in Missoula in which we hope to cut energy consumption by 50%. We are now in the monitoring stage of the project so have no current data. Another project, completed this last Christmas (1980) was passive solar retrofit of a residence in Central Montana and replacement of an inefficient fireplace w/an efficient wood stove. Granted, this last January was unusually warm but the houses energy consumption was 2300 KWH compared to a previous (10 year) average of over 5000 KWH.

14) Representative Azzaras bill, realizing that specific energy needs can be met through a variety of alternative resources, not strictly limited to conventional fuels would look at research such as ours, looking for the most cost-effective resource available.

Thank-you

R. Marc Williams

VISITORS' REGISTER

HOUSE ______________________ COMMITTEE

BILL 798

Date 2-20-81

SPONSOR Harrell

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Dr. Wm Crowley	2209 Lockey, Helena	G.T. Murray & Co.	✓	
Gregory T Murray	2511 So Ridge Dr.	G.T. Murray & Co.	✓	
[illegible]	Box 75 [illegible], East Helena	Self	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

Statement of Intent - HB _____ (LC 2325)

A statement of intent is required for this bill because it grants rulemaking authority.

Section 5 (3) of the bill authorizes the Montana economic development authority to adopt all procedural and substantive rules necessary for the administration of the act.

It is intended that these rules deal with the terms of loans, forms for loan applications, sale of bonds, internal management of the authority's business, procedures for servicing loans by financial institutions, procedures for acquiring and disposing of property, and establishing reserve requirements.

Section 5 (21) requires the authority to designate "primary industries", which are to be given preference for loans.

It is intended that primary industries be commercial, manufacturing, agricultural, industrial, transportation, recreational, and tourist enterprises.

AMENDMENTS PROPOSED FOR HOUSE BILL 798

1. Page 4, line 7.
Strike: " -- quasi-judicial"

2. Page 4, lines 11 and 12.
Following: "governor" on line 11
Strike: "as provided in 2-15-124"

3. Page 4, lines 24 and 25.
Following: "(3) on line 24
Strike: Remainder of line 24 through "purposes" on line 25
Insert: "The terms of members of the authority expire coincidentally with the terms of the appointing officers. Compensation of members and functions of the authority are regulated by subsections (7) and (8)"

AMENDMENT PROPOSED BY REP. ELLERD FOR HB 798

1. Page 1, line 20.
Following: "development"
Insert: ", and all phases of the livestock and agricultural industry"

J25P

Amendment to House Bill 798

1. Page 22, lines 13 and 17.

Strike: section 22 in its entirety.

Insert: "Section 22. Annual audit. The authority's books and records must be audited at least once each year by the legislative auditor or by a contract auditor as directed by the legislative audit committee. The cost of the audit shall be paid by the authority."

Revised language —

PROPOSED AMENDMENT FROM STATE LEGISLATIVE AUDITOR - John Northey

VISITORS' REGISTER

HOUSE _____ COMMITTEE

BILL 778 Date 2-20-81

SPONSOR Harper

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
David Sexton	Helena	Mont Educ Assn	✓	
Bill Olson	Helena	Mont Contractors	✓	
Kevin Campbell	Helena	IUOE #400		✓
Gregg McCurdy	Avon	MT Associated Contractors	✓	
Don Judge	Helena	MT State AFL-CIO		✓
Wayne Buchanan	Helena	MSBT	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

Exhibit 9 778

ARBITRATION IN MONTANA AND THE NEED FOR NEW LEGISLATION

By William L. Corbett
Associate Professor of Law
University of Montana
School of Law

This article reviews the current legal status of arbitration in Montana and compares the Montana law with the Uniform Arbitration Act. Legislative Enactment of the Uniform or similar legislation is necessary to enable Montana to join the vast majority of states that permit and encourage effective private dispute settlement through arbitration.

I. Arbitration at Common Law.

To clearly understand the current Montana law on arbitration it is necessary to understand arbitration at common law. This is due to the fact that arbitration law in Montana has changed little in the last one hundred years.

At common law arbitration was viewed with much disfavor by the courts. The courts believed that they should not be ousted of their traditional role in dispute settlement by private tribunals, nor should parties to a contract be deprived of access to the courts. As a consequence, arbitration clauses were almost universally held to be void and unenforceable. *Palmer Steel Structures v. Westech, Inc.*, 35 S.Rept. 1354, 1358(B) dissenting opinion (1979) *School Dist. No. 1 v. Globe and Republic Ins. Co.*, 146 Mont. 208, 212 (1965). **See** Note, *Contract Clause Providing For Arbitration Of Future Disputes Is Not Enforceable In Montana,* 24 Mont. L. Rev. 77 (1963).

At common law, the courts generally **recognized** but did **not necessarily enforce** three distinct types of arbitration clauses:

(1) An agreement to arbitrate a dispute **existing** at the time the agreement is entered. These provisions were valid and enforceable only after the subject was actually arbitrated, but a party would be denied a court order enforcing the contractual duty to arbitrate.

(2) An agreement to arbitrate a **future factual** dispute (a **factual** dispute not in existence at the time of the agreement was entered but which might arise in the future). These provisions were considered valid because the courts were not ousted of their jurisdiction over issues of law.

(3) An agreement to arbitrate **any future** dispute (fact or law). These agreements were uniformly held to be void and unenforceable because the courts were ousted of their jurisdiction over legal issues and it was believed that the parties should not be deprived of their access to the courts.

II. Arbitration in Montana.

A. Arbitration in commercial disputes.

In 1867 the Montana legislature enacted a statute which upon first reading appears to have reversed the common law bias against arbitration. The statute provides that "persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them . . . . 27-5-101 MCA. Despite the potentially broad reading this statute might be given, the Montana Court, in conformity with jurisdictions with similar legislation, interpreted the statute to provide for judicial enforcement of an arbitration provision only when the dispute is in existence at the time the agreement is entered. *Green v. Wolff*, 140 Mont. 413, 423 (1962). Thus, under the statute, an agreement to arbitrate only an **existing** dispute is valid and enforceable.[1] In addition to the statute, the Montana Court continued the common law notion that an agreement to arbitrate any **future factual** dispute was valid and enforceable (category #2 discussed above). Moreover, the Court recognized that an arbitration award under a valid and enforceable arbitration agreement is binding on the parties.[2] See *Palmer Steel Structures v. Westech, Inc., supra,* 35 S. Rept. at 1357.

However, the major obstacle to arbitration remained. The Montana Court continued to follow the common law rationale that an agreement providing for the arbitration of a **future** dispute involving an issue of law was unenforceable (category ÷3). *Palmer Steel Structures v. Westech, Inc. supra,* 35 St. Rept. at 1357.

Unlike Montana, many jurisdictions early came to the realization that if an agreement providing for arbitration of **existing** disputes involving issues of **law** were enforceable, it would not violate public policy to make enforceable an agreement to arbitrate a **future** dispute involving an issue of **law.** These courts realized that even if the award of an arbitrator were to be based on an issue of law, the award was not enforceable until a court, with an opportunity to review the legal rationale, enforced the award. *See Ezell v. Rocky Mountain Bean & Elevator Co.*, 76 Colo. 409, 232 Pac. 680 (1925). However, these jurisdictions, unlike Montana, were not faced with a legislative mandate prohibiting the development of arbitration away from its common law limitations.

In 1895 the Montana legislature enacted a statute that codified the existing common law notion that courts cannot be denied their traditional jurisdiction over dispute set-

Continued on page 6

tlement by agreements of the parties. *School Dist. No. 1 v. Globe & Republic Ins. Co., supra* 146 Mont. at 212.[3] This 1895 statute has been consistently interpreted by the Montana Court to make unenforceable an agreement to arbitrate **future** disputes unless the arbitration provision is limited to the determination of solely **factual** issues. *Palmer Steel Structures v. Westech, Inc., supra,* 35 St. Rept. at 1356-1357.[4]

The Montana Court has indicated that such a narrow conception of arbitration is not truly arbitration but merely judicial recognition of commercial appraisal. *School Dist. No. 1 v. Globe & Republic Ins. Co., supra* 146 Mont. at 213. Thus, what is often referred to as arbitration in Montana is nothing more than legal recognition and enforcement of appraisal agreements in a commercial setting.

B. Arbitration in Labor Disputes.

Frequently a collectively bargained contract between an employer and a union will include a provision for dispute settlement ending in arbitration.[5] In view of the limited scope of arbitration in the commercial setting, the question arises whether the agreed method of labor dispute settlement will fare any better. Because the arbitration machinery in the labor agreement anticipates the resolution of all (factual and legal) future disputes, it could be argued that these arbitration agreements will meet with the same fate as found in commercial contracts. However, this is not the case.

Section 301 of the National Labor Relations Act provides that a suit for violation of a labor contract involving a private sector employer engaged in interstate commerce may be brought in a Federal District Court (with state court concurrent jurisdiction) without regard to the amount in controversy or diversity. 29 USCA 185(a). The great majority of cases brought under § 301 are actions to enforce agreements to arbitrate and actions to enforce (or set aside) arbitration awards rendered. Additionally, under § 301 a federal court can by declaratory relief rule that an employer is not required to arbitrate under the specific contract provisions. Gorman, Robert A., *Basic Text on Labor Law Unionization and Collective Bargaining,* 547 (1976).

Accordingly, if a Montana private sector employer engaged in interstate commerce agrees to the arbitration of labor disputes, federal law provides for the enforcement of the agreement. The federal law, unlike Montana, does not limit arbitration of future disputes to solely the resolution of factual disputes.

If the arbitration clause is included in a labor agreement involving a Montana **public** employer (not subject to the federal legislation), it also appears that the clause will be enforced without regard to the limitations found in commercial arbitration. The Montana Collective Bargaining For Public Employees Act provides that nothing "prohibits the parties from voluntarily agreeing to submit **any** and **all** of the issues to final and binding arbitration," and any "agreement to arbitrate, and the award issued . . . shall be enforceable in the same manner **as is provided in the act for enforcement of collective bargaining agreements.**" (Emphasis added.) 39-31-310 MCA. Thus, the legislature provided for enforcement of public employment arbitration provisions in the same manner as the enforcement of the collective bargaining agreement in which the provision is included. The problem is that the legislature did not (forget to?) include a provision in the Act concerning the enforcement of the collective bargaining agreement.

However, this is not a significant problem. Collective bargaining agreements are universally enforced in the same manner as any other contract.[6] It is not reasonable to assume the Montana legislature intended any other procedure. If the legislature intended that "any and all" arbitration clauses would be enforced as collective bargaining agreements, and collective bargaining agreements are traditionally enforced as any other contract, then the only reasonable conclusion is that the legislature intended arbitration provisions to be fully enforced without the limitations found in commercial law.

The need to treat labor arbitration differently than commercial arbitration has long been recognized. The United States Supreme Court has noted that in the commercial setting arbitration is the substitute for industrial strife. Given this distinction, the Court stated since "arbitration of labor disputes has quite different functions from arbitration under an ordinary commercial agreement, the hostility evinced by courts toward arbitration of commercial agreements has no place here. *United Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U.S. 574, 578 (1960). It appears that the Montana legislature recognized this distinction and clearly intended that public employee labor arbitration be fully enforceable.

While the Montana Court has not spoken directly on this issue, two recent opinions assumed the traditional broader position for labor arbitration. However, the Montana Court, without discussing any conflict, upheld a District Court order requiring the employer to arbitrate what appears to be clearly an issue of **law** under an arbitration clause requiring the arbitration of **future** disputes, *Butte Teachers Union v. Bd. of Ed.,* 34 St. Rept. 726, 730 (1977). In another case, the Court assumed that if the grievance came within the grievance procedure the union could compel the employer to arbitrate the quasi-legal question of "just cause" as required by the contract grievance procedure, *Wibaux Education Association v. Wibaux County High School,* 35 St. Rept. 93 (1978). Moreover, if the Court were to directly speak on the issue, should certainly place much weight on the expressed legislative intent, especially in light of the universally recognized distinction between labor and commercial arbitration.

Accordingly, with labor arbitration provisions involving a Montana employer engaged in interstate commerce fully enforceable under federal law, and such provisions involving a Montana public employer enforceable under the Montana Public Employee Bargaining Act, the vast majority of labor arbitration provisions will be enforceable without regard to the limitations applied to commercial arbitration. For those few Montana solely intrastate employers who have a labor agreement providing for arbitration, it can be argued that the arbitration provi-

sion should be fully enforceable without regard to the limitations imposed on commercial arbitration, based upon the universally recognized distinction between labor and commercial arbitration. However, given the fact that Montana, unlike most jurisdictions, has a specific statutory limitation on arbitration, this argument might very well be rejected. *See Smith v. Zepp, supra* 34 St. Rept. 753, 761 (1977). Thus, an arbitration agreement involving a solely intrastate private employer might very well be subject to the limitations found in commercial arbitration while no such limitation would be applied to a similar agreement involving an interstate or public employer.

II. Comparison Between the Uniform Arbitration Act and Montana Law.

A summary analysis of the Uniform Arbitration Act and a comparison with current Montana law can conveniently be presented under three headings: (1) which agreements to arbitrate would the model act apply; (2) the judicial procedure applicable in the enforcement of arbitration agreements and arbitration awards; and (3) the hearing procedure used by arbitrators.

1. Agreements Covered.

As previously discussed, current Montana law provides that agreements to arbitrate future disputes involving legal issues are unenforceable. The Model Act eliminates this limitation. The Model Act provides for the enforcement of a written agreement to submit any existing controversy, or a written contract provision to submit any controversy thereafter arising between the parties regardless whether the issue is legal or factual. Uniform Arbitration Act §1. (Hereafter cited as U.A.A.)[11] The Model Act also specifically applies to labor arbitration agreements, unless the parties specify otherwise. The equal treatment for both commercial and labor arbitration under the Model Act eliminates the present confusion in Montana law on this subject. See U.A.A. § 31.

2. Enforcement Procedure.

The Model Act provides that upon motion to the court (a court of competent jurisdiction in the state, e.g., a Montana District Court), a party may seek an order directing arbitration. The order must be granted if the court finds that there is an agreement to arbitrate covering the dispute in question and that the opposing party refuses to arbitrate. U.A.A. § 2(a). In the event there is an action or proceeding involving the issue pending before the court, the court must stay that action or proceeding, or sever the arbitrable issue from that action or proceeding. U.A.A. § 2(c) and (d). The purpose of staying the action or proceeding or severing the arbitrable issue from the action or proceeding is to prevent the court from preempting the arbitration process. The Model Act also provides that a court may not refuse an order for arbitration because the court believes the issue lacks merit. U.A.A. § 2(e). Whether the party seeking arbitration raises a meritorious issue is to be left to the decision of the arbitrator and the arbitration process must not be preempted by the court. Thus, when a party seeks a court order enforcing an arbitration provision, the court need only concern itself with whether there is a valid arbitration agreement and whether the agreement covers the dispute in question. Whether the issue raised has merit is left to the arbitrator. Current Montana law is in substantial agreement with these provisions of the Model Act.[8]

The other major area of judicial intervention concerns the enforcement of the award. The Model Act follows the traditional motions to confirm, vacate, correct or modify the award of the arbitrator. U.A.A. §§ 11, 12, 13. This corresponds to the method used in Montana. Compare MCA §§27-5-203 through 27-5-302 with §§ 11, 12 and 13 of the Model Act.[9]

The Model Act provides that the court shall vacate an award on five separate grounds.[10] The Montana statute provides that a court **may** vacate an award under similar circumstances. Compare 27-5-301 MCA with U.A.A. § 12. Other than the compulsory language in the Model Act requiring the Court to vacate and the permissive language of the Montana Act, there is little substantive difference between the two provisions.[11] Moreover, the Montana Court has recognized that its scope of review under **common law** arbitration is narrow, and its authority to vacate an award is limited to situations similar to those set forth in the Montana statute and the Model Act. *McIntosh et al. v. Hartford Fire Ins. Co.*, 106 Mont. 434, 439-440 (1930). *See also Lee v. Providence Washington Ins. Co.*, 82 Mont. 264, 274-275 (1928); *Clifton Applegate - Toole v. Drain Dist. No. 1*, 82 Mont. 312, 328-9 (1928). Accordingly, the Model Act does not represent a sharp departure from current Montana law on this subject.[12]

3. Arbitration Hearings.

Dean Pirsig, the leading draftsman of the Model Act, has indicated that the goal of the arbitration hearing procedure in the Model Act "was to safeguard the essentials of a fair hearing without detracting from the informality, the freedom from technicality, and the dispatch which characterize arbitration hearings and which are commonly important reasons why the parties have agreed to resort to arbitration," Pirsig, *supra* note 12 at 118. The hearing procedure set forth in the Model Act meets this important goal. While, in comparison with the Montana Act, the Model Act specifically provides for more procedural options [13] and procedural safeguards,[14] these provisions are not inconsistent with the Montana Act or the decisions of the Montana Court. The Model Act merely goes further to assure that the arbitration process will be workable and fair.

IV. Conclusion.

Twenty two states and the District of Columbia have adopted the Model Act. Most other states have statutes similar to the Model Act or judicial decisions affording full use of the arbitration process as a method of private dispute settlement. Given the present Montana statutory framework that locks in the out of date, universally rejected common law view of arbitration, the Montana legislature must act if Montana is to have a truly effective method of extrajudicial dispute settlement. The Montana Court has similarly recognized that although "arbitration may be the most speedy and economical means available to parties for a binding resolution of their disputes," full utilization of this method cannot be made until the legislature acts. *Smith v. Zepp, supra* 34 St. Rept. 761. In an era of

Continued on page 17

Continued from page 7

crowded dockets and lengthy and expensive litigation, methods supporting private settlement of disputes should be encouraged. The Model Act or some tailored form of the Model Act is the best method to achieve this goal.

William L. Corbett

Mr. Corbett received his B.S. from the University of Wyoming, in 1967, his J.D. from the University of Wyoming in 1970, his LL.M. from Harvard University, in 1971. He was Attorney, Appellate Court Div., Office of the General Council, National Labor Relations Board, from 1971 to 1974.

FOOTNOTES

Fourteen footnotes, which include complete citations as well as explanatory material, accompany this article. Because of space limitations, the text of these footnotes has been deleted. However, copies of the text of the footnotes are available upon request from the writer or the Montana Bar, and the footnote numbers have been left in the text of the article for the convenience of those who wish to make such a request.

VISITORS' REGISTER

HOUSE _____ COMMITTEE _____

BILL 431 Date 2/19/81

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Phyllis A. Bock	Helena	MT's POWER TO THE PEOPLE		✓
Carl J. Donovan	GT. Falls	MAP Montanans in Act		✓
Elaine Bishop	Mt Falls	Mt. Power to the People		—
Janet Davis	Gt. Falls	Montanans Power to the People		—
Carol F. Schaer	Gt. Falls	Montanans Power to the People		—
Jean Schaerin	Gt. Falls	M.P.P.		—
Jim Jensen	Helena	LISCA		X
[illegible]	Helena	Mont Conser Council		✓
Bill Opitz	Helena	PSC		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33
1-81

NAME Carl J Donovan BILL No. 431

ADDRESS Box 1201 GT. FALLS, MT 59403 DATE 2/20/81

WHOM DO YOU REPRESENT (MAP) Montanans in Action for People

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We oppose this bill because as it is now the R.S.C. doesn't have the staff, or Computer Capacity to deal with this.

If costs are provided they could be to high or they could be to low, then who is going to pay for these.

I urge the Committee to kill this bill as they have killed H.B. 395.

Thank you

FORM CS-34
1-81

NAME Phyllis A. Bock BILL NO. HB 431

ADDRESS Helena DATE 2/10/81

WHOM DO YOU REPRESENT MT.'S POWER TO THE PEOPLE (MPP)

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We oppose this bill unless the P.S.C. is given the staff and computer capacity so that they can analyze the future test year period data without being required to take "on faith" the data given to them by the public utility companies the P.S.C. is supposed to regulate.

FORM CS-34
1-81

NAME _____ BILL No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME _____ BILL No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Janet Irene Davis BILL No. 431

ADDRESS 2806 2nd Ave. North DATE Feb. 20, 1981

WHOM DO YOU REPRESENT Montana's Power to the People

SUPPORT ______ OPPOSE ✓ ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

My name is Janet Davis our group represents Montanas Power to the People from Gt. Falls Montana we came to oppose House Bill 431. Because of the ~~utilities~~ utilities increase. the people that can not afford them right now will not be able to afford them then ~~d~~ either for mother people in my … that have a set income like mine.

Thank you again

FORM CS-34
1-81