

MINUTES OF MEETING
SENATE NATURAL RESOURCES
February 2, 1981

The seventh meeting of the Natural Resources Committee was called to order by Senator Harold Dover, Chairman, at 1:00 P.M., on the above date in Room 405 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 229:

AN ACT TO PROVIDE FOR HYDROELECTRIC POWER GENERATION AT APPROPRIATE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WATER PROJECTS; PROVIDING FOR THE LEASE OF SUCH PROJECTS FOR THE PURPOSE OF POWER GENERATION; SPECIFICALLY AUTHORIZING THE CONSTRUCTION AND OPERATION OF SUCH FACILITIES BY THE DEPARTMENT IF NO LEASE IS CONSUMMATED; AND ESTABLISHING THE METHOD OF SALE OF POWER GENERATED AT SUCH FACILITIES.

Senator Turnage, District #46, presented this bill to the committee. He advised that the bill would require the Department of Natural Resources to make a study and report as to the possibility of developing hydroelectric generating facilities in state water projects. If the project seems feasible then a lease will be made out. The Department may not sell power generated at a facility except to a public utility or a rural electrical cooperative, organized in Montana and selling power to Montana customers. He requested Leo Barry, Department of Natural Resources, to testify on behalf of this bill and to present amendments.

Leo Barry, Department of Natural Resources, reviewed this bill and supports it as it will provide a reasonable approach to solving the need to repair some of the state owned projects to utilize existing hydroelectric capabilities on state owned projects. This does not mean that the Department of Natural Resources will plan to develop generating facilities on its own. Mr. Barry furnished written testimony and amendments proposed for this bill. (copy attached)

Bill Opitz, PSC, supports this bill with a request that it be amended on page 7, line 23 by striking the word "levelized" before the phrase "avoided cost".

There being no other proponents to this bill Chairman Dover asked for opponents.

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Charles F. Crame, Montana Water Development Association, does not feel that the Department of Natural Resources should get into the generating business. He does not see how the Department can make a profit if private enterprise, who has been in the business for 50 years, does not feel they can make a profit.

Rod Hanson, Montana Associated Utilities, has some problems with the bill as it is written. He would like to look at this bill in conjunction with similar legislation that has been introduced in the House and Senate. There definitely needs to be a procedure for assuring feasibility before the department mandates to repair a plant.

Wilbur Anderson, Vigilante Electric Cooperative, Dillon, said that eight members of western Montana's generation cooperatives are fully in support of legislation that has been introduced in the house, which prohibits the state from going into generation projects. These projects can be developed by organizations that provide electrical service presently and who have responsibility for providing facility services to consumers in Montana.

There being no other opponents Chairman Dover asked for questions from the committee.

Senator Manley said that he thought a piece of legislation had been introduced last session that specifically stated that the state was not to be allowed to develop these plants and it was passed through the Senate, House and signed by the Governor.

Senator Brown said that is correct.

Senator Manley asked Senator Turnage that when he presented the bill he stated that if you strike the state out of the generating business, it would be better to kill the bill.

Senator Turnage said that nothing would be built unless the state is left in. The state would give private industry the incentive to keep up the dams. The state would only step in if they refused to keep up the dams.

Senator Dover asked how this project would be funded.

Senator Turnage said they could resort to any public financing available under the law. It couldn't be financed out of direct appropriation other than to make the study. Construction would be just like any private utility would do.

Senator Hafferman asked Senator Turnage if this wasn't a step toward socialism.

Senator Turnage said this is more a self help project.

Senator Keating asked after the study area is determined feasible and the area is offered to the cooperatives for development for the generation of electricity, and they decide it is not feasible, wouldn't you be suspect of a project if private operation turns it down.

Senator Turnage said the bill should say they may construct in this situation after legislative approval.

Senator Keating asked if the bill did say that the department could make that decision.

Senator Turnage suggested that they amend the bill to say they will seek legislative approval.

Senator Keating asked if the state does develop a generation plant and does have electricity for sale, the coops or utilities could be forced to take it by direction of the PSC.

Senator Turnage said that if they did not have this provision, they could effectively block the projects by refusing to accept energy.

Senator Keating asked if there was a provision in the bill for the Department to close a facility and dismantle it?

Senator Turnage said he assumed they could come to the legislature for authority.

Senator Keating asked Mr. Crame if there were areas of the state power department that would be desirable for generation of hydroelectricity.

Mr. Crame said the Clark Canyon and probably a great number of others.

Senator Keating asked where the private sector would get financing.

Mr. Crame said they could sell stocks and bonds.

Senator Keating asked if the rural electric coops could compete in this market, could they generate capitol for the development of these dams.

Mr. Crame said they have the facilities to generate capitol but they would have to go through procedures and red tape.

Senator Elliott questioned that there was not a fiscal note attached to the bill.

Senator Turnage said that he could ask for a fiscal note.

Senator Turnage closed by saying that the amendments suggested would be helpful to the bill, other than that the state be barred or taken out.

CONSIDERATION OF SB's 138, 139, 140 AND 196:

SB 138 - AN ACT PROVIDING FOR INDUSTRIAL DEVELOPMENT PROJECT FINANCING OF SMALL-SCALE HYDROELECTRIC FACILITIES

SB 139 - AN ACT TO AUTHORIZE THE SALE OF ELECTRICITY FROM QUALIFYING SMALL POWER PRODUCTION FACILITIES TO UTILITIES UNDER RATES AND CONDITIONS MUTUALLY AGREED UPON OR ESTABLISHED BY THE PUBLIC SERVICE COMMISSION

SB 140 - AN ACT TO CLASSIFY NEW QUALIFYING SMALL POWER PRODUCTION FACILITIES AS CLASS FIVE PROPERTY; INCREASING THE PERIOD OF CLASSIFICATION FOR PROPERTY USED IN THE PRODUCTION OF GASOHOL

SB 196 - AN ACT TO MODIFY THE PENALTIES FOR DAM BREACH

Chairman Dover turned the meeting over to Vice Chairman Etchart so that he could present these bills. Senator Dover explained that these bills were designed to provide incentive to develop Montana's renewable energy resources and are specifically directed toward small-scale hydro development. A copy of Senator Dover's written statement is attached.

Vice Chairman Etchart asked for proponents.

Bill Opitz, Public Service Commission, supports these bills but has prepared amendments to SB 139, copy attached. The amendments would give a small group of people the right to form a sort of cooperative of neighbors to distribute the electricity between themselves.

Leo Barry, Department of Natural Resources, supports these bills but questions the criteria of 80 megawatts. This is inconsistent with Montana laws, which defines a major operation as 50 megawatts.

Bob Fitzgerald, U. S. Windpower, supports these bills and would like "wind facilities" amended into SB 138, to be included with small scale hydroelectric facilities.

Ann Wilsnack, Alternative Energy Resources Organization, is in favor of these bills and a copy of her written statement is attached.

Don Snow, Environmental Information Center, supports these bills but feels the 80 megawatts should be lowered to 50 megawatts to be comparable with federal legislation on hydro planning.

There being no opponents, Vice Chairman Etchart asked for questions from the committee.

Senator Hafferman stated that we need energy in the United States, so why hold it at 50 megawatts.

Senator Elliott asked any of the witnesses how these bills would fit in with what federal programs we have.

Leo Barry said SB 139 complies with the federal language and the other three bills are state laws.

Senator Dover said that two of the bills were for incentive, one bill making no penalty clause and SB 139 lines up with federal policy.

Senator Van Valkenburg asked Leo Barry what problems would arise if we have a 80 megawatt limit on small skale hydro and 50 megawatt limit on major facilities.

Leo Barry said that it would not cause a problem or inconsistency in the act, the only problem would be in being consistent with the state law.

Senator Keating asked Mr. Opitz to explain "avoided cost".

Mr. Opitz explained that avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source, and which are approved by the Commission.

Senator Dover appointed a sub-committee to work these bills together with Senator Turnage's bill. The committee will consist of - Senator Ryan, Senator Brown, Senator Manley, Senator Keating, and Senator Dover, with Senator Manley as head of the committee.

EXECUTIVE SESSION - DISPOSITION OF SB 80: Senator Van Valkenburg talked with the Director of EPC and basically there will be no regulations with respect to peat if we pass this bill in its present form. This may conflict with consitutional provisions requiring reclamation of all lands.

Senator Brown was involved in a dispute between a peat miner and a landowner who was concerned about the hole, which was 18 to 20 feet deep, and he was worried about his cows getting into the area. The peat miner agreed to fence off the mining area.

Senator Manley explained that peat was a grown over lake and you ended up with a lake when the peat was all dug out.

Senator Ryan said that this is a renewable resource. The peat will regenerate after the lake is cleaned out.

Senator Manley said that from testimony received this just involves a couple of small businessmen in the state of Montana, and he motioned that SB 80 receive a "DO PASS". The motion passed unanimously.

DISPOSITION OF SB 16:

Senator Keating furnished copies of the amended bill.

Senator Tveit motioned that we accept the amendments.

Senator Brown asked if in Section 2, sub-section (1) if they were meaning to limit damages to agricultural production and not include recreational land. Subsurface owner means anybody who has interest in the land.

Senator Van Valkenburg said that if we passed the bill it could conceivably be signed by the governor the first of April, which would mean that it would not be effective until May 1. There could be some oil companies that want to get some development done before the bill goes into effect and he feels it should be effective on passage and approval of this bill.

Senator Brown asked for time to review the amendments and suggested the committee get together on Wednesday, February 4th, for final disposition of this bill.

Chairman Dover advised the committee that we would have executive session on Wednesday, February 4th, for final disposition of this bill.

DISPOSITION OF SB 165: Senator Keating motioned that we accept the amendment offered to SB 165. The motion passed unanimously.

Senator Van Valkenburg motioned that SB 165 "DO PASS" as amended. The motion passed unanimously.

ADJOURNMENT: There being no further business, the meeting adjourned at 3:00 P.M.



HAROLD DOVER, Chairman

ROLL CALL

NATURAL RESOURCES COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/2/81

NAME	PRESENT	ABSENT	EXCUSED
Harold Dover, Chairman	✓		
Mark Etchart, Vice Chairman	✓		
Thomas Keating	✓		
Roger Elliott	✓		
Larry Tveit	<i>arrived late ✓</i>		
Jesse O'Hara	✓		
John Manley	✓		
William Hafferman	✓		
Steve Brown	✓		
Dave Manning	✓		
Patrick Ryan	✓		
Fred Van Valkenburg	✓		

Each day attach to minutes.

SENATE BILL 229

Testimony of the Department of Natural Resources and Conservation

AN ACT TO PROVIDE FOR HYDROELECTRIC POWER GENERATION AT APPROPRIATE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WATER PROJECTS...

The Department of Natural Resources and Conservation supports Senate Bill 229. This bill promotes the development of hydropower facilities on state-owned projects and provides a mechanism for that development. The bill would require us to lease our water projects to a public utility, rural electric cooperative or corporation. Only if lease bids were not received or, if bids were received and determined by the Board of Natural Resources not to be advantageous to the state, could the Department itself pursue construction of hydropower facilities. This preference for leasing sites rather than for Department construction is supported.

Department efforts to obtain funding to rehabilitate and maintain the state-owned water conservation projects resulted in an investigation of the potential for hydroelectric generation at these projects. The Department has made good progress in pursuing this development and feels that SB 229 will provide appropriate legislative direction to promote further hydroelectric projects in Montana.

The Department would propose four modifications to SB 229 that should assist in the implementation of this legislation.

1. On page 2, line 10, eliminate the language following the word control. If projects are disposed of in the future there would be no need to study them.

2. Section 9 (3), page 6, requires the sale of power to public utilities or rural electric cooperatives. Adding federal power marketing agencies after cooperatives, on line 3 would be beneficial to Montana power consumers. These federal agencies could average in the higher cost of power from the new hydropower projects with their existing lower cost power which could result in lower cost power to the consumer.
3. Section 9 (1), page, 5, should allow the department to defer hydroelectric projects if changing economic conditions indicate the project is no longer feasible.
4. Section 13, page 8, allows for a rate determination by the Rural Electrification Administration (REA). Based upon discussions with officials of the REA it is apparent that the REA does not provide a rate-setting function. The Public Utility Regulatory Policies Act (PURPA) delegates the rate-making authority for small power production facilities to the Federal Energy Regulatory Commission (FERC). To be consistent and to take advantage of FERC's existing authority and experience, I suggest that rural electrification administration on line 11, page 8, be replaced with federal energy regulatory commission.

NAME: Bill Opitz DATE: 2/2/81

ADDRESS: 2 Wood St

PHONE: 449-3007

REPRESENTING WHOM? PSC

APPEARING ON WHICH PROPOSAL: SB-229

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

COMMENTS: The PSC supports the
passage of SB-229.
Amendment

Pg 7 line 23 strike
the word "levelized" before
the phrase avoided cost.

NAME: Charles Case DATE: _____

ADDRESS: Bethel, ME

PHONE: 727-5000

REPRESENTING WHOM? Mount Water Res. Assn.

APPEARING ON WHICH PROPOSAL: St. 229

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

COMMENTS: Supporting the proposal for the
development of the water resource
in the area.

NAME: Rod Hanson DATE: Feb 2, 1981

ADDRESS: Fairfield, Ont. S7H3L6

PHONE: 467-2526

REPRESENTING WHOM? Montana Associated Utilities

APPEARING ON WHICH PROPOSAL: S.B. 229

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Rural electricians have problems with the
bill as written - would like to look at it
in conjunction with other similar legislation
that has been introduced in the House and
Senate.

Definitely need to provide some procedure
for assuring feasibility before the department
was mandated to construct a plant

These four bills are result of much study & mtg w/ National conference of state legislatures + E & C, departments & public.

These four bills provide incentive to develop Montana's renewable energy resources and are specifically directed toward small-scale hydro development. Small-scale hydro (SSH), defined as 80 MW or less in these bills, promises an energy source compatible with the environment, an economy less dependent on a finite and limited supply of raw materials, and a constant and reliable source of energy beneficial to everyone.

Hydropower development is being emphasized at existing dam sites to avoid adverse environmental impact and also to eliminate the high cost of dam construction. The Army Corps of Engineering inventoried 132 incremental, potential, and existing sites where SSH development (less than 25 MW) could occur. These sites have a capacity to generate 2,214 MW annually. This is translated to a savings of 923,000 tons of coal or 32,305,000 dollars at 35 dollars a ton. This power is capable of serving 221,400 people ... more than one fourth of Montana's population.

Incentive for hydropower production does not exist in the present legislation. Financing is complicated or non-existent, marketing potential is unreliable, and taxation policies are discriminatory. These bills introduced address these issues in hope of providing incentive to small-scale hydro developers.

SB 138 intends to provide financial incentive to capital intensive Small scale hydro SSH projects. Because income taxes must be paid on interest earned by purchasers of investor owned utility bonds (IOUs), the cost of capital for IOUs is approximately 50% higher than for public entities. This clearly creates financial disincentive but can be remedied by including SSH projects in the tax exempt financing status of the Montana Industrial Development Projects Act (90-5-101, MCA). The wording of the act may

be interpreted to include SSH projects. However, to eliminate the possibility of future litigation regarding this interpretation, SB 138 would amend the MIDPA to explicitly include SSH to be eligible for MIDPA bonds.

These bonds were
The ~~MIDPA~~ was designed to enhance the economic stability of an area by providing financial incentive to developers. In view of the economic benefits offered by SSH projects it does not seem contrary to the intent of *the act and development of* MIDPA to include SSH projects.

SB 139 is a state version of the federal Public Utilities Regulatory Policies Act (PURPA) requiring public utilities to cooperate with the development of SSH. PURPA established regulations allowing developers of SSH projects to "plug into" the power grids of larger utilities. However, the method of establishing rates and regulations was left to the legislative bodies of the state. Marketing excess power is advantageous to both utilities and developers. Utilities can supplement their existing systems with a reliable, decentralized resource of SSH. By plugging into this system, developers would be guaranteed a constant supply of energy ... this is extremely convenient at periods of low generation. SB 139 establishes conditions and rates for the sale of electricity between utilities and developers if they cannot mutually agree. The act, Sections 2-4, establish the guidelines the Public Service Commission will follow. Adoption of these measures guarantee to promote the economic feasibility of SSH projects.

SB 140 is introduced as a tax incentive to small-scale hydro facilities by classifying them as Class Five property. Under current tax laws any entity marketing power in two or more counties or states is considered a

SB 139 quoted last session - 3 yrs

public utility and taxed under public utility laws. If a facility markets power in only one county but sells to the local utility, the facility will be taxed under the industrial tax laws. Under these laws, buildings are considered Class Four property and taxed at 8.55% of fair market value. Machinery is classified as either Class Seven property, taxed at 8% of the fair market value, or Class Eight property, taxed at 11% of the fair market value. Class Five property is taxed at 3% of the fair market value. Since SSH is capital intense relative to coal and oil plants, this system constitutes an unjust property tax discrimination against SSH. Also, the initial stages of SSH development are characterized by periods of low return and high capital input. A constant tax liability serves as definite disincentive to SSH developers. SB 140 would classify any qualifying small power production facility (defined in Section 66) as Class Five property during construction and for the first five years of operation. This act promises to encourage SSH development by reducing initial costs of construction and operation.

SB 196 is an act to modify the penalties for dam breach as contained 85-15-304 MCA. Present wording of the act includes the threat of prosecution for homicide if a violation results in death. This is not intended to impose criminal liability in a case of ordinary negligence. The Montana Criminal Code adequately covers any possible cases of criminal negligence. It therefore seems unnecessary to give any potential hydro developer a mistaken impression about their exposure to a special criminal liability which only serves as disincentive to development.

Proposed Amendments to SB 139

1. Page 1.

Following: line 1~~5~~

Insert: "(3) electric cooperative means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted hereunder to do business in Montana."

Renumber subsequent subsections in Section 1.

2. Page 2, line 8.

Following: "may"

Strike: "not engage in the distribution of the electricity it generates."

Insert: "generate electricity from the sources described in [section 1(3)(a)] and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rules and regulations established by PURPA."

NAME: Ann Wilsnack DATE: 2/2/1981

ADDRESS: P.O. Box 555 Helena 59624

PHONE: 443-4332

REPRESENTING WHOM? Alternative Energy Resources Organization

APPEARING ON WHICH PROPOSAL: 140

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: 80 megawatts is not small scale
to provide tax rates for
relatively large scale hydro electricity
could loose much tax revenue
for the counties of MT.
50 megawatt, Cochran Dam provides
\$184,064 in taxes last year
18 megawatt Black Edge facility
paid \$47,282 of tax base last year

NAME: Ann Wilsnack DATE: Feb 2, 1981

ADDRESS: P.O. Box 555

PHONE: 443-4332

REPRESENTING WHOM? Alternative Energy Resources Organization

APPEARING ON WHICH PROPOSAL: Senate Bills 138, ~~140~~

DO YOU: SUPPORT? _____ AMEND? OPPOSE? _____

COMMENTS: 138 should include all renewable resources - not just hydro electric

That ~~the~~ 180 megawatt is not small scale hydro even according to PURPA see 16 USC 2708 sec

408 for definitions small scale is 15 megawatts also the National Council of State legislatures define it as 25 megawatts or less

Mr Chairman, Members of the Board

I am Ann Wilsnack representing the Alternative Energy Resources organization.

I rise in favor of Senate Bill 138. The who group of bills by Dover are farsighted in their support of renewable energy from financing ~~credits~~ to tax incentives.

~~In Senate Bill 138~~

There are a few changes we would like to see. First we would like 138 to include any facility that produces electricity by the use, as a primary energy source, of biomass, waste, water, or other renewable energy resources or combination of those resources as is stated in D.B. 139 pg 1 lines 20-22.

Secondly we are very concerned that ~~that~~ the use of 80 megawatt to define small scale. We contend that 80 megawatts means ~~are~~ 80 million watts. Canyon Ferry has a 50 megawatt capacity. There are 80 megawatt facilities that would cost 200, ~~000~~ billion dollars to build

Small
Scale

in compliance with the MTS. Major
Facility Siting Act. In that
way there will be more funds available
to truly small scale electric production.

The Public Utility Regulatory Policy Act defines in ~~section 405~~ Small Scale Hydro Electric power ~~at~~ in section 408 as 15 megawatts or less.

The National Council of State Legislatures defines small scale as 25 megawatts or less.

Montana's ^{Major} Facility Siting Act covers ~~all facilities that have a capacity over 50 megawatts~~ defines any sight that is over 50 megawatts as a major sight.

80 megawatts is 4 times the definition of small scale for PERPA over 3 times the limit set for the National Council of State Legislatures and is 30 megawatts more than Mts. Major Facility Siting Act.

Truly small scale hydro electric power plants are cost effective as they generally require no new dams.

~~there is also quite a bit~~ According to the National Hydro Power Study, the hydro potential of .05 - 15 megawatt dams in Montana is 317 megawatts.

I urge you to ammend this bill to difine Small Scale to at most 50 megawatts

Mr Chairman Members of the Board,

again, I am Ann Wilsnack representing the Alternative Energy Resources Organization.

Again I stand in favor of Senator Dovers Bill 140 and again I am concerned about the use of 80 megawatt to define ~~scale~~. Small Scale.

Providing tax incentives to renewable energy facilities is commendable but I am concerned about the tax break ~~be~~ being provided to large ~~se~~ facilities ~~50~~ 50 megawatt

The Cochran dam owned by Montana Power which is ~~rated at 50 megawatts~~ provided \$189,060 in taxes to Montana last year.

The Black Eagle facility that provides 18 megawatts provided \$47,282 dollars in taxes last year.

If we define small scale as too large we may be losing important tax bases for the counties of Montana.

I urge you to amend this bill to 50 megawatts or less. in ~~defining small scale~~

NAME: Bill Opatz DATE: 2/2/18

ADDRESS: 2 Wood Ct

PHONE: 449-3007

REPRESENTING WHOM? PSC

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: Pg 2 Strike lines 8-10 in their entirety.

Pg 7 line 20 Strike the word "levelized"

Definition of the term "Avoided cost" - Avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source, and which are approved by the Commission.

NAME: ROBERT S. FIDLERMAN DATE: 1/2/81

ADDRESS: Box 952 Helen, mt

PHONE: 443-1690

REPRESENTING WHOM? U.S. Windpower

APPEARING ON WHICH PROPOSAL: Sen Bill # 138

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

COMMENTS: I would like to add "wind facilities" along with small scale hydro electric facilities.

STANDING COMMITTEE REPORT

February 2, 1981

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **165**

Respectfully report as follows: That **SENATE** Bill No. **165**

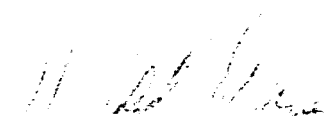
be amended as follows;

1. Page 1, line 17.
Following: "royalty"
Insert: "on a nonproducing lease"

and, as so amended,

DO PASS

JRF


.....
HAROLD L. DOVER Chairman.

STANDING COMMITTEE REPORT

February 2, 19 81

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **80**

Respectfully report as follows: That **SENATE** Bill No. **80**

DO PASS

4/C.