

MINUTES OF MEETING
SENATE NATURAL RESOURCES
March 18, 1981

The twenty-first meeting of the Natural Resources Committee was called to order by Senator Harold Dover, Chairman, at 12:35 P.M., on the above date in Room 405.

ROLL CALL: All members were present with the exception of Senators Keating, Elliott, Hafferman and Manning.

CONSIDERATION OF HB 397:

AN ACT PROVIDING FOR THE LEASE OF WATER PROJECTS
UNDER THE CONTROL OF THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION FOR HYDROELECTRIC
DEVELOPMENT

Representative McBride, District #85, presented this bill. She said the bill simply outlines the leasing procedure for state owned water projects with hydroelectric generation. The Department of Natural Resources has this ability and the bill gives the guidance and sets out a procedure for doing this. She reviewed the various sections of the bill with the committee.

Chairman Dover asked for proponents.

Leo Barry, Department of Natural Resources, supports this bill. He called the committees' attention to page 3, line 24, which says "Whenever an application in writing has been presented to the Board. . ." He said this would be initiated by some private entity and the agency would then proceed with the project.

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

Senator Ryan said initially you will receive an application to start the process. Upon receipt of the application the Board or Department would furnish information to anybody who might be interested in this project.

Representative McBride said receipt of the application starts preliminary examination to determine whether it is reasonable or economical. Only after that examination proved to be justified would it be advertised for other potential applicants.

Senator Ryan said the first applicant must have gone through some time and expense to recognize that the potential is there. Is there any expense invested by the other people or do they take advantage of the first applicant's time and expense.

Leo Barry said there would not necessarily have to be a lot of initial work done when the first application is submitted. As you will notice there are no real requirements for the first application. They could just come in and apply, using whatever information they happen to have on the feasibility of producing energy. The Department must then conduct a preliminary examination or evaluation on the capability of the project to produce electricity. If the examination determines further proceedings on the application are justified, we would then advertise for potential applicants for the project. The Board would conduct a hearing of the applicants and the applicants would give evidence that their proposal is the best. The Board would then make a decision on which was most advantageous to the state. He does not see where there would be an initial investment of any large amount.

Senator Ryan asked what if there is an initial investment and it is quite large. His investigation process will be presented with the application and it becomes public record.

Leo Barry said the bill does not speak to that. He does not think there is examination work done on these projects. We will have a number of people who are interested in leasing a project and they will rely on the information that the Department generates on its examination and evaluation and will use it to put together their application.

Senator Manley said you are talking about existing water projects. There is a problem that could be created to the irrigators by the generation of electricity on Nevada Creek. As a member of the Nevada Creek Water Users Association he is concerned with a possible problem in the future.

Representative McBride referred Senator Manley to Page 3, line 18, Section 3, Conditions of the lease. She said the wording "protect the interests of the state" would preclude the proposal of generation of electricity if it would prevent the original use of the project.

Senator Manley said the Nevada Creek Dam spillway is not the firmest thing in the world. He sees a problem in generating electricity and maintaining a certain water flow.

Leo Barry said your project has water contracts and that is what the feasibility study is for. The water contracts would have to be fulfilled first. We would do our preliminary examination as to the feasibility of putting in a generation facility. The existing contract would have to come into consideration. Nothing in the bill says we could change or transfer existing contracts. The project would be secondary to those contracts. He suggested in Section 3 that we could add "protect the interest of the state civil water use contracts."

Senator Manley would like to see an amendment prepared that addresses the problem, as opposed to interpreting what the law probably means.

Representative McBride said she sees no problem with that and she will submit an amendment after the meeting.

Senator Tveit questioned the language that was deleted on page 6, line 21, which was changed from an annual payment to a royalty payment.

Representative McBride said the House Natural Resources Committee discussed this and felt that the royalty didn't need to be on an annual basis, that it could in fact be monthly.

Senator Tveit is concerned by the word "a", which would denote a one time payment. Also on page 5, line 6, it is worded "an adequate royalty payment".

Leo Barry said "royalty" was amended in to make it consistent with Section 8.

Senator Manley asked if a project would be considered economically feasible if it were not operated year round.

Leo Barry said he did not know.

Gary Fritz said that is certainly a possibility.

Senator Dover asked if this bill coincides with the Senate bills that are now in the House that relate to this subject.

Leo Barry said yes.

Senator Dover is concerned with how general parts of the bill are.

Leo Barry said we see this process as one of negotiation from project to project and applicant to applicant.

Senator Dover questioned the amount of time the individual will be held up. The time frames seem to be longer than is necessary.

Representative McBride thinks this is consistent with some of the other bills that have come through. The Department needs time to evaluate the applications.

Leo Barry said we may be able to shorten the time frames in some cases. In Section 6 the 120 day time frame is for the benefit of the applicants. It gives them time to get their proposals together.

Senator Dover asked if we could protect the applicant that started the idea.

Leo Barry said we could change the Board's decision to 120 days and development of an application to 90 days or maybe 60.

Senator Dover referred to page 4, line 3, "the plans of development submitted by the applicant." He asked what plans are going to be required.

Representative McBride said that is part of the preliminary examination required by the Department of Natural Resources.

Leo Barry said that would vary depending on how much time the applicant put into the project. That section of the bill does not require any plans or development by the applicant. He does not have to sell his project at that stage. That comes after the preliminary examination is done.

Senator Dover asked if the applicant has to prove to the Department that the project is economically feasible.

Leo Barry said that responsibility will be on the agency. We will evaluate the project and determine whether it is economically feasible.

Representative McBride said the difference in this bill and the others that you may have seen, is that the applicant initiates the process.

Senator Dover said it would be easy for anybody to say that looks like a good site so look into it.

Leo Barry said the projects deserve to be looked into.

Senator Dover would like to see some criteria put into the bill. He is concerned that the state will be obligated to look into projects that are not worthwhile.

Leo Barry said an amendment could be prepared but he believes this will place too great a burden upon the applicant.

CONSIDERATION OF HB 697:

AN ACT TO REQUIRE A LICENSE TO USE A SUCTION DREDGE
IN STATE WATERS AND TO PROVIDE A PENALTY

Representative McBride, District #85, presented this bill. The purpose of this bill is to add another step to anyone who wants to use suction dredges. Suction dredges are portable and used with a vacuum and run along the bottom of a streambed. The bill's purpose is to put a handle on how many of these are being used in the state.

Under current law anyone using a suction dredge has to have a Water Discharge Permit. What this bill does is to make sure that the operators of suction dredges are aware of the law and to have one place where they would obtain a license, the Department of Health and Environmental Sciences. There are several concerns of the impact of suction dredges on the waters of Montana. Fishermen are concerned that they have too harsh an impact on the fish habitat. Land and mineral owners are concerned because of the mobility of the suction dredge and the fact that they could be on private land or a claim without realizing they are trespassing. This bill will insure that an observable license is on the dredge. This will show that they have gone through the process and are in compliance with the law. She furnished the committee with copies of material on suction dredges. Copies are attached.

Chairman Dover asked for proponents.

Ray Beck, Montana Association of Conservation Districts, supports this bill. This will insure that people who are using suction dredges are complying with the law.

Don Yardley supports this bill. There is concern in Park County on suction dredges and he thinks this law will help.

Don Skully got involved with suction dredge problems after a hearing took place on the Yellowstone. He feels centralizing one place where people can get oversight into the necessary law is a good idea. Also, with a visible license land owners and mineral owners know that individual is aware of the law and is in the area he should be.

Larry Ward, Hard Rock Miners, supports this bill. He had an experience with a suction dredge on his property and he could not identify the dredge owner. He feels the dredge owner should be aware of the law and should have something identifiable on his machine. With some identification the landowner can contact that person if he is trespassing.

Don Snow, Montana Environmental Information Center, would like to go on record in support of this bill.

John North, Department of State Lands, supports this bill. The State Lands gets involved in suction dredging in two ways. In the Hard Rock Act, Small Miners Exclusion Statements, and if the stream is on state land, they have to get a mineral or general lease from the Department of State Lands. Often times the public does not know these are required and this bill would make them aware of that. The permit would be obtained from the Department of Health and Environmental Sciences. He pointed out to the committee that if SB 258 were passed, with the transfer of Water Quality functions to the Department of Natural Resources, this bill would have to be changed to coincide.

Chairman Dover asked for opponents.

Bill Hand, Mining Association, originally testified in support of this bill but now opposes it. Suction dredges are already licensed through the Department of Health and Environmental Sciences and this bill is just a duplication of the process.

Chairman Dover asked for questions from the committee.

Senator Manley asked Mr. Hand if the Department of Health set rigid enough rules could they ban these suction dredges.

Mr. Hand said it would amount to a ban.

Senator Manley asked Mr. North about his mention of navigable streams.

Mr. North said two streams in Montana have been declared navigable.

Senator Brown said this does not mean that there are not other streams that are navigable. It just means that two have been declared.

Larry Huss wanted to clarify that this bill would not allow the Department to make rules that would ban suction dredges. This bill does not expand the present law except to issue a license to the suction dredge owners and to make them aware of the present law with regard to suction dredges. This bill will not allow a ban on suction dredges.

Senator Van Valkenburg asked who will enforce the law.

Representative McBride said it would be enforced through the sheriff.

Senator Ryan said there is already a permit system. Are the dredge owners going to have to get a permit for a specific site.

Larry Huss said this will not increase the number of permits that a dredge owner needs to obtain. It will just require a visual license for the dredge and that the dredge owner is aware of the law regarding suction dredges.

Senator Brown asked why they didn't just amend the discharge permit to require that if it is a suction dredge operation the permit must be placed on the dredge.

Don Skully said the suction dredge owner will go to the Department of Health and obtain a list of all applicable law. If they comply with this law they will get a license.

Senator Brown understands that the problem is that dredges are operating without the necessary permit.

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Steve Pilcher said the permit that is issued at the present time is in letter form and is usually not on their person. We are having problems with the tremendous growth of dredge activities. By issuing visible licenses, everyone will know the number of the dredge and where it is operating. If he is in the wrong location it would be very easy to follow-up from the number on the permit.

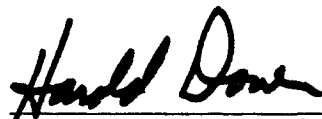
Senator Brown said there could be an access problem or trespassing problem. Does the dredge owner have to have proof that he has access to a certain stream through private property.

Representative McBride said the Department would monitor that.

Mr. Pilcher said the reason this was put in the bill was to make the dredge owner aware that the permit has limitations.

Representative McBride closed by saying we have sufficient laws to cover the operation of suction dredges but because of their portability, identification is needed to determine that they are in the place they are permitted for. This bill isn't to discourage their use, it is to protect the landowners, mineral owners and fishermen.

ADJOURNMENT: The meeting adjourned at 1:50 P.M.

A handwritten signature in dark ink, appearing to read "Harold Dover", is written over a horizontal line.

HAROLD DOVER, Chairman

ROLL CALL

NATURAL RESOURCES COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3-18-81

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

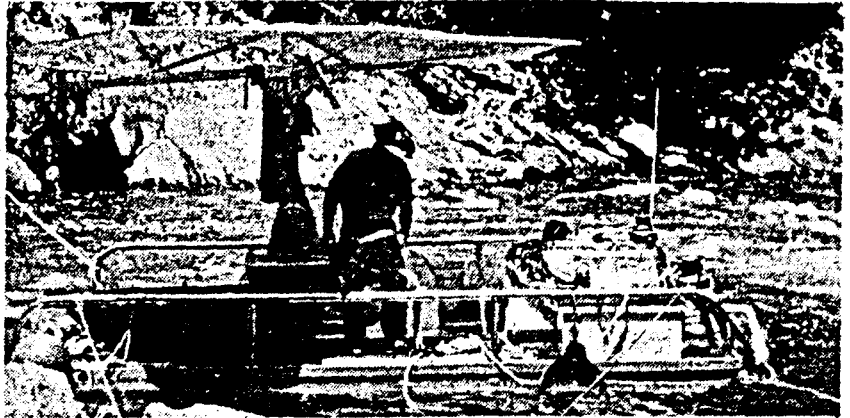
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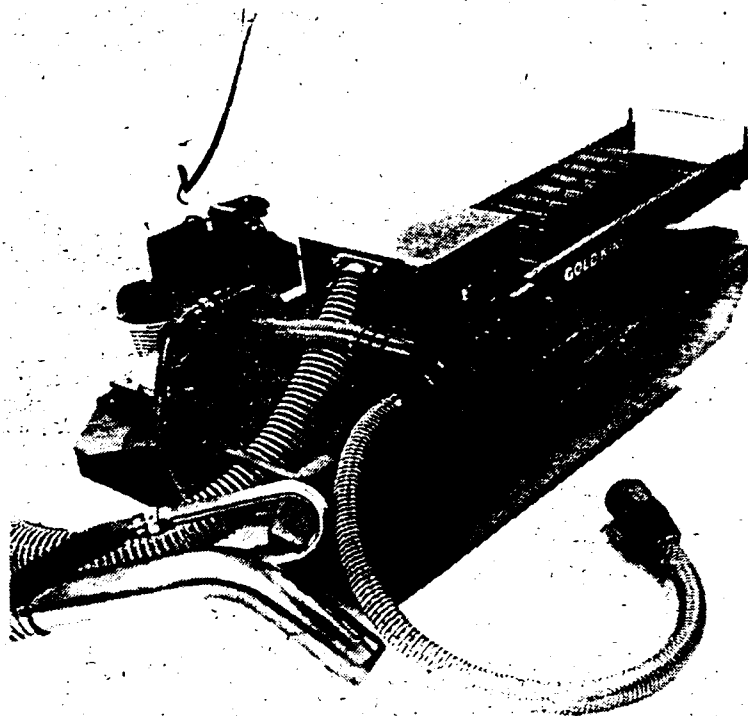


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NAME: John North DATE: _____

ADDRESS: 1000 1st St. N. Wash

PHONE: 20746

REPRESENTING WHOM? State of Ind.

APPEARING ON WHICH PROPOSAL: 1-12-77

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

COMMENTS: _____

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