

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
January 26, 1983

The House Natural Resources Committee convened at 12:30 p.m., on January 26, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Asay, Curtiss and Quilici, who were excused. Chairman Harper opened the meeting to a hearing on House Bill 135.

HOUSE BILL 135

REPRESENTATIVE DAN YARDLEY, District 74, chief sponsor, said this bill creates a wind energy easement and provides that solar and wind energy easements are servitudes attached to land. Rep. Yardley went through the bill discussing the different parts. He said wind energy is likely to become a major investment on the east side of the divide and an easement like this is needed.

DON REED, Montana Environmental Information Center spoke in support and a copy of his testimony is Exhibit 1 of the minutes.

KAREN STRICKLER, League of Women Voters, spoke in support. She said the League supports state policies which would stimulate the development and use of alternative and renewable energy sources. She said without wind easements it is very possible some wind projects will not be developed. She urged the committee to support the bill.

WADE WILKISON, Helena, Mont SEIA, spoke in support. He said this could help solve general technical problems of people that are going to be involved with developing wind energy.

MARY VANT HULL, Bozeman, spoke in support. She said these kind of energy bills are important and communities will be needing easements for wind and solar.

There were no opponents.

REPRESENTATIVE YARDLEY closed.

Questions were asked by the committee.

Rep. Ream asked of the possibility of including solar on page 2, line 21. John Carter, the researcher, was asked to respond to this and he said solar easements are covered under another section of the law.

Rep. Yardley responded to a question that this free access to wind requires your neighbor's agreement in writing as there is no way to force this easement upon a neighbor.

Rep. McBride said in Livingston that individuals are beginning to erect wind generators and she questioned their ability to get financing if there wasn't some guarantee that there will be access to the wind.

Rep. Yardley said the investment is great, as a single windmill can cost \$21,000,000. He said they have to go and make sure that nothing is done that will be detrimental to the wind. He said he was sure they would like safeguards.

Chairman Harper closed the hearing on this bill and opened the hearing on HB 122.

HOUSE BILL 122

REPRESENTATIVE KELLY ADDY, District 62, chief sponsor, said this is an act to authorize the Board of Land Commissioners to set the primary term of oil and gas leases at 10 years or less. He said presently the Board has the authority to grant oil and gas leases on public lands but it is limited to leases of 10 years. What this bill would do is allow that Board to grant leases for 10 years or less. He said we should be able to market the oil and gas according to what the market is worth. He said presumably this would result in greater revenues to the state.

DENNIS HEMMER, Department of State Lands, spoke in support and a copy of his testimony is Exhibit 2 of the minutes.

DON ALLEN, Montana Petroleum Association, spoke in support with a suggested amendment. He felt the lease should be for either 5 or 10 years as he felt this would allow a certain amount of security to prospective bidders on these leases.

REPRESENTATIVE ADDY closed. He questioned why the state should be restricted to one or two lease periods when individual landowners are not.

Questions were asked by the committee.

Rep. Jensen asked about the lease drilling penalty. David Woodgerd, State Lands, said the Board of State Lands raised the drilling penalty which requires a fee be paid in the 6th, 7th, 8th, 9th and 10th year if no drilling has occurred on the lease. He said within the first five years a lease holder will pay \$1.50 to \$2.50 an acre. Rep. Jensen asked if a similar rule would be applied to a 5 year lease. Mr. Allen didn't think there should be. He said if done, this would diminish the interest in the leasing. He said it is OK between 5 and 10 years because if someone has sat on it that long they should be encouraged to drill or give up the lease.

Rep. Ream asked what the federal lease term is. Mr. Allen said there is talk that they are trying to change their lease times. He said the trend is toward the five year term but he didn't know how many were changed.

Chairman Harper closed the hearing on this bill and Vice-Chairman Ream assumed the chair as Chairman Harper is the chief sponsor of the following bill.

HOUSE BILL 287

REPRESENTATIVE HAL HARPER, District 30, chief sponsor, said the bill is at the request of State Lands. He said the bill is to eliminate the \$1,000 per acre reclamation cap charged for disturbing lands. This is a bond put up by the open cut mining operator.

DENNIS HEMMER, Commissioner of State Lands, spoke in support and a copy of his testimony is Exhibit 3 of the minutes.

There were no opponents.

REPRESENTATIVE HARPER closed. He said he had talked to Gary Langley of the Montana Mining Association and he was not there testifying against the bill. Rep. Harper said a recent issue of the Mining Journal stated that costs sometimes exceed \$10,000 an acre for reclamation so maybe this needed change was anticipated and they are ready to accept it.

Questions were asked by the committee.

Rep. Mueller asked how the cost of reclamation is determined. Mr. Hemmer said they ask the operator to submit the cost and if it is unrealistic they go back and review.

Rep. Hand asked "If the Department determined they did not like what the operator is proposing, do they deny the application?" He said he knew there were time restraints on the Department. Mr. Hemmer said he didn't know if they could deny but they don't grant one until they have an acceptable reclamation plan.

Rep. Hand asked Mr. Hemmer if he felt this could have a serious economic impact. Mr. Hemmer said he didn't think so. He said they are mostly looking at gravel and particularly where it intercepts the water system.

Rep. Bertelsen asked concerning an open cut around Glasgow. He said he recalled that it was going to cost more than \$10,000 an acre, and if the operator does not pay how does it get done - who pays. Mr. Hemmer said if there is no sufficient bond, the department reclaims to the best of their ability and then it is abandoned. He said they don't have the funds where they could go

back and make amends so they do the best they can.

Vice-Chairman Ream closed the hearing on this bill. Chairman Harper resumed the chair and opened the meeting to an executive session.

EXECUTIVE SESSION

HOUSE BILL 287 Rep. Fagg moved DO PASS. This motion carried unanimously with all present (absent were Reps. Asay, Curtiss, Quilici and D. Brown).

HOUSE BILL 135 Rep. Jensen moved DO PASS. Rep. Fagg asked why this couldn't be done now without a law. John Carter was asked to respond and he said the value of the bill is that it gives protection to the person who wants to build the windmill as nothing can then ever take place on the adjoining land to interfere with the wind. Mr. Carter said it is a simple mechanism that is statutory for other kinds of other kinds of easements.

The question was called and the motion carried with Reps. Fagg and Hand voting no, and absent were Reps. Asay, Curtiss and Quilici.

HOUSE BILL 122 Rep. Fagg moved to amend on line 13 by inserting "minimum" before "primary"; and striking "10" and inserting "5"; and striking "or less" and inserting "with a minimum of 10 years." He said this amendment seemed important to the oil industry and we should give them the protection they are asking for.

Mr. Hemmer was asked to respond and said the bill as written leaves the board more flexible so they can go with the economics of the situation.

The motion to amend failed with only Rep. Fagg voting for it.

Rep. Hand moved the bill DO PASS. This motion carried with Rep. D. Brown opposing and absent were Reps. Asay, Quilici and Curtiss.

HOUSE JOINT RESOLUTION 2 Rep. D. Brown moved the amendments that are Exhibit 4 of the minutes. He discussed the amendments with the committee. He said the intent is in no way to duplicate anything done by the Montana Major Facility Siting Act but to establish a political contact for communication. Rep. McBride asked about amendment #11 if this was the sole intent. Rep. D. Brown withdrew this amendment. The questions was called and the motion to adopt the amendments carried unanimously with all present. Rep. Brown then moved the bill AS AMENDED DO PASS. This motion carried with

Reps. Jensen, Veleber, Ream and Metcalf voting no and absent were Reps. Asay and Quilici. Rep. Curtiss had left a vote favoring the bill.

Rep. Jensen questioned whether passage of this bill would be setting up a precedent. Rep. Brown assured him that it is not a precedent but has been done before - with Wyoming for one. He said that resolution was much broader than this one. Rep. Harper said he didn't see it as a precedent but merely as a response to a request by the state of North Dakota to provide some form of coordination.

HOUSE BILL 118 Chairman Harper said a similar bill to this was carried by Rep. Donaldson last session and it was passed by the House almost unanimously and then killed in the Senate. He said that is why the Subdivision Bureau was closed and the function was moved to Water Quality. He said the question is do we want to enable it to be funded now from fees.

Rep. Fagg said he still didn't know where the money was going. He said he had a few questions. He said under the present rules a condominium unit is considered a lot and that counts up pretty fast in fees. He said he does want to see the subdivision unit able to work but would like to see exactly what they are doing with their money.

Rep. Jensen said he agreed with Rep. Fagg that the witnesses on the bill had done a poor job of defending their need. He asked how they generate the \$50 figure. He, too, said he wanted to see this function alive but didn't know exactly how it should be done.

Rep. Mueller asked if the bureau was put in the appropriation budget would they be required to come up with a fixed budget. He said he agrees with Reps. Jensen and Fagg that he can't see where they need the kind of money they would get from the fee. He said he would like to see a detailed breakdown of the number of units and how much they really need.

Rep. Brown said the EQC held two hearings on the Subdivision Bureau to get to the bottom of this. He said they also requested a breakdown but he hadn't seen it yet.

Chairman Harper said he would accept a motion that Mr. Carter draft a letter and have it typed by the secretary, with a carbon going to the Governor and Rep. Schontz, asking for more information on this bureau and a breakdown of the costs.

Rep. Brown said the letter should not indicate lack of support but ask them to justify the amount of the fee. He moved this be done. The motion carried unanimously with all present.

HOUSE BILL 108 Rep. Fagg suggested the bill be tabled rather than to be acted on before looking at other proposals also asking for money from this fund.

Rep. Neuman said water development is way down at the bottom after the money runs out. He said it is a longer project than a year and they would not be eligible for RRD funds the second year. He said he would just as soon see the bill go on.

Rep. Brown suggested just holding the bill for a second look rather than tabling it. He made this a motion and the motion carried with Rep. Neuman voting no.

Meeting adjourned at 1:50 p.m.

Respectfully submitted,



HAL HARPER, CHAIRMAN

Emelia A. Satre, Secretary

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEEBILL HB 135DATE 1/26SPONSOR YARDLEY

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Don Reed	Helena	MEIC	✓	
Karen Strickler	"	MT LWV	✓	
M. Vank Hull	Bozeman		✓	
WADE WILKISON	HELENA	MONT SEIA	✓	
Kirt Harding	Helena	Mont SEIA	✓	

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Testimony presented to the House Natural Resources Committee
By the Montana Environmental Information Center
January 26, 1983

We feel H.B. 135 is consistent with Montana's support of conservation measures and renewable energy devices.

Property rights have long been an integral part of our society. They are the basis upon which our free enterprise system was built. The perception of what constitutes private property is subject to redefinition or clarification as the potential uses of that property change. In recent years, as our fossil fuel energy supplies have diminished, renewable energy sources have increased in importance. People throughout Montana have placed non-fossil forms of energy generation upon their property. Consistent with this shift in property use, we must grant those harnessing renewable energy legal protection of their access to that energy. This is wholly consistent with our existing set of property rights, which protect the individual property owner from infringement upon his or her right to use that property.

H.B. 135 will help protect the rights of wind energy users and by so doing contribute to energy use that keeps Montana's air and water clean, reduces our dependency on out-of-state energy sources, and enhances the financial well-being of those in Montana. Protect the rights of property owners who wish to harness the wind by supporting H.B. 135.

WITNESS STATEMENT

NAME Karen Strickler BILL No. HB 135
ADDRESS 1500 Jerome, Helena DATE 1-26-83
WHOM DO YOU REPRESENT League of Women Voters
SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The League of Women Voters supports state policies which would stimulate the development & use of alternative and renewable energy sources. We urge committee support of HB 135. Without wind easements it is very possible some wind projects will not be developed.

✓

COMMITTEE

DATE 1/26

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 122

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

House Bill 122 is at the request of the Department of State Lands. The purpose of the bill is to give the Board of Land Commissioners the authority to issue oil and gas leases on state land for a term of less than 10 years. Section 77-3-421, MCA, currently requires that such leases be issued for a primary term of ten years. A ten year lease term was the standard term for oil and gas leases for many years. However, in the last few years, shorter primary terms have become common. In areas such as the Williston Basin in eastern Montana, the vast majority of private leases are being granted for a term of five years or less. Also, the neighboring states of North Dakota, South Dakota and Wyoming are issuing state leases for five year primary terms.

In geographic areas where the potential of producing oil and gas is high, a primary term of less than ten years is desirable because it forces the lessee to drill and begin production in a shorter time period. If the lessee does not begin producing and paying royalties by the end of the primary term, the lease is terminated.

It is to the benefit of the state to have the lease developed as soon as possible in order to begin receiving royalty payments and to insure that the mineral is not being drained by wells on adjacent land. Royalty payments are an important source of revenue to the school trust fund. Also, if the lease is not developed within the primary term, the state can lease it again and collect a bonus payment.

A primary term of less than 10 years may not always be in the best interests of the state especially in highly speculative areas. However, the Board of Land Commissioners should have the flexibility to determine the length of primary term which is in the best interests of the state. The state is at a disadvantage in leasing its land for oil and gas when it is restricted to a primary term of ten years.

The Department of State Lands urges the committee to vote in favor of House Bill 122.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 287

DATE 1/26

SPONSOR HARPER

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL #287

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

House Bill #287 is at the request of the Department of State Lands. The purpose of the bill is to give the department the authority to require a reclamation bond greater than \$1,000 per acre if the department finds, in writing, that the cost of restoring the disturbed land exceeds \$1,000 per acre.

Based on past experience, the department has learned that on some open cut mining operations a reclamation bond of \$1,000 per acre is not an adequate amount to satisfactorily reclaim the area if the operator defaults and the department is forced to use the bond to reclaim the area.

I have put together some figures based on the actual costs of reclamation. These figures incorporate such items as (1) cost of earth moving which includes backfilling, grading and topsoiling; (2) cost of equipment; (3) labor; (4) seeding; and (5) fencing. The figures indicate that the cost of reclamation may cost as much as \$10,000 per acre depending upon the individual operation.

If the department is allowed to require a realistic bond amount that more accurately reflects the cost of reclamation, I feel that the requirements of the Open Cut Act can be more effectively met.

The Department of State Lands urges the committee to vote in favor of HB 287.

SUGGESTED AMENDMENTS
TO
HOUSE JOINT RESOLUTION #2

1. Title, line 6.
Following: "SUBCOMMITTEE"
Strike: "STUDY"
Insert: "EXAMINE"
Following: "ON"
Insert: "STATE AND LOCAL GOVERNMENT SERVICES IN"
2. Page 1, line 11.
Following: "plant"
Strike: "will"
Insert: "may"
3. Page 1, line 14.
Following: "substantial"
Strike: "local"
Following: "on"
Insert: "state and local government services in"
4. Page 1, line 15.
Following: "Dakota"
Strike: "communities"
5. Page 1, line 21.
Following: "plant"
Insert: "upon the provision of state and local government services"
6. Page 1, line 25.
Following: "Subcommittee"
Strike: "study"
Insert: "examine"
7. Page 2, line 1.
Following: "on"
Insert: "state and local government services in"
8. Page 2, line 3.
Following: "to"
Strike: "study"
Insert: "examine"
9. Page 2, line 4.
Following: "upon"
Insert: "state and"
10. Page 2, line 5.
Following: "governments"
Insert: "services"
11. Page 2, line 6.
Following: "which"
Insert: "taxation policies and"
12. Page 2, line 8.
Following: line 7
Strike: "accomplished"
Insert: "coordinated"

STANDING COMMITTEE REPORT

January 26 19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **122**

First **white**

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE BOARD OF LAND COMMISSIONERS TO SET THE PRIMARY TERM OF OIL AND GAS LEASES AT TEN YEARS OR LESS; AMENDING SECTION 77-3-421, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **122**

DO PASS

STANDING COMMITTEE REPORT

January 26, 1933

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 135

First reading white

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WIND ENERGY EASEMENT;
PROVIDING THAT SOLAR AND WIND ENERGY EASEMENTS ARE SERVITUDES ATTACHED
TO LAND; AMENDING SECTION 70-17-101, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 135

DO PASS

STANDING COMMITTEE REPORT

January 26,

19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **287**

First reading copy (**white**
color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE RECLAMATION BOND REQUIRED BY THE OPENCUT MINING ACT MAY BE GREATER THAN \$1,000 PER ACRE IF THE DEPARTMENT OF STATE LANDS DETERMINES, IN WRITING, THAT THE COST OF RESTORING THE DISTURBED LAND EXCEEDS \$1,000 PER ACRE; AMENDING SECTION 82-4-433, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **287**

DO PASS