

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
January 31, 1983

The House Natural Resources Committee convened at 12:30 p.m. on January 31, 1983, in Room 224K of the State Capitol with Chairman Hal Harper presiding and all members present except Rep. Dave Brown who was absent. Chairman Harper opened the meeting to a hearing on HB 305.

HOUSE BILL 305

REPRESENTATIVE JOHN HARP, District 19, chief sponsor, said this bill pertains to a change in existing law in that it increases the emergency sale of timber from 200,000 to 1 million board feet. With the restrictions in the present law it is often a month to a month and a half after the problem is spotted before anything can be done and in the higher elevations that could mean the next spring and then there might not be much of value left. The bill would call for at least ten days for bids and it would go to the highest bidder. This bill would benefit the school trust fund as it would maximize returns for timber in these emergency situations.

RANDY MOSLEY, Department of State Lands, spoke next in support and a copy of his testimony is Exhibit 1 of the minutes.

ROBERT N. HELDING, Montana Wood Products Association, spoke next in support. He mentioned the pine beetle infestation in different sections of Montana and said this bill would help utilize the infested timber.

CHAIRMAN HARPER closed.

Questions were asked by the committee.

Rep. Fagg asked how many board feet would there be on a truck. Approximately 4-5,000 board feet was the answer. Rep. Fagg asked if the timber from the trees infested by the pine beetles were being used for white pine interior paneling. He said he understood there was a fairly good market for this. Mr. Holding said it is being promoted but so far not that much of a market exists.

Chairman Harper closed the hearing on HB 305 and opened the hearing on HB 352.

HOUSE BILL 352

REPRESENTATIVE BOB REAM, District 93, chief sponsor, said the bill is due to a flaw that exists in the law as it pertains to the Air Quality Bureau. The Air Quality Bureau can enforce the regulations established but it cannot enforce violations of the permit except to completely revoke the permit. He said this law will

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make it consistent with the Clean Water Act. He said there should be some provision for enforcement besides just closing down a company.

HAL ROBBINS, Department of Health, spoke next in support and a copy of his testimony is Exhibit 2 of the minutes.

DON REED, Montana Environmental Information Center, spoke next in support and a copy of his testimony is Exhibit 3 of the minutes.

REPRESENTATIVE REAM closed.

Questions were asked by the committee.

Rep. Quilici asked for how long the permits are granted. Mr. Robbins said for the life of the facility. Rep. Hand asked if this would change any of the specifications. Mr. Robbins said no, that all they were trying to do with the bill is to have this consistent with how we enforce other rules.

Chairman Harper closed the hearing on HB 352 and opened the meeting to a hearing on HB 263.

HOUSE BILL 263

REPRESENTATIVE BOB REAM, District 93, chief sponsor, said the bill looks like a simple bill as it just deletes one subsection but it involves a very complicated issue. He said the law as it is written is very confusing at best and it just might be giving away state's rights that we don't want to give away. He said when the act was passed this language was included just to prevent possible conflict with the U.S. Supremacy Act. Rep. Ream presented a proposed amendment which is Exhibit 4 of the minutes. A copy of the information sheet passed to the members is Exhibit 5 of the minutes. He said Don McIntyre, Department of Natural Resources, and Sheri Sprigg, Attorney General's Office, were present to answer questions.

REPRESENTATIVE BOB MARKS, District 80, said he was one of the sponsors of the bill. He said this closes a back door approach to building power lines through the center of his county. He said apparently because of a possible time delay the consortium asked the BPA to build the power line from Townsend to Garrison. Instead of applying for an amended certificate the BPA consortium went to the BPA and asked them to build the land. So they were able to avoid going through the process of siting a massive installation and he said this is of great concern to his people. If it had been built by private construction as originally proposed, they would at least have become taxpaying neighbors. He said the purpose of the bill is to at least have a hearing process that the people can have an input to where it will be placed.

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He said they can't do anything about this line but might be able to do something about what might be happening in the future.

ARLENE WARD BRAUN, County Attorney's Office, Missoula County, spoke in support, and her witness statement is Exhibit 6 of the minutes.

LARRY LATTIN, rancher from Boulder, spoke in support of the bill. He said they were very affected by this project. He said three agencies, Forest Service, BLM and BPA, combined to build this across their land with no consideration for private land owners. He said they border federal land but ended up with 18 towers and 90 acres lost. He said there is no jury trial on the condemnation procedure. He said BPA acquired a 2 mile corridor which makes him think we could be looking at just the tip of the iceberg. He said they had said there would be 7 wires and there are 17.

KEN KNUDSON, Montana Wildlife Federation, spoke in support. He said the state should take the lead rather than let the federal government tell us we need the facility.

KAREN STRICKLER, Montana League of Women Voters, spoke in support. She said we should reserve the right to have the final say as to what happens within our borders.

PAUL SMITH, lawyer from Boulder, representing both the family ranch and the Northern Boulder Protective Association, spoke in support of the bill. He said in 1976 it was recognized there was a need to have a policy for federal lands and it said if the state laws are stricter they applied. When the BPA took over the building of the line they should have consulted the state and if they had followed the Siting Act most of the problems could have been avoided. He said the court ruled in our favor. The line was rerouted and the residents of Boulder and Deer Lodge knew nothing until after the decision. He said this is an example of arrogance on the part of the federal agency. He said the BPA efforts have improved. There are seven federal lines on the drawing board and the BPA seems to have signaled that they want the DNRC's active participation and that they will cooperate with them.

LEO BERRY, Director of the Department of Natural Resources and Conservation, said they would support the enactment. A fact sheet is Exhibit 7.

DON REED, Montana Environmental Information Center, spoke in support and a copy of his testimony is Exhibit 8 of the minutes.

REPRESENTATIVE VERNER BERTELSEN, District 27, representing self, said he felt he would be remiss if he didn't speak in support of this bill. He said the power line crosses all four of the counties he represents. He said they would have appreciated a law

like this rather than the after-the-fact participation they got. He said they are very unhappy that they had to submit to this kind of intrusion and still receive no taxes from it.

REPRESENTATIVE JAMES JENSEN, District 66, spoke in support. He said there are some genuine concerns that need to be identified and have been identified. He said the WAPA Act could have very detrimental impacts on the counties' taxation bases in eastern Montana.

REPRESENTATIVE TOM ASAY, District 50, spoke in support. He said states' rights and states' obligations are in much the same area. He said he feels strongly about this bill and feels it is very important.

JIM WALSH, Butte, Montana power, said they neither oppose nor endorse the bill, but are neutral on the question. He said Congress wishes the states to be to some extent involved in the siting of the transmission lines. He said the state, though, is inviting litigation as regards hydroelectric projects licensed by the federal government. He said there is forty years of court history from the Supreme Court to District Court stating this. He suggested this point be amended into the bill that the state of Montana can not have any state siting authority over hydroelectric projects.

REPRESENTATIVE BOB REAM closed. He said he did not introduce the bill to get around the supremacy clause but to clean up some of our own laws. He said he would like to take the suggested amendment and consult with DNRC and the Attorney General and come up with the final wording for the next executive session.

Questions were asked by the committee.

Rep. Hand asked if Montana had any ground to stand on in telling the federal government what to do. Mr. Walsh said Congress has expressed a willingness to save the supremacy clause and says the states should have a say in the siting of the transmission lines.

Rep. Jensen asked if the original EIS for this particular line was adopted. Mr. Berry said that is correct. The agency recommended that Colstrip be denied certification and so didn't spend a lot of time on the routes. In the end the company had negotiation problems across the Flathead Indian Reservation and asked the BPA to use its authority. BPA agreed to site the line and decided to go all the way to Garrison West.

Rep. Jensen asked when the state became aware that instead of private ownership of the transmission lines or right-of-way it would be public ownership. Mr. Smith said when the federal government had to do their EIS they came up with a very thick draft and in that two or three pages said there might be a BPA alternative.

Rep. Jensen asked if in the late 60s the power company was involved in planning facilities. Mr. Walsh said in the 60s BPA was not planning any specific facilities as they were engaged in the long-range plan to meet the power needs of the Northwest.

Mr. Berry responded to a question to say DNRC sued BPA and the judge found that our Siting Act didn't have substantive standards. He said this has been appealed. But while this was happening the line was proposed to be constructed and Judge Batten said we couldn't deny a portion of the line. He said that is being appealed. He said the BPA has included the DNRC into the planning and siting of the line west and so from Garrison West the state has played an active role. Mr. Berry said legally the state does not have a great deal of control over these lines. He said the natural tendency is to follow a corridor but the ranchers in the corridor protested so BPA moved the corridor to the other side of the valley.

Chairman Harper asked how Mr. Berry felt about the proposed amendment. Mr. Berry said he was not opposed to the amendment. He said there are protests that we don't have jurisdiction over the hydroelectric facility; if we don't have, maybe we should have and should send such a notice to Congress.

Chairman Harper closed the hearing on this bill and opened the meeting to an executive session.

EXECUTIVE SESSION

HOUSE BILL 305 Rep. Mueller moved DO PASS. He said we are in the middle of the epidemic of the Mountain Pine Beetle. He said with this infestation hundreds of thousands of acres of trees die rapidly.

Rep. Fagg asked if 1 million board feet is enough.

Chairman Harper asked how many of the board feet is affected. He asked if this could be a way to get out of some of the normal leasing procedures. Rep. Mueller said sub 3 answers that. He said there are controlling factors that any professional forester would have to know before calling an emergency, or he would be out of a job fast.

John Carter said what keeps the department honest is that other private parties out there might be interested in buying the timber. If there were only ten days and not a legitimate emergency, it would only happen once.

Rep. Addy mentioned that the National Park Service has the policy of letting the pine beetle and forest fires run their course. He said they use it as a management tool. Rep. Mueller said there is a difference with active commercial forests that are returning income to the state. He said if you are managing a forest stand for the long pull you must control the insect infestation.

The question was called and the motion of DO PASS carried unanimously with all present (absent were Reps. Brown and Asay). Rep. Quilici had left a yes vote on this bill.

HOUSE BILL 352 Rep. Bertelsen moved DO PASS. This motion carried unanimously with those present. Rep. Asay and Quilici had left yes votes and Rep. Brown was absent.

HOUSE BILL 8 Rep. Hand moved the amendments (Exhibit 9 of the minutes). He said this subject comes up almost every session and he said his proposal would transfer the rights of owners that can't be found to the Board of Land Commissioners.

Rep. Iverson said he would oppose the motion as the primary reason for the bill is that over the last several years there has been a flow of rights from the surface owner. He said he thought the idea was to provide some mechanism to reverse the flow and let the surface owner get the rights.

Rep. Curtiss felt the amendment would kill the intent of the bill.

The question was called and the motion failed with Rep. Hand voting for and all others present opposing the motion.

Rep. Iverson moved the amendments, Exhibit 10. The amendments were approved unanimously by all present (absent were Reps. Quilici, Neuman, Brown and Asay).

John Carter upon request of the chair said the question was raised by several parties if the bill covered both mineral and royalty interests. He said this is the question that was submitted to the attorney in Billings, Mr. Louis Moore. Mr. Moore had determined the bill as written did confuse mineral rights with royalty interests. Mr. Carter said the amendments also clears up Mr. Romine's problem as it makes

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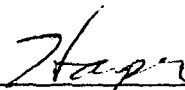
clear what tasks the clerk is to perform. Mr Carter said there is a distinction between severed mineral interests and royalty interests.

Rep. Mueller asked, "If you own a piece of land and continue to pay the taxes could you get a tax title?" The answer was you would have to take a quick claim deed and become an owner of record.

Rep. Iverson moved that HB 8 AS AMENDED DO PASS. This motion carried unanimously with all present (absent were Reps. Quilici, Neuman, Brown and Asay).

Meeting adjourned at 2:20 p.m.

Respectfully submitted,



HAL HARPER, CHAIRMAN

Emelia A. Satre, Sec.

WITNESS STATEMENT

Name Dawn A. North Committee On Natural Resources
Address 914 Brackenridge, Helena Date 2/2/83
Representing LWU Support X
Bill No. HB 200 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. ~~to~~ LWU strongly supports CERCLA and its application in Montana. We believe that passage of HB 200 will accomplish this goal.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Randy Masley Committee On Natural Resources
Address Dept. of State Lands ^{Capitol Hill} ~~station~~ Date 31 Jan 83
Representing Dept. of State Lands Support X
Bill No. 305 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. House Bill 305 is at the request of Dept. of State Lands
2. Bill would raise the amount of timber to 1 million board feet. The Department could sell under emergency conditions using a 10 day minimum advertised bid.
3. This is necessary to expedite the sale process of timber from state lands subject to fire, insect & disease attacks, and blowdowns.
4. Timber sold under those conditions degrades in quality and value rapidly. Enactment of this bill will minimize any losses to the school trust fund.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL No. 305

House Bill 305 is at the request of the Department of State Lands. The purpose is to increase the amount of timber subject to the 10-day minimum advertisement period prior to sale by the Department from 200,000 to 1 million board feet.

The current statute regarding the emergency sale of timber, as occurs during periods of fire, insect and disease attacks, and wind throw allows the Department to sell up to 200,000 board feet of timber on a 10-day minimum advertisement period without prior Land Board approval. Time is of the essence in preparing insect and disease infested timber for sale before substantial degrade in lumber quality and value occurs. If this happens the value of the timber can go from a green price to a dry price, thereby reducing the amount of revenue to the school trust lands.

Under House Bill 305 the Department would be able to increase the volume it would be able to sell on a 10-day minimum advertisement period during emergency conditions from 200,000 to 1 million board feet.

Our experience over the last few years in selling bug infested timber has demonstrated the need for this bill. The Department of State Lands urges the committee to support this bill.

WITNESS STATEMENT

Name BOB HELDING

Committee On NATURAL RESOURCES

Address MISSOULA MT.

Date 1-31-83

Representing MT. WOOD PRODUCTS ASSOC.

Support HB 305

Bill No. HB 305

Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Allows the State Trustee to sell*
Pine Beetle killed timber to my large woods
2. *to the State School Fund.*

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 305

DATE 1/31

SPONSOR HARP

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

TESTIMONY
HB 352
(1983 Legislature)

presented on behalf of the
Montana Department of Health and Environmental Sciences

The Department of Health and Environmental Sciences (DHES) would like to thank you for the opportunity to present testimony in favor of the proposed legislation. HB 352, proposed by request of the DHES, would clear up certain problems with enforcement of permits in the Montana Clean Air Act (75-2-101 et. seq. MCA). In order to facilitate an explanation of the proposal and rationale for its adoption, the testimony has been divided into the following sections:

Background;

Need;

Department Activities Related to the Bill;

Summary

BACKGROUND

The Montana Clean Air Act (Title 75, Chapter 2, MCA) states "It is the public policy of the state to achieve and maintain such levels of air quality as will protect human health and safety . . .". In order to accomplish this goal, the Act empowers duties and responsibilities to the DHES and the Board of Health and Environmental Sciences. The Board's primary function is to set general policy through passage of rules designed to protect air quality and control air pollution emissions. The Department, on the other hand, is charged with carrying out those rules and regulations. To achieve compliance with these standards, the Act provides many enforcement procedures. The enforcement options range from efforts to obtain voluntary compliance to the formal proceedings in Part 4 of the Act. Part 4 catalogues a number of enforcement options including: a) Notice of Violation and An Order to Correct; b) Order to Appear before the Board; c) Civil Penalties; and d) Criminal Penalties.

In addition to the Act, administrative rules of Montana 16.87.1101 et. seq. require that certain facilities with the potential to emit pollutants into the outdoor atmosphere require a permit. (These rules were adopted pursuant to the authority in 75-2-203 MCA). The rules also permit the DHES to attach certain conditions and/or limitations to the permit in order to comply with the intent of the Act. Frequently this includes an emission limitation, air pollution control technology, and so forth.

NEED FOR THE LEGISLATION

The Department believes that a minor flaw exists in the Act as it relates to air quality permits. The enforcement section of the Clean Air Act declares that the Department may take enforcement action against someone for a "violation of this chapter or rule made under it." It is noted that the enforcement proceedings, therefore, only apply to direct violations of the Act, or violations of a rule made pursuant to the Act. It does not cover violations of a permit condition. It can be concluded, therefore, that the Act did not specifically contain provisions for enforcement of permit conditions.

ARM 16.8.1112 provides the only explicit language concerning a violation of a permit. This rule grants the Department the authority to revoke the entire permit and therefore discontinue the facility's operation.

It is readily obvious that some gap exists in the enforcement of air quality permit conditions. Clearly revocation of a permit as the only enforcement option is a most serious enforcement action. The Department is reluctant to invoke such an option. Also, it is patently unfair to the facility to be subjected to such a harsh penalty for what may only be a minor problem. It would be in the facility's best interest to allow the Department to use other enforcement options than revocation of its right to operate the facility.

It is submitted that those who wrote the Act did not intentionally foresee this split enforcement role. The Department asserts it is merely an oversight that needs correction. The Clean Water Act, for example, does allow enforcement of permit conditions (75-5-612(2)) in much the same manner suggested in the bill. It is appropriate, therefore, to afford the same procedures for air quality permit violations.

PROPOSAL

The bill proposes to modify Part 4 of the Act to allow the Department to take the same enforcement action for violations of a permit as violations of the Act, or rules made pursuant to the Act. In simple terms, the bill modifies the Act in four locations:

- 75-2-401 Inserts language to allow the Department to proceed with Notice of Violation and Order to Correct for permit violations;
- 75-2-403 Inserts language to allow the Department to inspect facilities to determine compliance with permit conditions;
- 75-2-412 Includes permit violations in criminal penalty proceedings; and
- 75-2-413 Includes permit violations in civil penalty proceedings.

The bill should be self-explanatory.

DEPARTMENT ACTIVITIES RELATED TO THE BILL

It has been the Department's policy for a number of years to allow public comment on proposed rules and policy well in advance of hearings conducted by the Board of Health or the Legislature. This legislation is no exception.

On August 31, 1982, the Department informed our mailing list of several pieces of legislation being considered for this session. (The mailing list includes over 50 names, including most major industrial and environmental interests. A copy of this mailing list can be supplied upon request.)

The August memo outlined four proposed alterations to the Act. One of those proposals was, of course, the essence of HB 352. Quite to our surprise, no one submitted any comments regarding any of the proposals. It is rather unusual to make air quality proposals without responses from those who might be affected.

During the past week the Department attempted to contact most of the industrial and environmental interests who might be concerned with the passage or defeat of the bill. The Department believes that most of the persons concerned with this legislation have been contacted by the Department.

SUMMARY

The Montana Clean Air Act provides for a range of enforcement proceedings for violations of the Act or rules made pursuant to the Act. While these enforcement proceedings do provide a wide range of options, the Act does not specifically allow these same proceedings for violations of permit conditions. The only current enforcement option of a permit condition is revocation of the permit.

This bill would allow the Department to enforce against violations of a permit in the same manner as a violation of any other rule or regulation.

The Department has attempted to contact all parties that may be affected by the passage of the bill. No negative comments were received prior to this date.

The Department believes that this is a reasonable bill and would allow enforcement actions for permit violations to be within the same scope as all other enforcement actions. This request is consistent with existing Water Quality legislation and is consistent with the goals of the Clean Air Act. The Department respectfully requests passage of this bill.

WITNESS STATEMENT

Name Don Reed Committee On Nat. Res.
Address P.O. Box 1184, Helena Date 1/31/83
Representing MEIC Support ✓
Bill No. 352 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Pertinent standard often doesn't appear in the law or in the rules.
2. HB 352 allows fair + equitable enforcement of Clean Air Act.
3. (see written testimony)
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

HB 352

Presented to the House Committee on Natural Resources

By the Montana Environmental Information Center

January 31, 1983

HB 352 allows the Department of Health and Environmental Sciences to take enforcement action based upon violation of an air quality permit. Presently, the law allows enforcement action only when the law or rules are violated.

The ability of the Department to enforce air quality permits is essential to our overall air quality program. Unlike many other environmental statutes, the Federal Clean Air Act and the Montana Clean Air specify only some of the standards which a source must meet. Other standards are specified in the rules. Yet even other standards are described in the rules. That is, the rules set up a procedure for determining the actual standards in effect for a given source at a given time. One example of this is the Prevention of Significant Deterioration program.

As a result, the technical standards for a source may be found only in the air quality permit in some instances. Thus, it makes sense to allow enforcement action based on a violation of that permit.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 352

DATE 1/31

SPONSOR REAM

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Ex. 4
Bob Ream

H.B. ~~200~~ ²⁶³

Proposed Amendment

NEW SECTION:

Section 2 - Section 75-20-201, MCA, is amended to read:

"(5) This chapter will apply to all federal facilities and to all facilities over which the federal government has jurisdiction, to the fullest extent possible under the law."

HOUSE BILL 263

An act to amend the Montana Major Facility Siting Act to delete provision exempting federal facilities from its coverage.

The Bill deletes section 75-20-202, MCA, which grants federal agency exemptions under Montana's Major Facility Siting Act (MFSA) 1973.

Background

In 1976, the Federal Land Policy and Management Act (FLPMA) was passed requiring federal agency compliance with state siting standards. Our MFSA still exempts federal agencies from complying with state standards.

Effects

Federal government will maintain its normal supremacy rights, but federal agencies will no longer be exempt from state siting standards.

The repeal will emphasize provisions of federal statutes requiring federal agency compliance with state regulations.

Terms and Conditions of FLPMA

43 USC 1765. Sec. 505. Each right-of-way shall contain-
(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards.

Ex. 6

WITNESS STATEMENT

Name Orlando H. Braun
Address County Attorney's Office
Courthouse, Missoula, Mt.
Representing Missoula County
Bill No. AB 263

Committee On Natural Resources
Date January 31, 1983
Support ☒
Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *It is important for Montana to retain control of siting for all major utility facilities since the state will have to cope with the results.*
2. *Future energy needs will require that eastern Montana coal be utilized, particularly to meet West Coast needs.*
3. *The federal government will be taking a much larger role in energy supply. BPA and WAPA will enable private utilities to evade state law by federal construction and leases to private utilities.*
4. *BPA sees itself as administering the energy industry throughout the entire Northwest. BPA plans to extend the federal transmission system to the maximum permitted by Congress.*

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Don Reed Committee On Nat. Res.
Address P.O. Box 1184, Helena Date 1/31/83
Representing MEIC Support ✓
Bill No. 263 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Federal law allows MT to assert control
2. Goal is to assert as much control as is possible
(see written testimony)
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Ex. 7

HOUSE BILL 263

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HB 263

Presented to the House Committee on Natural Resources

By the Montana Environmental Information Center

January 31, 1983

HB 263 removes the federal exemption under the Montana Major Facility Siting Act (MFSA) for facilities over which a federal agency has authority. Currently, the MFSA applies only to any unpreempted aspect of a facility over which a federal agency has only partial authority.

The two best examples of why such a change in the MFSA is needed come from the Bonneville Power Administration's (BPA) proposed powerlines accross western Montana and the proposed Kootenai Falls Hydroelectric Project. In both these instances, the state of Montana has claimed authority under the MFSA to regulate the proposed facilities. In both cases, the federal government has also claimed some authority. In the case of the powerline, the BPA--as a federal agency--refused to fully comply with the MFSA. In the case of the hydroelectric facility at Kootenai Falls, the Federal Energy Regulatory Commission (FERC) claims authority to issue an operating permit to the applicant.

The state of Montana has a legitimate state right to regulate facilities within its borders. This right was affirmed in the

Federal Land Policy Management Act (FLPMA) in 1976, a year after Montana's MFSA was expanded to cover most energy facilities. FLPMA states that "Each right-of-way shall contain terms and conditions which will ... require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards." (43 USC 1765, P.L. 94-579).

In other words, federal law states that Montana has a right to govern the facilities in question. Yet Montana has been reluctant to assert those legitimate rights in light of the specific federal exemption in the MFSA, which this bill would remove.

As you will recall, the presentation by the Conference of Western State Legislatures called for an aggressive posture by states to assert their control and challenge the authority of the federal government to preempt states' rights. This bill takes Montana one step in that direction by strengthening our legal authority to regulate facilities within our borders.

SUGGESTED AMENDMENTS TO HOUSE BILL 8

1. Title, line 7.

Strike: "SURFACE OWNER"

Insert: "BOARD OF LAND COMMISSIONERS"

2. Page 3, lines 20, 21 and 22.

Strike: "reverts"

Insert: "succeeds"

Strike: "surface owner of the land out of which the severed mineral interest was carved"

Insert: "board of land commissioners"

3. Page 5, lines 14 and 15.

Strike: "Any person who succeeds"

Insert: "The board of land commissioners in succeeding"

4. Page 5, line 16.

Strike: "may"

Insert: "shall"

5. Page 6, line 5.

Following: "(d)"

Strike: "the name of the person giving"

Insert: "that the board of land commissioners is giving the"

STANDING COMMITTEE REPORT

Ex. 10

1 of 4

February 3,

1983

MR. **SPEAKER:**.....

We, your committee on **NATURAL RESOURCES**.....

having had under consideration **HOUSE** Bill No. **8**.....

First reading copy (**white**)
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A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE TERMINATION OF CERTAIN SEVERED MINERAL INTERESTS OWNED BY PERSONS OTHER THAN THE SURFACE OWNER AND REVERSION OF OWNERSHIP TO THE SURFACE OWNER; AND ALLOWING THE PRESERVATION OF SEVERED MINERAL INTERESTS BY USE OR RERECORDATION."

Respectfully report as follows: That **HOUSE** Bill No. **8**.....

AMENDMENTS TO HB 8

1. Title, line 7.

Following: " ; "

Insert: "PROVIDING FOR NOTICE AND A 60-DAY REDEMPTION PERIOD; "

2. Page 1, line 25.

Strike: "nearly identical"

Insert: "substantially similar"

3. Page 2, lines 9 through 14.

Strike: subsection (1) in its entirety

Insert: "(1) 'Severed mineral interest' means an interest in minerals owned by a person other than the owner of the surface of the land in which the mineral lies, excepting royalty interests, leases and other contractual rights for development.

(2) "Minerals" means all forms and varieties of materials and substances formed or deposited in the crust of the earth

~~XXXXXX~~ by natural agencies alone, which have value when separated from the crust of the earth and excluding only water and common forms of sand and gravel.

February 3,

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..... 19.....

(3) "Royalty interests" means expense-free interests in production of minerals which are not entitled to any share of bonuses or rentals under leases or other types of development agreements."

Renumber: subsequent subsections

4. Page 2, line 16.
Following: "venture,"
Insert: "trust,"

5. Page 2, line 21.
Following: "interest"
Strike: subsection 3 through "]" on line 14 on page 3.
Insert: "which is not used. A mineral interest shall be deemed to be used when any of the following exists:

(a) minerals are produced therefrom or from lands pooled or unitized therewith or operations are conducted thereon, or on lands pooled or unitized therewith, in furtherance of development of any mineral interest including injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;

(b) the mineral interest is subject to a lease or other contract having as its object the development of such interest and which lease or other contract (or a memorandum thereof) is recorded in the office of the clerk and recorder of each county wherein the interest is located;

(c) in the case of coal or other solid materials, when there is production from a common vein or seam by the owner of the severed mineral interest or by the owner's lessee or permittee;

(d) taxes are being paid by the owner; or

(e) a statement of claim is filed pursuant to [section 3]."

6. Page 3, line 16.
Strike: "filed"
Insert: "recorded"

7. Page 3, line 18.
Strike: "coal, oil, and gas, or other"
Following: "is"
Insert: "continuously"

8. Page 3, line 19.
Strike: "continuous"
Following: "extinguished"
Insert: "subject to the right of redemption provided for in [section 4]."

9. Page 3, line 23.
Strike: "filing"
Insert: "recording"

10. Page 3, line 25.
Strike: "filed"
Insert: "executed, acknowledged, and recorded"

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11. Page 4, line 5.

Strike: this line in its entirety

Renumber: subsequent subsections

12. Page 4, line 6.

Following: "description"

Insert: "by legal subdivision, township, and range"

13. Page 4, line 9.

Strike: "the"

Insert: "whatever"

Following: "interest"

Insert: "is owned by the claimant"

14. Page 4, line 10.

Strike: "filed"

Insert: "recorded"

15. Page 4, line 11.

Strike: "the"

Insert: "each"

16. Page 4, line 12.

Strike: "filing"

Insert: "recording"

17. Page 4, line 15.

Strike: "filed"

Insert: "recorded"

18. Page 4, line 16 through page 5, line 12.

Strike: section 4 in its entirety

Renumber: subsequent sections

19. Page 5, line 14.

Strike: "prima facie evidence"

Insert: "redemption"

20. Page 5, line 16.

Strike: "may"

Insert: "pursuant to this part shall"

Strike: "the lapse of"

Insert: "succeeding to"

21. Page 5, lines 16 and 17.

Strike: "the lapse of that interest"

Insert: "same"

22. Page 5, line 20.

Strike: "and"

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23. Page 5, line 24.

Following: "publication"

Insert: "; and

(c) by recording in the office of the county clerk and recorder in each county in which the mineral interest is located, a copy of the newspaper notice, together with an affidavit of compliance with [subsection (b)]"

24. Page 6, line 4.

Strike: "and"

25. Page 6, line 5.

Following: "notice"

Insert: "; and (e) the owner of a lapsed severed mineral interest may redeem that interest by recording a statement of claim as provided for in [section 3] within 60 days of the recordation pursuant to [section 4(1) (c)]"

26. Page 6, lines 6 through 11.

Strike: subsection 3 in its entirety

27. Page 6, line 12.

Strike: "Statement of claim -- filing -- duty"

Insert: "Recording duties"

28. Page 6, line 13.

Strike: "filing"

Insert: "receipt"

29. Page 6, line 14.

Following: "3]"

Insert: ", [section 4(3)],"

30. Page 6, lines 15 and 16.

Strike: "5"

Insert: "4"

Strike: "in the clerk and recorder's office of the county in which the interest is located"

Insert: "the"

31. Page 6, lines 19 through 22.

Following: "Record"

Strike: line 19 through "notice" on page 22

32. Page 7.

Following: line 8

Insert: "Section 8. County not required to conduct title search. Nothing in this part shall be construed to require any county official or employee to conduct a title search to locate any severed mineral interest."

AND AS AMENDED
DO PASS

HAL HARPER,

STANDING COMMITTEE REPORT

Page 1 of 2

February 1,

19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **263**

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A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA MAJOR FACILITY SITING ACT TO DELETE THE PROVISION EXEMPTING FEDERAL FACILITIES FROM ITS COVERAGE; AMENDING SECTION 75-20-202, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **263**

be amended as follows:

1. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS 75-20-201 AND"

2. Page 1.

Following: line 9

Insert: "Section 1. Section 75-20-201 is amended to read:

"75-20-201. Certificate required - operation in conformance - approval by popular vote of certificate for nuclear facility.

(1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

XXXXX (3) A certificate may only be issued pursuant to this chapter.
DO PASS

February 2,

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(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction."

Renumber: subsequent sections

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

January 31, 19 83

SPEAKER:

MR.

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **305**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE AMOUNT OF TIMBER
SUBJECT TO THE 10-DAY MINIMUM ADVERTISEMENT PERIOD PRIOR TO SALE
BY THE DEPARTMENT OF STATE LANDS FROM 200,000 TO 2 MILLION BOARD
FEET; AMENDING SECTION 77-5-201, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **305**

~~DO PASS~~

STANDING COMMITTEE REPORT

January 31,

19 83

MR. **SPENCER**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **352**

First reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE ENFORCEMENT ACTION BASED UPON VIOLATION OF AN AIR QUALITY PERMIT; AMENDING SECTIONS 75-2-401, 75-2-403, 75-2-412, AND 75-2-413, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **352**

DO PASS