

48TH LEGISLATIVE SESSION

MINUTES OF
· NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

February 16, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order on Wednesday, February 16, 1983 at 12:30 p.m. by Senator Harold L. Dover, Chairman, in Room 405, State Capitol, Helena, MT.

ROLL CALL: Roll was called, a majority of the committee was present, Senator Manning was excused.

HOUSE BILL 68: Limiting motorboat noise. Chairman Dover opened hearing, and called on Representative Hal Harper, sponsor. Rep. Harper stated that boat noise is presenting problems here and everywhere there is a good size lake. It is particularly a bad situation for permanent residents on the lakes, where people run loud boats at all hours. The bill is to make the noise standards uniform. There are a large number of people present to speak, and he would keep his remarks short to allow them time.

PROPOSERS: Ken Bergvall, Montana Trade Association, said this bill doesn't establish anything new since the DBA levels were established in 1974, but it does give authority for enforcing the standards. All boats would have to comply. Two years ago this was talked about, and a permit for practice was discussed, and this bill provides for that.

Bill Christiansen, stated that boat owners can make modification to meet the levels, even on the parts that they have taken off their boats. The permit system will allow practice for racers. He represents the people from Canyon Ferry, and in a survey asked if noise was a problem, they said it was. He thought the House felt this was a good bill.

Robert Miller, Safety Administrative Officer of Fish, Wildlife and Parks stated the sound levels in the bill are in line with government levels and boat manufacturers are meeting those now. His department would not be able to absorb costs of administering without additional funding as provided. His testimony is attached, Exhibit '1'.

Hugh Kelleher, stated he would like to speak for himself and residents at Canyon Ferry. They support the bill. He provided copies of charts showing various sound levels and effects, attached as Exhibit '2'.

HB 68 (cont.)

Tom Hanson, One Way Marine and Montana Boat and Ski Club spoke in favor of the bill, stating this regulation is needed because boats with over transom headers disturb an area of at least 1/2 mile. Noise is limited in city limits and airports and needs to be on the lakes. A small fishing boat sits at the level of the exhaust, and the noise is deafening at this level. There would be no restriction on sanctioned racing through the permit process. His testimony is attached, Exhibit '3'.

David Lackman, Montana Public Health Association lobbyist, stated that noise of 85 decibels or above does damage the hearing. Last session there was a good bill similar to this one. This is a good bill, and will also help the small lakes.

Mark Radcliffe, Magpie Bay, Canyon Ferry, said increased use of the lake is causing problems. There are drag racers with no exhaust systems, not sanctioned racing boats that are causing problems. They weave in and out of fishing boats and water skiers and become a safety factor as well. The remainder of his testimony is attached, Exhibit '4'.

Ray Well, property owner at Canyon Ferry spoke in favor, stating the noise is not necessary and is not at a normal level.

Larry Johnson, Helena, stated the bill should also address replacement in older boats for requirement of meeting the sound level.

Other persons in favor handed in witness sheets.

OPPONENTS: Charles Abell, Montana Boat Racing Association, stated they represent a large number of members. They spoke last time this bill was introduced and thought they were represented well. Sanctioned races are well controlled and they are not the boats that run up and down the lakes at night. They feel the permit system would be an unnecessary burden. His testimony is attached, Exhibit '5'. They then displayed large numbers used on the racing boats for identification. He said they would propose amendments as well. The committee was also shown pictures of various boats being spoken about.

Senator Bob Brown also spoke for the American Power Boat Association. Sen. Brown thought a poor job was done with the bill last time. The boat racers use protective helmets during testing and racing. They are safety oriented, and testing is very limited, on smooth water. If they are required to test at a special time, they may take a chance with rough water.

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HB 68 (cont.)

Norm Sunholm also spoke briefly in opposition and showed some of the items used by the race drivers.

Tom Hamm, stated boat owners on the lakes do bring some good to the community. They buy gas which costs considerable amounts for the large boats.

Hoagie Carmichael, Whitefish, stated he used to live in Helena, is a ski instructor, and boat racer. He said there are many people in the state that hold records in the races. People come from all over the country to watch these races and it brings a lot of people to the area. There is a major part of testing done on racing boats in the shops, only driver training and final testing is done on the lakes. He stated there is erotic driving by some boaters, and they would also like to see that stopped.

Orv Good, spoke for the American Power Boat Association. They hold regattas, but there are only three bodies of water where they can, these are Whitefish Lake, Flathead Lake and Hauser Dam. He submitted a letter in further testimony, Exhibit '6'.

Other persons submitted witness sheets and testimony attached.

Committee questions. Senator Mohar inquired further into safety regulations, Mr. Abell stated their group has a right to take away membership if they do not abide by safety rules.

Senator Eck inquired if the "outlaw" boats could be modified to meet the noise standards. Mr. Abell stated they could. They could inject exhaust directly into the water and other modifications are available.

Senator Story asked where testing was done for noise levels or how that would be handled? Mr. Miller stated tests would be done for a length of fifty feet, but would be at slower speeds, but would give the ability to measure the noise from the vehicle. Boats would be stopped or pulled over that were exceeding noise levels.

Senator Lee stated he still has problems with the bill, and moved for a subcommittee so all individuals would be able to discuss this further due to limited time for hearing. Senators Lee, Story and Mohar are to be on subcommittee.

Senator Van Valkenburg noted that no one had been interested at all in the increased fee, no one mentioned that in their testimony, and asked Mr. Hovedal as to why. He stated the fee hadn't been in the last bill and persons may wish to speak to it.

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HB 68 (cont.)

Senator Van Valkenburg inquired of Mr. Miller as to use of the increased fee? Mr. Miller stated the additional \$1.00 would be used for enforcement of violations.

Senator Keating inquired how many opponents had been at the House hearing? It was stated there had been two. Hearing was then closed on the bill. Senator Dover asked for witnesses to please leave quietly to allow those waiting for the next large hearing to enter.

SENATE BILL 396: Senator Dover opened the hearing and called on Senator Reed Marbut, sponsor. Senator Marbut stated he would like to be unemotional on this issue, however he has a very unusual constituency in this matter, in that the rights of wildlife are being placed in jeopardy and being ignored and he would like to represent the wildlife in this case. The bill is to protect riparian habitats, and some large land-owners are in objection, however he would like to encourage them to form conservation easements in riparian areas. A conservation easement would protect the area and recreationists would no longer have license to intrude upon these areas. The Montana open space and conservation act does not allow public access to conservation easements, and this would define riparian habitats. He presented testimony, Exhibit '1'.

PROPOSERS: No one spoke in favor of the bill.

OPPOSERS: Ron Marcoux, Dept. of Wildlife, Fish and Parks stated he does support the protection of wildlife species, however this is also dealing with the rights of the public, and that this bill would restrict recreational access to use of streams, and recreational use can be compatible with the wildlife. A booklet on conservation easements was passed out, Exhibit '2'.

Bob Keisling, Nature Conservancy, stated they have worked to put together language similar to conservation easements, and did a study on the Bitterroot Valley, the riparian habitats, and flood plain area. This easement is designed to protect those areas. Another set is prepared for the Blackfoot River, and his group does appreciate the Senators work on the behalf of the wildlife. The study was presented, Exhibit '3'.

Dave Kumlien, Bozeman, outfitter, stated this bill would just about put them out of business. His testimony is attached, Exhibit '4'.

Ken Knudson, Montana Wildlife Federation, stated they would like to have more public review of any such easement, further than this hearing.

Lisa Anderson, Montana Land Reliance, Helena, stated they have currently 22,000 acres of conservation easements in Montana. The current conservation easement includes riparian habitats. She presented testimony and a booklet on the

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SB 396 (cont.)

Easements they have already obtained. These easements with their organization are between the landowner and their organization and are not mandated by law. Her testimony and booklet are attached, Exhibit '5'.

Jerry Manley, Bozeman, Montana Coalition for Stream Access, stated they wish to speak against the bill. Ex. '6'.

Larry Aiuppy, Livingston, representing himself, spoke against the bill and removing access of recreational use. His letter is attached, Exhibit '7'.

Eugene Cantley, Great Falls, Medicine River Canoe Club, stated they feel access could be limited to all waters if this were passed. Floaters and fishermen do not do as much damage as cows, mining or agriculture. They oppose the bill. His statement is attached, Exhibit '8'.

Patricia Dolan, Montana Audubon Council, Missoula, stated any benefits to be gained from the bill would be outweighed by the negative effects of elimination of access, loss of public review of habitats and danger of abuse of the open space and conservation act. Her statement is attached, as Exhibit '9'.

Also attached is statement from Jim Flynn, Dept. of Fish, Wildlife & Parks. Ex. '10'.

Senator Marbut stated that the conservation easement language was originally designed to prohibit recreation use and mining use, but does no longer. He stated he would rather see the habitats protected. The tourist industry would not be harmed by this bill. There are rivers, however that are being harmed by large developments, and this would stop that as well.

Senator Tveit inquired as to a reference that the Fish and Game department is doing a better job of conservation than ranchers? It was stated they are charged with enforcing the wildlife regulations and are doing a good job.

Senator Lee inquired into reference to the Audubon Society testifying on behalf of the recreationists rather than the wildlife of the state? Ms. Dolan stated they feel that the bill could be used in other ways by people who would see it as an access to private fishing streams, and that an amendment could be put in to close an area and then to subdivide it into private parcels.

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(SB 396 cont.)

Senator Van Valkenburg inquired into any other states having a similar bill. Senator Marbut stated he was not aware of any other than those similar to the open space and conservation act.

Senator Eck inquired if there would be opportunity for more public review. Senator Marbut stated there was no provision for local review, as there wouldn't be many qualified to speak professionally on the bill within the jurisdiction. Hearing was then closed.

HOUSE BILL 122: Chairman Dover opened hearing on House Bill 122, calling on Rep. Addy. Rep. Addy stated this bill relates to oil and gas leases. In the past there has been authority for leases on state land for a term of 10 years. This bill would allow reduced terms. The Dept. of State Lands will speak, and propose some amendments.

PROPOSERS: Dennis Hemmer, Commissioner of State Lands, stated this bill was at their request, that the board of commissioners should have flexibility to determine which length of lease would be of best interest to the state. Shorter terms may be to advantage when resources are in danger of being depleted as well. He proposed amendments, which are attached with his testimony, Exhibit HB 122, No. '1'.

Don Allen, Montana Petroleum Association, stated he did appear in the House on this bill and expressed some concern with the bill. However, in some respects it may encourage oil and gas exploration. He concurs with the proposed amendments.

Mark Roberts, Petroleum Land Man stated he also concurs.

OPPOSERS: There were no opposers.

Senator Keating inquired how many acres of leases were dropped this year. Mr. Hemmer stated none. Senator Keating asked about advertising of leases? Mr. Hemmer stated they would advertise for the same amount of time as longer term leases had been.

Senator Eck moved do pass on the amendment, page 1, line 13, following "of", insert "not more than" and following "or less" insert "than 5 years". Page 1, line 16, following "lessee", insert "However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource". Vote was called, all present voted 'aye' and motion carried.

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(HB 122 (cont.) ACTION ON HOUSE BILL 122:
Senator Van Valkenburg moved that HB 122 Be concurred in as amended, 'a majority voted 'aye', Senator Story voted 'no', motion carried.

SENATE BILL 400: Chairman Dover opened hearing on SB 400, calling on Senator Bob Brown. Senator Brown stated this bill was at the request of the Governor's Office. It deals with the reciprocal Access Act, and he would ask to have the Governor's representative speak.

PROPOSERS: Mona Jamison, Legal Counsel to Governor Schwinden stated the Commission on Uniform State Laws worked on this bill. There have been many meetings upon meetings with state agencies. This bill would expand access to other courts with respect to pollution. It would allow a person or entity to go into a Canadian court or Washington Court, as the case may be. The act is to be procedural and not substantive, and local law applies where a suit is brought. Both jurisdictions must have enacted this act for it to apply. The Departments of Health, State Lands and Natural Resources have all been involved. She presented testimony, attached as Exhibit '1', SB 400.


Robert Sullivan, representing Montana Uniform Laws Commission also spoke on the bill, stating he has been on the commission for a number of years. He is required to recommend to the Governor bills that would affect uniformity in Montana law. This deals with the Uniform Transboundary Pollution Reciprocal Access Act, and it has to be passed by more than one state and province to be effective. It includes Canadian provinces. It would affect Cabin Creek Mining North of Flathead, and persons that can show damage can bring action, but they do have to establish that damage. It would not include acid rain. The bill does bring Montana into conformity.

Senator Etchart inquired as a headwater state if we are accepting more liability than other states. Mr. Sullivan stated he felt the industries in the state would be more protected.

Senator Story inquired if other states had passed this bill? There are none surrounding that have at present. Maine is one state that has passed. Senator Dover inquired if we would be hurting our state if we held off passing this for two years? Ms. Jamison stated it would be wise to be cautious if that is the wish of the legislature. Hearing was then closed.

There being no further business to come before the committee the meeting was duly adjourned at 2:30 p.m.


Patricia Hatfield
Committee Secretary


SENATOR HAROLD L. DOVER, CHAIRMAN
SENATE NATURAL RESOURCES COMM.

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2-16-83

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓	<i>late.</i>	
KEATING, Thomas F. (R)	✓		
LEE, Gary P. (R)	✓		
MANNING, Dave (D)		✓	✓
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

216-83

Seneca Natural Resources

House Bill
68

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Kim Hurley		✓	
MARY RADCLIFFE	SELF	✓	
Josh R. Kelleher	Kelleher's	✓	
Charles R. O'Neil	Family		✓
Valley Johnston	self		✓
Carol E. Cramer	Self	✓	
Robert E. Cramer	self	✓	
Robert V. Folger	self		✓
Robert P.			
By White	Self	✓	
Chris Spence	Self	✓	
Maureen M. Dumas	Self		
Willis Vandiver	self		✓
John H. Hentley, Jr.	Self		✓

(Please leave prepared statement with Secretary)

COMMITTEE ON

BUSINESS & INDUSTRY

DATE

2-16-83

In re: Natural Resources.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bill Fredrickson	SELF	SB 396		✓
W F Antonich	Self	SB 396		✓
Steve Antonich	Self	SB 396		✓
Sam R Johnson	SELF	HB 68		
NORM SUNDHOLM	MONTANA BOAT RACING ASSN	HB 68		✓
Robert A. Woodhouse	MBRA	HB 68		✓
MOYIS R. BORCHERS	MONTANA BOAT RACING ASSN	HB 68		✓
SUSAN K. Abell	AMERICAN POWER BOAT ASSN	HB 68		✓
Ory Good	American Power Boat ASSN	HB 68		✓
Kathy Good	APBA + MBRA	HB 68		✓
TOM HANSON	ONE WAY MARINE MONTANA BOAT & SKI CLUB	HB 68	✓	
HOAG, CARMICHAEL	APBA + MBRA	HB 68		✓
David Regels	Self	SB 396		✓
R. J. Foukal	Self	SB 396		✓
L. Pitterle	Self	396		X
W Brewster	Self	SB 396		✓
W F Hamer	Self	SB 396		✓
Bob JACKLIN	SELF	SB 396		✓
Dianne McDermann	Self	SB 396		✓
James W. McDermann	Medicine River Canoe Club	SB 396		✓
Timothy M. Marchette	Self	HB 68		✓
Ken Knudson	MT. Wildlife Fed	SB 396		✓
Thomas M. Travis	Self	SB 396		✓
Bob Kiesling	T H. Booth The Nature Conservancy	SB 396		✓
Serry MANLEY	MONTANA COALITION FOR STREAM ACCESS	SB 396		✓

(Please leave prepared statement with Secretary)

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Karen E. Catley	Self	SB 396		✓
Frederic W. Harty, Jr.	Self	SB 396		✓
Richard J. Charvat	Self	SB 396		✓
John A. Wick	"	SB 396		✓
Gene Cantley	Self	SB 396		✓
James A. Lissman	Self	SB 396		✓
Walter H. Carpenter	Self	SB 396		✓
Steve Tagness	Self	SB 396		✓
Greg Thomas	Self	SB 396		✓
Wm. Corwin	(Business) Timberline Reclamations	SB 396		X
Dave Smith	Self	H.B. 68		X
Dave Thutgens	Self	H.B. 68		X
Robert de Fener	Self	SB 396		X
Mike McLaughlin	Self	SB 396		X
Jerry Gimpsey	SELF	SB 396		X
Robert L. Lupton	SELF	SB 396		X
Norman E. LeFever	SELF	SB 396		X
Robert G. Henderson	Self	SB 396		X
Ross Mac Pherson	self	SB 68	✓	
Ross Mac Pherson	self	SB 396		✓
David Dupont	Self	SB 396		✓
Dean R. Larson	Self	SB 396		X
Robert C. Carlson	Self	SB 396		✓
Orwin Rogers	Self	SB 396		✓
Benjamin C. Goodwin	Self	SB 396		✓
Wm. Holdorf	Self	SB 396		✓

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
EDWARD EXELIN	SELF		396	✓
DAVID LACKMAN	Lobbyist / MT Pub. Hlth. Assn.	HB 68	X	
Jim Anderson	MONTANA LAND RELIANCE	SB 396		✓
Thomas Hamm	MBout Racing Assn	HB 68		✓
Joe Christiansen	Self	HB 68		✓
Dean R. Larson	Self	HB 396		✓
Tim Sullivan	Self	HB 396		✓
Dale Mongetz	Self	HB 396		✓
Terry Johnson	Self	396		✓
Mike Cawness	MSU OUTDOOR RECREATION	396		✓
DAVID Repold	Self Skyline Sportsman	396		✓
Gary Braun	Self	396		✓
Ruth S. Shaw	Self	396		✓
Tom Brugni	Shylene Sportsman	396		✓
Bel M. Donogh	Self Tourism C. Butte C. of Commerce	396		✓
Daphne Brugni	Shylene Sports. Butte	396		✓
BOE URBANI	Timberline RECREATIONS	396		✓
Tom Johnson	Tom Johnson Sport Shop	396		✓
Mike Mosolf	Self	396		✓
Joel Shouse	Self	396		✓
PAUL ROSENTHAL	TROUT UNLIMITED	396		✓
Bruce Reinhinkel	Self	396		✓
Poket Johnson	Outfitters (Ennis)	SB 396		✓
Cheryl Willits	Self	396		✓
Paul A. Willits	Self	396		✓
Graig Macken	Outfitters Sporting Goods	HB 68 396		✓

TESTIMONY

House Bill 68

I am Robert M. Miller, Safety Administrative Officer for the Department of Fish, Wildlife & Parks, and I was requested to bring over our file on motorboat noise.

The sound levels that are mentioned in the bill are in line with government levels, and all boat motor manufacturers are meeting these levels now.

Also, the bill is drafted following the Model Act of the National Association of State Boating Law Administrators.

The file I have here contains information about boat noises and letters of complaints from people about the subject. Some of the letters date back to 1977 and cover several areas of the state.

It would not be possible under our present or proposed budget, for our Enforcement Division to absorb the costs of administering the Act without additional funding as provided in this bill.

I would be happy to answer any questions you might have about this subject.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

**COMMON OUTDOOR
SOUND LEVELS**

**NOISE LEVEL
dB(A)**

**COMMON INDOOR
SOUND LEVELS**

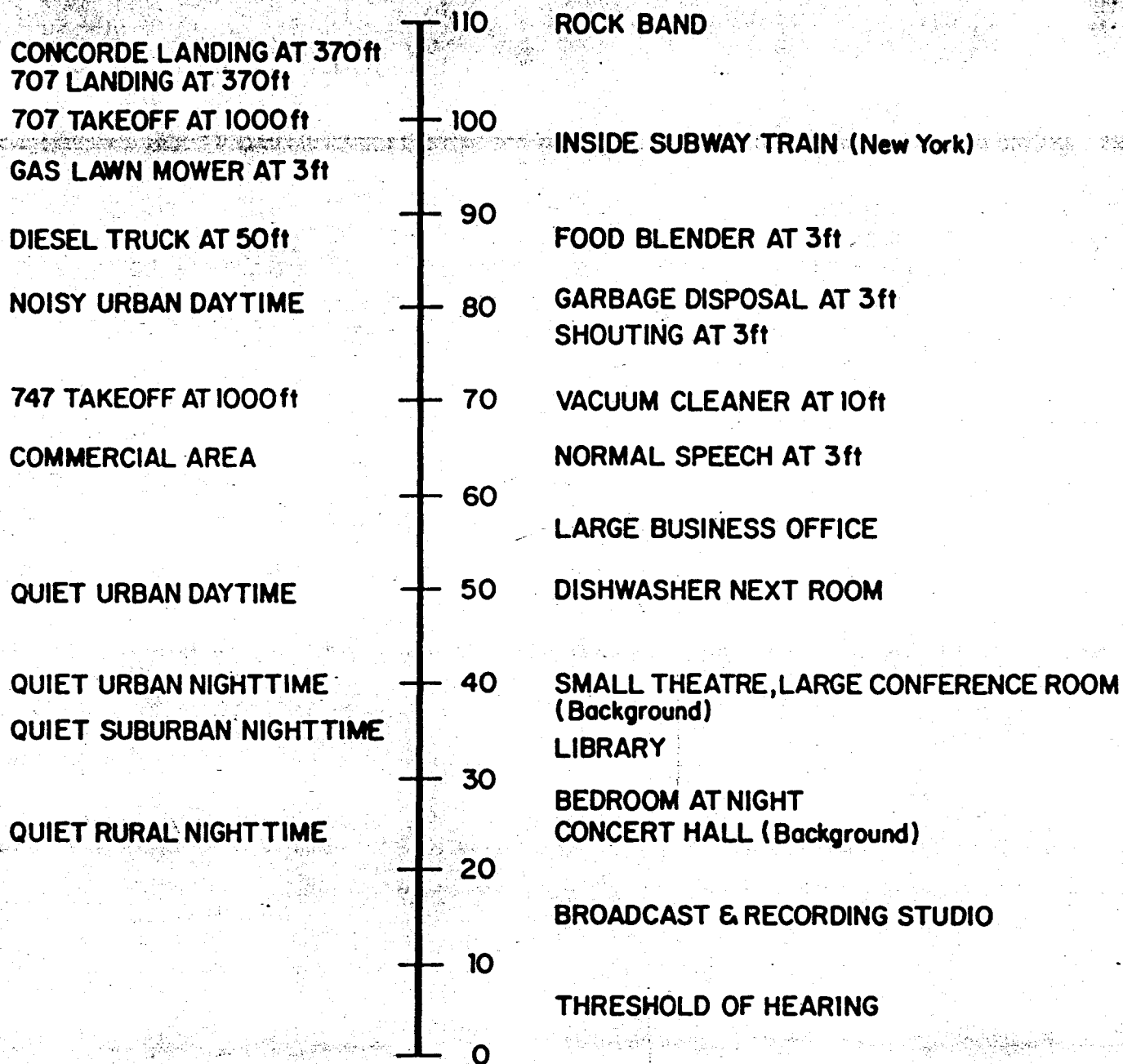


FIG. 7. COMMON SOUND LEVELS.

2.16.83
Det. Hqs.

IMPACT OF NOISE ON PEOPLE

How people perceive loudness or noisiness of any given sound depends on several measurable physical characteristics of the sound. These factors are:

- a. Intensity - in general, a ten decibel increase in intensity may be considered a doubling of the perceived loudness or noisiness of a sound; however, recently obtained psychoacoustic evidence suggests that a greater than 10 decibel increase in peak level of airplane flyover noise is required to produce a perceived doubling of loudness.
- b. Frequency content - sounds with concentration of energy between 2,000 Hertz and 8,000 Hertz are perceived to be more noisy than sounds of equal sound pressure level outside this range.
- c. Changes in sound pressure level - sounds that are increasing in level are judged to be somewhat louder than those decreasing in level.

NOV 11 4 07
2-16-83
Wet-Rest

Certificated noise levels of several of these smaller aircraft are shown in Table 6.

TABLE 6. NOISE LEVELS OF REPRESENTATIVE LIGHT PROPELLER AIRCRAFT.

Airplane	Measured/Estimated dBA	Part 36 Limit dBA
Beech C 18 S	86.0	82.0
56 TC	82.0	82.0
95-B55	78.0 - 84.0*	82.0
Cessna 150 D	67.0	69.7
172	72.0	74.0
310 F	81.0	82.0
Mooney M-20F	75.0	76.6
Piper PA-18-150	70.0 - 72.0*	70.6
PA-30	76.0	81.8
PA-31-350	87.0	82.0

*Value depends on propeller used.

**Department of Transportation/Federal Aviation Administration
Aviation Noise Abatement Policy, 18 November 1976**

In recent years, the FAA has become active in dealing with the airport noise problem through means other than source control. On November 18, 1976, the DOT/FAA Aviation Noise Abatement Policy was issued jointly by the Secretary of Transportation and the Administrator of the FAA. This policy addresses itself to the shared responsibilities of those who must act to alleviate the noise problem - industry, government, and private citizens.

TABLE 3

HDD 44-44
2-16-83
Net Res.

LAND USE GUIDANCE CHART I: AIRPORT NOISE INTERPOLATION							
LAND USE GUIDANCE ZONES (LUG)	NOISE EXPOSURE CLASS	INPUTS: AIRCRAFT NOISE ESTIMATING METHODOLOGIES				HUD NOISE ASSESSMENT GUIDELINES	SUGGESTED NOISE CONTROLS
		L _{dn} DAY-NIGHT AVG. SOUND LEVEL	NEF NOISE EXPOSURE FORECAST	CNR COMPOSITE NOISE RATING	CNEL COMMUNITY NOISE EQUIVALENT LEVEL		
A	MINIMAL EXPOSURE	0	0	0	0	"CLEARLY ACCEPTABLE"	NORMALLY REQUIRES NO SPECIAL CONSIDERATIONS
		TO	TO	TO	TO		
B	MODERATE EXPOSURE	55	20	90	55	"NORMALLY ACCEPTABLE"	LAND USE CONTROLS SHOULD BE CONSIDERED
		TO	TO	TO	TO		
C	SIGNIFICANT EXPOSURE	65	30	100	65	"NORMALLY UNACCEPTABLE"	NOISE EASEMENTS, LAND USE, AND OTHER COMPATIBILITY CONTROLS RECOMMENDED
		TO	TO	TO	TO		
D	SEVERE EXPOSURE	75	40	115	75	"CLEARLY UNACCEPTABLE"	CONTAINMENT WITHIN AIRPORT BOUNDARY OR USE OF POSITIVE COMPATIBILITY CONTROLS RECOMMENDED
		TO	TO	TO	TO		
		HIGHER	HIGHER	HIGHER	HIGHER		

Source: FAA Advisory Circular 150/5050-6, "Airport-Land Use Compatibility Planning."

Form CS-34
1-79

NAME:

Bill No. H.B. 68

ADDRESS:

TOM O. HANSON - 200 CUSTER W. HELENA
DATE 2-16-83

WHOM DO YOU REPRESENT

ONE WAY MAKING - HELENA
MONTANA BOAT & SKI CLUB

SUPPORT ☒

OPPOSE ☐

AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: THE NOISE EMITTED FROM POWER
BOATS EQUIPPED WITH OVER THE TRANSOM
MOTORS IS SO LOUD THAT A BOAT GOING
BY EQUIPPED WITH THESE INTERRUPTS ALL
GOINGS ON IN AN AREA APPROX 1/2 MILE
IN RADIUS. IT'S RIDICULOUS TO THINK THAT
NOISE IS LIMITED IN CITY LIMITS, AIRPORTS
AND EVERYWHERE WE LIVE EXCEPT ON THE
CAKE. SINCE THESE BIG BLOCK ENGINES
ARE EXHAUSTING 2 TO 3 FEET ABOVE THE
WATER LEVEL THE NOISE EMITTED IS DEAFENING.
THIS BILL ALLOWS FOR A.B.A. RACING AND
IN NO WAY PROHIBITS OR RESTRICTS
SANCTIONED, RESPONSIBLE BOAT RACING.
SINCE THE VAST MAJORITY OF MONTANA'S
BOATERS APPROVE OF THIS BILL I SINCERELY
HOPE THIS COMMITTEE REPRESENTS
THE MAJORITY ON THIS ISSUE.

CS-34

NAME: T MARK RADCLIFFE

Bill No. 1/3 68

89601

ADDRESS: 3648 EAST SHORE DR. HELENA MT

DATE 2-16-83

WHOM DO YOU REPRESENT SELF

SUPPORT

✓

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I HAVE LIVED ON MAGIE BAY AT CANYON FERRY FOR 15 YEARS - THE ENERGY CRUNCH HAS INCREASED RECREATIONAL USE OF CANYON FERRY TO THE POINT WHERE WEEK ENDS & HOLIDAYS ARE OVERCROWDED. WATER SAFETY IS CRITICAL & EXHAUST NOISE IS A PAIN IN THE NECK

I AM REFERRING TO THE DRAG RACE INBOARD BOATS WITH NO EXHAUST SYSTEM - NOT SANCTIONED RACE BOATS

I AM A CIVIL ENGINEER & MOST OF MY PROFESSIONAL WORK HAS CONCERNED AIR & IMPACT NOISE CONTROL - THE BOATS REFERRED TO USUALLY PRODUCE NOISE EQUAL TO OR EXCEED 84 db

THESE SAME BOATS WEAVE IN AND OUT FISHING BOATS & WATER SKIERS AT A HIGH RATE OF SPEED WHICH BECOMES A CRITICAL SAFETY HAZARD

NAME:

Kimi Huiley

DATE:

2/16/83

ADDRESS:

3706 E. Shore Dr.

PHONE:

475-3722

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

Boat Noise

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENTS:

We live on the lake at Canyon Ferry. The noise from the boats is not necessary in residential area.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Sam Johnson

DATE: 2-16-83

ADDRESS: 1916 WINNE HELENA

PHONE: 443-3744

REPRESENTING WHOM? MYSELF

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____

AMEND? X

OPPOSE? _____

COMMENTS: I SUPPORT THE BILL'S INTENT- HOWEVER
THERE SHOULD BE PROVISION FOR EXCEPTIONS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Sen. Nat. Res.
2/16/83



MONTANA BOAT RACING ASSOCIATION

Providing entertainment and water recreation under the Big Sky



February 16, 1983

Dear Senators and Members of the Committee for the Department of Natural Resources:

We, the members of Montana Boat Racing Association, are opposed to House Bill 68, as introduced. Quite frankly, we are offended that no one bothered to contact any of us or inform us of this bill. Two years ago, eight of our members attended the Senate hearing of the Fish and Game Committee, where we spoke in opposition to House Bill 222 in the 47th Legislature. Our suggested amendments to that particular bill were well-received and were included in the Senate Standing Committee Report (Fish and Game) of March 26, 1981. Subsequently, House Bill 222 of the 47th Legislature was defeated.

During 1981, members of Montana Boat Racing Association discussed with members of the Legislature the possibility of the same type of proposal being introduced again. We made it quite clear that we were willing to assist in the preparation of such a bill so that it could be introduced in a form that we could support. On each occasion, we were assured that we would be contacted and consulted in the preparation of a new bill. Now, we are shocked to learn that House Bill 68 has been introduced in the 48th Legislature, with no significant revisions over the previous bill!

Montana Boat Racing Association members realize that some type of noise restrictions on motor boats is inevitable. However, we do not like the inference that the noisy boats that run up and down the lake at all hours of the night are race boats. They are not! We Montana Boat Racers pride ourselves on our consideration of others. We are careful to run our equipment at times when it will not be disturbing to others. During regattas, we are governed by the rules and regulations of the American Power Boat Association, including very strict standards of good sportsmanship and safety.

Also, we feel that the proposed requirements for permits for race boats are unfair. Our race boats are taxed and registered, as well as any other boat. We do not believe that any other type of motor vehicle is required to obtain a permit in order to test or race on their race course. Unfortunately, we boat racers do not have specially built race tracks. We must depend on the already existent lakes and rivers of our state. But we are careful always to maintain safe conditions with respect to other water sportsmen. Permits for race boats would create an unnecessary administrative burden, as well as an unnecessary burden for the boat racers themselves.

LX 74 V P. 2
2-16-83
Nat. Res.

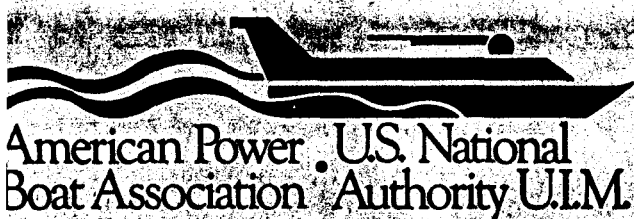
House Bill 68
Page 2
February 16, 1983

Boat racing in Montana is our chosen recreation which we are able to enjoy with our families and friends. At the same time we are able to provide entertainment for thousands of fans, attract business for various Montana communities, and even raise funds for charitable organizations. We request that you disapprove of House Bill 68 as proposed, and allow us to work with you in making the amendments necessary to allow us to continue to enjoy the sport of boat racing as we have known it in Montana.

Respectfully,

Kathy Good

Kathy Good, Secretary
Montana Boat Racing Association



February 16, 1983

STANTON T. FITTS
President

MICHAEL K. JONES
Senior Vice-President

DIONE WILLIAMS
Secretary

MICHAEL A. WIENER
Treasurer

JOHN H. LOVE
Executive Director

REPLY TO

N.W. 5342 Teepee Drive
Florence, Montana 59833

Dear Senators and Committee Members of the Department of Natural Resources:

Montana is located within Region 17 of the American Power Boat Association. We, the members of Region 17, are opposed to House Bill 68 as proposed. We support the spirit of the bill, but we feel it will not accomplish its intended purpose.

We believe in the purpose of the proposed noise legislation, but by regulating only those engines that are manufactured on or after January 1, 1978, this bill grants a blanket exclusion to the boats that are creating noise problems. We feel that most noise complaints result from ski boats with over-the-transom exhausts. Our research has revealed that the majority of these boats are powered by a 454 cubic inch Oldsmobile engine. Our local automobile dealers have informed us that these engines were last manufactured in 1978, and most, if not all, of these engines which would be found in ski boats would be pre - 1978. We would also like to make it clear that none of these boats are participants in American Power Boat Association regattas in Montana, nor are they registered with American Power Boat Association.

Our association prides itself on being a self-policing organization, maintaining the highest standards of consideration for those around us. We do not test our equipment at unreasonable hours and we are careful not to be offensive to those who live around the lakes and rivers where we test or race. We have even eliminated certain classes of boats in areas where they cause noise problems.

Our national organization is very much safety oriented, providing safety training and recommendations and/or requirements for safety equipment. In fact, the American Power Boat Association is one of the world leaders in developing and implementing boating safety equipment and techniques.


We are strongly opposed to the proposed requirement for permits while preparing for a regatta. Our boats are taxed and registered just the same as any other boat, and the idea of requiring a permit in order to put our boats on the water is grossly unfair. In addition, if a boat racer has obtained a permit to test his equipment at a certain time on a certain day, he could be forced into an unsafe situation simply because he must test only during the time for which his permit was issued. If the water or weather conditions are unfavorable at that time, or the water is particularly crowded with other boats and people, it could create a very hazardous situation.

7 UP.2
Nat. Bo.
2-16-83

House Bill 68
Page 2
February 16, 1983

There are fewer than thirty racing members of American Power Boat Association in our state, but we provide good wholesome entertainment for thousands of Montanans. We thoroughly enjoy our sport, along with our families, friends, and boat racing fans. We do not believe that this legislation is intended to inhibit our sport, but if this bill is enacted in its current form, it would have a devastating effect on the sport of boat racing in Montana. We request that you disapprove of House Bill 68 as introduced, and offer our cooperation and assistance in making necessary amendments to the proposal.

Respectfully,



Orv Good, Chairman
Region 17
American Power Boat Association

March 26, 1981

Nd. Ro.
3-16-83

9. Page 11, line 4:
Following: "through"
Strike: "5"
Insert: "4"

March 26, 1981

SENATE STANDING COMMITTEE REPORT

That the Statement of Intent be amended to House Bill No. 222 as follows:

A statement of intent is required for this bill because it deletes rulemaking authority to the Department of Fish, Wildlife, and Parks to adopt rules prescribing:

- (1) the manner of certification by manufacturers of outboard motors and other marine engines manufactured after January 1, 1982, as having been tested and found to comply with the noise level limit in Section 1;
- (2) the testing procedures employed to determine compliance on a voluntary basis by owners of outboard motors and other marine engines manufactured before January 1, 1982.

As prescribed in Section 2 of the bill, the testing procedures employed to determine outboard and marine engine noise shall comply with the exterior sound level measurement procedure for pleasure motorboats recommended by the society of automotive engineers in its recommended practice designated SAEJ34. The department shall establish a program throughout the state whereby boaters can voluntarily have their motorboats checked for compliance with the noise level limit in Section 1.

Section 4 of this bill requires that the Department of Fish, Wildlife, and Parks will issue a permit on an annual basis to the owner of a motorboat that is registered by a bona fide national boat racing association and displaying numbering approved by that association in order to exempt the motorboat from compliance with the noise level limit in Section 1 for the purposes of competing in regattas and testing for competition races. Before issuing the permit, the department shall require proof of registration and displayed numbering by the bona fide national boat racing association. In addition, the department shall determine whether the racing association that the motorboat is registered with is in fact a legitimate nationally recognized boat racing association.

First adopted by the Senate Fish and Game Committee on the 25th day of March, 1981.

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Fish and Game)

That House Bill No. 222 be amended as follows:

1. Page 1, lines 14 through line 6 on page 2.
Strike: section 1 in its entirety.
Insert: "Section 1. Maximum noise emissions from motorboats. No motorboat may be operated in or upon the waters of this state if it emits noise that exceeds 86 dbA measured at a distance of 50 feet from the motorboat except those motorboats permitted under the provisions of [section 4]."
2. Page 2, line 11.
Strike: "levels"
Insert: "level"
3. Page 2, line 12.
Following: line 11.
Strike: "subsection (2) of"
4. Page 2, lines 19 through 24.
Strike: section 3 in its entirety.
Renumber: all subsequent sections
5. Page 2, line 25 through line 16 on page 3.
Strike: section 4 in its entirety.
(S) Insert: "Section 4. Exceptions. (Sections 1 through 3) do not apply to:
(1) a motorboat that is:
(a) registered by a bona fide national boat racing association and displaying numbering approved by that association; and
(b) authorized by a permit issued on an annual basis by the department.
(2) a motorboat or boats competing in a regatta that is sanctioned by a bona fide national boat racing association including those motorboats or boats sanctioned by that association for testing for not more than 2 days prior to competition in a regatta.
(3) a motorboat or airboat operated by legally designated search and rescue units, law enforcement officers, or personnel of a federal, state, or local government agency on emergency duty or in training for emergency duty.
(4) vessels commonly known as airboats."
6. Page 3, line 22.
Strike: "5"
Insert: "4"
7. Page 3, line 24.
Strike: "5"
Insert: "4"
8. Page 11, line 2.
Strike: "5"
Insert: "4"

38-91-2
898H

STATE OF MONTANA

REQUEST NO. 124-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 16, 1981, there is hereby submitted a Fiscal Note for House Bill 222 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to limit noise emissions from motorboats, providing maximum noise levels, and increasing the motorboat identification fee to \$2.00.

Assumptions

That the number of boats to be registered will be approximately 31,000 for FY 1982 and 32,000 for FY 1983.

Fiscal Impact

	<u>FY 1982</u>	<u>FY 1983</u>
Expenditures under proposed law	\$31,764	\$35,764
Personal Services	24,000	26,000
Operations	10,000	5,000
Total	\$65,764	\$66,764
Less Expenditures under current law		
Personal Services	\$18,764	\$18,764
Operations	16,000	16,000
Total	\$34,764	\$34,764
Increased expenditures under proposed law		
Personal Services	\$13,000	\$17,000
Operations	8,000	10,000
Equipment	10,000	5,000
Total Cost to State	\$31,000	\$32,000

Comments

Enactment of House Bill 222 will increase the workload of state game wardens and require the purchase of sound meters. The emission levels in House Bill 222 are in line with federal guidelines.

Airboats are not addressed in the bill, their unique design and operation makes control of noise level extremely difficult and therefore should be exempted.

The Enforcement Division's budget spending authority should be increased \$31,000 for FY 1982 and \$32,000 for FY 1983 to insure compliance with the new act.

David M. Lewis
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____



FORMERLY SHENEMANS'

JAMES DUFORD

DICK WOLLIN

HB 68 EX. 1
Sen. Nat. Res.
2/16/83

219 Main

Polson, MT. 59860

(406) 883-2129

January 14, 1983

Montana Senate
Committee for Development of Natural Resources
State Capitol Building
Helena, Montana

Gentlemen:

At the February meeting of the Polson Retail Trade Association we discussed the provisions of House Bill 68 which limits noise emissions for engines manufactured January 1, 1978 and after. As we understand the bill in its present form, it could abolish boat racing in Montana.

As a result of our discussions, our group did approve unanimously the motion that the "Polson Retail Trades Association go on record as opposing House Bill 68 and such opposition be communicated to the Committee for Development of Natural Resources."

Our group did indicate support for the spirit of the bill - to reduce noise emissions on public waters - but not in its present form. The Polson community has supported and promoted a number of Regattas held on the lower end of Flathead Lake. These events have helped to attract large numbers of visitors and tourists to Western Montana and have contributed significantly to the economy of this area. They have provided a wholesome type of recreation for participants and for the thousands of spectators who attend the events. The noise pollution from these events is insignificant in comparison to the benefits received.

We urge that you reject House Bill 68 in its present form.

Yours truly,

Dick Wollin

Chairman, Polson Retail Trade
Association



NAME: David Thorkelson DATE: 2-16-83

ADDRESS: Box 5505

PHONE: 227-5666

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: H.B. 68

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: The Bill #68 I oppose because

I think it Intrudes on my right
to recreate. I bought a boat for
\$7000.- and now I would have to
hampers the performance to make a
few people happy. If these people
wanted peace & quiet why don't
they live in the mountains? I
think that these people just can't
stand seeing someone else enjoying
themselves. I would also like to point
out the time the noise is offensive.

NAME: Steve Flensgoe DATE: 2-16-83

ADDRESS: 1327 N. Lamborn

PHONE: 442-8782

REPRESENTING WHOM? Pleasure Boaters

APPEARING ON WHICH PROPOSAL: HB 68

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: I am opposed to this bill because

this will be a state law and I see no reason

why a group of 30 people from the local lakes

can pass a bill for the state. My boat may

or may not pass depending on where it is

tested. It has various decibel ratings depending

on how fast, in the water, at idle or whatever.

If these people want to own the lakes why not

sell the lakes and then we would all be in the

same boat. If they don't like the noise they can

buy a cabin in the hills. These people's lawn

mowers are just as loud. We had better put decibel

ratings on lawn mowers also. Pleasure boats have

just as much right on the lake as the residents do.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Sherry Thomas DATE: 2/16/83

ADDRESS: 1703 Highland Helena Mont.

PHONE: 443-3074

REPRESENTING WHOM? Pleasure boaters

APPEARING ON WHICH PROPOSAL: H.B. 68

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENTS: This bill would limit or stop the

privilege to enjoy Montana recreation on lakes,

as enjoyed by myself & friends by limiting noise emission. The

type of boat I own is a jet boat, that if required to meet

the noise level would run poorly. I feel it is unfair

to infringe on my rights as a Montana citizen by

making my boat perform poorly to meet certain

noise levels, this boat was not designed to be operated

with a noise restriction. It seems to me that a

bunch of high rollers that own lakefront cabins

on Cagnon Ferry Lake should be able to dictate how loud

boats in Montana should be. Another point that should be

realized is the short season these boats can be operated, around

3 months. so the time a person on the beach would hear

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

This type of boat would be noisy little.

It is the purpose of this conservation easement to ^{SD 370- U}
preserve and protect in perpetuity and to enhance, by ^{Ex. 11}
restoration, the natural ecological and aesthetic features ^{SB 396}
and values of those portions of the Bitterroot River System ^{Sen. Nat. Res 2/16/83}

-3-

Sample easement language
protecting riparian zones

within and upon the Grantors' Land. Specifically, and without limitation of the general purposes, it is the purpose hereof to preserve, protect and restore all aspects of the Bitterroot River, including the water quality, fishery and aquatic biology of those portions of the Bitterroot River System within and upon the Grantors' Land and to preserve, protect and to restore the soil composition structure and productivity, the native grasslands and marshes and the native wildlife habitat on the Grantors' Land. In furtherance of these purposes, Grantors agree to build and maintain fences in the locations shown on Exhibit B hereto, in the event that livestock is grazed on the property. The fences will serve to separate the Grantors' Land into two zones, the "Natural Zone" (which may be used for fishing, hunting and ecological study and restoration subject to the terms, conditions and restrictions hereof), and the "Agricultural Zone" (which may be used for ecological study, restoration, ranching and residential purposes subject to the terms, conditions and restrictions hereof).

The rights conveyed by the conservation easement granted are the following:

1. To identify, to preserve and protect in perpetuity and to enhance by restoration, the ecological and aesthetic features and the natural flora and fauna on the Grantors' Land and its water resources.

2. To enter upon the Grantors' Land to enforce the rights herein granted and to observe, study and make scientific observations of its ecosystems, upon prior written

notice to Grantors, their heirs, successors or assigns, and in a manner that will not unreasonably interfere with the use of the Grantors' Land by Grantors, their heirs, successors or assigns at the time of such entry.

3. To enjoin any activity on, or use of, the Grantors' Land which is inconsistent with the conservation easement granted and with the Grantors' intentions and to enforce restoration of such areas or features of the Grantors' Land as may be damaged by such activities.

The conservation easement granted shall run with and burden title to the Grantors' Land in perpetuity, and shall bind the Grantors, their heirs, successors and assigns.

Pursuant to the terms of Section 76-6-107, Montana Code Annotated, the Grantors' Land preserved hereby as open space and natural land may not be converted or directed to any uses other than those provided herein.

Within 12 months of the execution hereof the Conservancy shall complete a restoration plan for Grantors' Land which Grantors shall implement in accordance with the terms thereof. Within 12 months of the execution hereof a compilation of baseline biological information shall be compiled and be attached as an exhibit to this conservation easement. Such compilation shall include at a minimum (i) current aerial photographs and ground photographs depicting all improvements and all major geologic, geographic, pedologic and hydrologic features and all major floral communities of Grantors' Land,

and (ii) inventories of all floral, faunal and aquatic communities and features of Grantors' Land. Said compilation shall be conducted under the direction of a competent biologist familiar with the ecology of Montana, to be designated by the Conservancy and at the expense of Grantors. Failure to complete the restoration plan or compile information required hereby shall not effect the enforceability or validity of any other provision of this conservation easement.

I. NATURAL ZONE. With respect to the land contained in the Natural Zone, the following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with this conservation easement, and these practices may not be precluded, prevented or limited by the conservation easement, except for the requirement of prior approval from the Conservancy as provided herein:

A. To fish in a manner that does not deplete the native fishery or damage the ecology of the Bitterroot River System;

B. To hunt game birds and game mammals;

C. To walk upon the Grantors' Land for purposes of recreation or ecological study;

D. To conduct restoration activities consistent with the restoration plan and with the consent of the Conservancy.

II. AGRICULTURAL ZONE. With respect to the land contained in the Agricultural Zone, Grantors state that the

following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with this conservation easement, and these practices may not be precluded, prevented or limited by this conservation easement, except for the requirement of prior approval from the Conservancy as provided herein:

A. To pasture and graze livestock only in a manner consistent with the maintenance and enhancement by mutual agreement, of soil composition, structure and productivity, to the extent that such activities do not interfere with the natural existence and reproduction of the riparian forests (cottonwoods and willows), and to the extent that such activities do not result in the pollution or degradation of any surface waters in such a manner as to have a demonstrable detrimental effect upon fish or wildlife, their natural habitat, or upon the natural ecosystems and their processes, as determined by the Conservancy, provided, however, that Grantors shall not pasture or graze livestock on Grantors' Land prior to June, 1982.

B. To develop and maintain those water resources on the Grantors' Land necessary for the grazing, wildlife and domestic purposes conducted thereon pursuant to the terms hereof, to the extent that such development and maintenance do not result in a decrease in the quantity or the quality of surface or subsurface water on Grantors' Land.

2-16-83

The Conservancy's response to Grantors' notice shall be sent by registered mail, return receipt requested, to Grantors at Wood Island, Suite 3A, 60 East Sir Francis Drake Blvd., Larkspur, California 94939, or to such other address as the Conservancy from time to time may be informed of in writing by Grantors, their heirs, successors or assigns.

Should the Conservancy fail to post its response to Grantors' notice within thirty (30) days of the posting of said notice, the proposed activity shall automatically be deemed consistent with the terms of this conservation easement, the Conservancy having no further right to object to the activity identified by such notice.

Grantors state that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are inconsistent with the purpose of this conservation easement, and shall be prohibited:

1. The change, disturbance, alteration or impairment of the natural ecological values of those portions of the Bitterroot River System within and upon Grantors' Land except as provided herein.

2. The introduction of non-native plant or animal species in the Natural Zone and, except as permitted under subparagraph A on page 7, the introduction of non-native plant or animal species in the Agricultural Zone which will

2-16-83

compete with and result in the decline or elimination of native species except where such introduction is intended as biological control against introduced pest species and where the introduction is subject to the prior Conservancy approval, which approval shall not be unreasonably withheld.

3. The hunting of any animals other than game birds and game mammals.

4. Trapping.

5. The exploration for or extraction of minerals, hydrocarbons or soils or other materials except that Grantors reserve the right to drill for natural gas or oil from two mutually agreed upon sites and at mutually agreed upon times of the year within the Agricultural Zone, provided, however, that such materials shall only be extracted below a depth of 500 feet, further provided that:

a. Prior to extraction, a baseline study, extraction plan (detailing time of year, site and manner) and reclamation plan shall be completed by the Grantors and submitted to the Conservancy for its review and approval. The review and approval shall be made on the basis of consistency of the extraction plan with the terms of the conservation easement. The Conservancy shall have the right to reject and prohibit the implementation of any extraction plan which is inconsistent with the terms of this conservation easement, in which event the Grantors shall be precluded from undertaking such activity.

b. Access to exploration and/or extractions sites shall be by existing roads and at mutually agreed upon times of the year.

2/6/83
c. Mineral extraction and related activities shall not occur during those times of year when it will be disruptive of soils, plant life and wildlife.

d. Mineral extraction and related activities shall not result in the degradation of water quality.

6. The division, subdivision or de facto subdivision of the Grantors' Land, except as provided herein.

7. The construction of any structures except as otherwise provided herein.

8. The construction of roads except as provided herein.

9. The use of off-road vehicles in such a manner as will result in soil erosion or compaction or in the interference with vegetation or with the natural habitats of those animal species occurring on the Grantors' Land.

10. The establishment or maintenance of any commercial feed lots. A commercial feed lot shall be defined for purposes of this agreement as the establishment and maintenance of a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

11. The dumping or other disposal of non-compostable refuse on the Grantors' Land, except Grantors may continue in place the historical dump site and may from time to time dump additional ranch related refuse thereon, provided that the size of the existing dump site may not be expanded or the Grantor and the Conservancy may select a mutually agreeable dump site.

12. The removal, destruction or cutting of trees or plants except that Grantors may remove trees for personal use from a mutually agreed upon site.

13. The installation of utility structures or lines upon or within Grantors' Land except in connection with the construction of agricultural and residential facilities as provided herein.

14. The grazing or pasturing of animals except as provided for herein.

15. Riprapping except with the consent of the Conservancy and in accordance with a plan approved by an appropriate governmental agency.

16. The use of biocides including herbicides and insecticides without prior written consent of the Conservancy, provided, however, that the Grantors may use biocides to the minimum extent necessary for compliance with local regulations mandating control of noxious weeds, insects or pestilence and then only to the extent that there is no prudent, feasible alternative and the method to be used does not result in a long lasting residue and is selective.

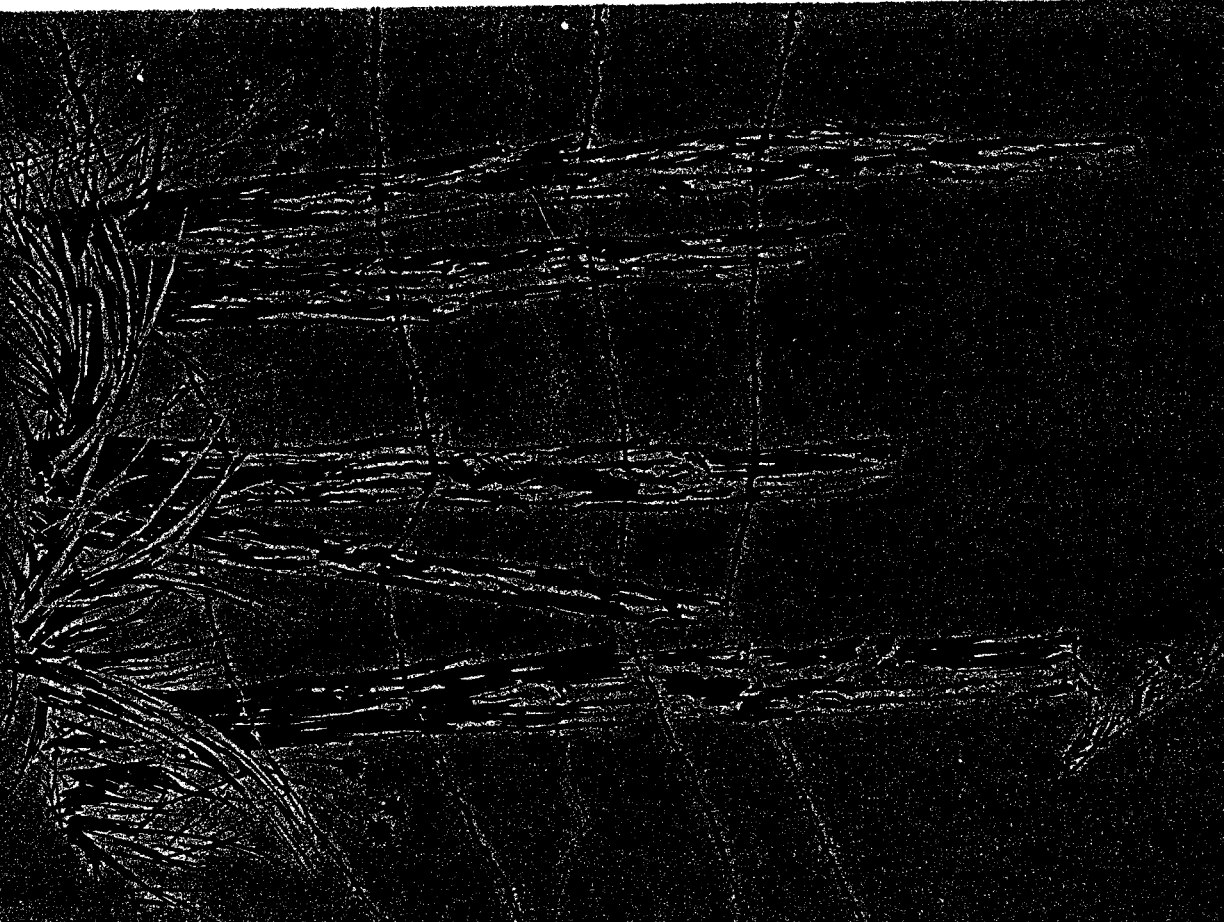
Grantors further intend that should Grantors, their

5000 2/1/83

heirs, successors or assigns, undertake any activity requiring approval of the Conservancy without or in advance of securing such approval, or undertake any activity in violation of the terms of this conservation easement, the Conservancy shall have the right to force the restoration of that portion of the Grantors' Land affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the Conservancy's costs of suit, including attorney's fees, shall be borne by Grantors or those of their heirs, successors or assigns against whom a judgment is entered, or in the event that the Conservancy secures redress without a completed judicial proceeding, by Grantors or those of their heirs, successors or assigns who are otherwise determined to be responsible for the unauthorized activity. Nothing herein contained shall be construed to preclude Grantors from exhausting their legal remedies in determining whether the proposed activity to which the Conservancy has objected is inconsistent with the conservation easement.

Grantors agree to pay any and all real property taxes and assessments levied by competent authority on the Grantors' Land.

CONSTITUTIONAL EXERCISES
IN MATHS



NAME: DAVE KUMLER DATE: 2/14/83

ADDRESS: 2020 W Main St. Bozeman, MT

PHONE: 406-587-4709

REPRESENTING WHOM? Fishing, Floating, Outfitters, Assoc. of Montana

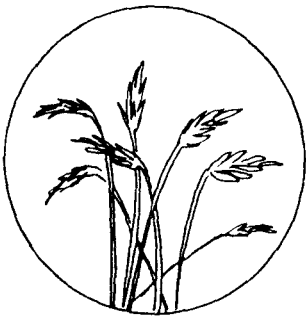
APPEARING ON WHICH PROPOSAL: 396

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

COMMENTS: _____

Another attempt to limit access to
rivers and streams by sportsmen, floaters,
and fishermen. Oppose it.

as a fishing tackle shop owner & fishing
outfitter, passage of the bill put more out of
business.



SB 396 EX. 3
Sen. Nat. Res. 2/16/83⁷
Montana Land Reliance

Office: 107 W. Lawrence, upstairs

P. O. Box 355

Helena, Montana 59601

(406) 443-7027

February 16, 1983

Senate Natural Resources Committee

Dear Committee Members:

The Montana Land Reliance wants to go on record in opposition to Senate Bill 396, ammendments to the Conservation easement statute. The Montana Land Reliance has taken conservation easements on seven agricultural properties in Montana in the last four years. These properties total 22,000 acres throughout western Montana. It is our feeling, working with the current conservation easement law on a daily basis, that the changes proposed in Senate Bill 396 are unnecessary and confusing.

The current conservation easement statute allows for protection of riparian habitat. The appropriate qualified private conservation organization, such as the Montana Land Reliance or the Nature Conservancy, works with the individual landowner for the appropriate wording in the conservation easement to protect his or her property including the riparian habitat. Domestic grazing, oil and gas development, farming practices, non-agricultural development are all factors which can potentially disturb the riparian habitat. The landowner can under present law allow or deny public access. The use of the conservation easement tool to automatically deny such use will run contrary to the wishes of several landowners the Reliance holds conservation easements with.

The success of the conservation easement tool in protecting ecologically significant agricultural land in Montana is the fact that it is a private market transaction between the private preservation organization and the landowner. Attempts to dictate to the landowner such as those contained in Senate Bill 396 are unwise and not in the best interests of the landowners who want to use this tool. We have found no instance where recreational use of the riparian zone has caused any detrimental effect.


The Montana Land Reliance would like to extend an invitation to this committee to talk about the success of the existing conservation easement law and why it works. We urge you to recommend a no pass for Senate Bill 396.

86346-71 2/16/83

Natural Resources Committee-

Thank you for allowing our testimony.

Yours,

A handwritten signature in dark ink, appearing to read 'Bill Long', with a long, sweeping horizontal stroke extending to the right.

Bill Long
Financial Manager
Montana Land Reliance

CONSERVATION EASEMENTS



THE MONTANA LAND RELIANCE

STATE E.F.H. 6
2.16.83

NAME: Jerry Manley DATE: _____

ADDRESS: 1640 Wilson

PHONE: 723-8587

REPRESENTING WHOM? MONTANA COALITION FOR STREAM ACCT 50

APPEARING ON WHICH PROPOSAL: SB 396

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

2-16-83

NAME: LARRY A. WILLY DATE: 2/16/83

ADDRESS: PO Box 26, Livingstone

PHONE: 974 4367

REPRESENTING WHOM? South Carolina Co. Prison A

APPEARING ON WHICH PROPOSAL: 2.15 3-16

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

COMMENTS: oppose - no either

AIUPPY PHOTOGRAPHS

LAURANCE AIUPPY 2-16-83
P.O. BOX 26
LIVINGSTON, MT 59047
(406) 222-7308

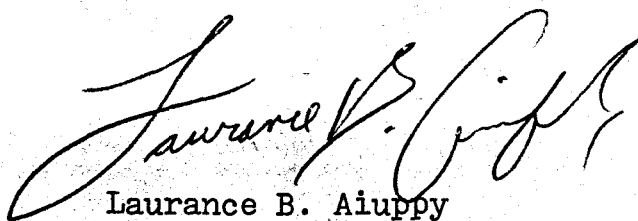
February 15, 1983

On Senate Bill 396, introduced by Jack Galt

As a Montana citizen who likes to go fishing, and who is dependent on the economic well being of the State of Montana for his livelihood, I am unalterably opposed to S.B. 396.

S.B. 396, if enacted, would remove the right of access of recreational users to the rivers of Montana. Certainly it would take a while, and just as certainly it is Jack Galt's intent that the right of access be removed on our rivers. I am totally, unalterably opposed to this bill, S.B. 396, for all the same reasons I am totally, unalterably opposed to S.B. 347 - 348 (see attached carbon copy of my letter on S.B. 347 - 348).

S.B. 396, like S.B. 347 - 348, is a punitive, confrontational unnecessary and totally unstatesmanlike bill and should be killed with "extreme prejudice".



Laurance B. Aiuppy

February 15, 1983

On Senate Bill 347 and Senate Bill 348, introduced by State Senator Jack Galt

As a Montana citizen who likes to go fishing, and who is dependent on the economic well being of the State of Montana for his livelihood, I am unalterably opposed to both S.B. 347 and S.B. 348. Both bills, if enacted, would do the same thing - remove the right of access of recreational users to the rivers of Montana.

There are many ways to recompense the landowner for problems with trespassers along our rivers, but locking up the rivers of Montana for the private use of large landowners and the wealthy is not the way to do it.

The enactment of either or both of these bills would cripple a major industry in Montana - tourism - and directly or indirectly hurt virtually every man, woman and child of Montana. It would directly financially injure thousands of Montana citizens who own hotels, motels, campgrounds, gift shops, art shops, tackle shops, sporting good stores, grocery stores, bars, restaurants, gas stations, and so on and so on. Enactment of these bills would, as well, badly damage the "quality of life" that is so important in both attracting new industry to the state, and keeping the industry we have got.

S.B. 347 and S.B. 348 are confrontational, polarizing, divisive legislation that would rancorously pit sportsman against landowner in a no-win situation. Both sportsmen and landowners have legitimate needs and justifiable grievances that must be addressed, for which solutions must be found. There must be rational, conciliatory measures taken for statesmanlike compromise between both sides. S.B. 347 and S.B. 348 are certainly none of these things.

S.B. 347 and S.B. 348 solve no problems. They will cause more and worse problems. They are bad bills and should be killed as quickly as possible, so that real solutions can be found for the problems of landowner rights versus recreationist rights.

Laurance B. Aiuppy

2-16-83 8

NAME: EUGENE CANTLEY DATE: 2-16-83

ADDRESS: 1317 14 St. S.W. GREAT FALLS, MONTANA

PHONE: 406-455-3344

REPRESENTING WHOM? "MEDICINE RIVER CANOE CLUB" & RECREATIONISTS

APPEARING ON WHICH PROPOSAL: SB 396

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

COMMENTS: THIS BILL REPRESENTS YET ANOTHER ATTEMPT TO CLOSE
MONTANA'S RIVERS & STREAMS TO FLOATERS & FISHERMEN

IF THIS BILL IS PASSED, A LANDOWNER COULD ESTABLISH
A ^{small} CONSERVATION EASEMENT AND CLOSE IT FOR RECREATION

ACCORDING TO S.B. 396, ACCESS COULD BE RESTRICTED TO

"RECREATIONAL DEVELOPMENT & PUBLIC ACCESS FOR RECREATION"

DOES A FLOATER OR FISHERMAN DO AS MUCH DAMAGE

AS A GRAZING COW, MINING OPERATIONS, OR AGRICULTURAL
INTERESTS. HARDLY. But, BY THE WORDING OF THIS

BILL, CONSERVATION EASEMENTS NEED NOT BE REVIEWED

BY A PLANNING AUTHORITY IF THEY ARE CREATED TO
Preserve RIPARIAN HABITAT. ^{This gives the landowner a blank check}

BY ESTABLISHING A CONSERVATION
EASEMENT, A LANDOWNER COULD EFFECTIVELY CLOSE A ~~small~~
NAVIGABLE RIVER OR STREAM TO RECREATION. IT WOULD ALLOW THE
LANDOWNER TO BECOME A SELF-APPOINTED CONSERVATIONIST. IT SEEMS THAT
MONTANA HAS A FINE AGENCY TO SOLVE THESE PROBLEMS

I ASK YOU TO OPPOSE THIS BILL.
PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

2.16.83 #41

NAME: Patricia Dolan DATE: Feb 16, 1983

ADDRESS: 303 Skyline Dr Missoula MT 59802

PHONE: 728-1908

REPRESENTING WHOM? Montana Audubon Council

APPEARING ON WHICH PROPOSAL: SB 396

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

COMMENTS: _____

Any benefits gained from added conservation easements will be
outweighed by the negative effects of

(1) elimination of fishing access now guaranteed on navigable
rivers, sloughs and streams;

(2) loss of public review of easements on riparian habitat;
of conservation easements, contrary to

(3) the danger of abuse, ~~to~~ the intention of the open Space
Land and Conservation Act.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 396

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

February 16, 1983

Senate Bill 396 provides a means to restrict recreational use of navigable streams rather than encouraging serious preservation of riparian habitat.

Paragraph 6 in Section 1 (page 2, lines 6-12) of the bill lists purposes of conservation easements. Among those purposes is the preservation of recreational and scenic areas. Contrary to those purposes, the direction of this legislation is to inhibit recreation and deny people access to scenic areas.

Paragraph 7 on page 2 (lines 19-21) is a new paragraph that suggests "preservation ... of riparian habitat may necessitate restrictions on public access ...". If the intent of this bill is to preserve riparian areas, why is it directed at a use that "may" impact these areas while it ignores land uses that can degrade and at times permanently destroy riparian areas?

There are many activities that may damage sensitive and productive riparian areas. Placer mining, logging, subdivision, intensive agriculture and grazing can all impact riparian areas. By comparison, a fisherman passing on foot over a gravel bar has, in reality, no impact. However, it is the recreationist's impact that is the focus of this bill.

Our concerns over this bill increase when in paragraph 6 of Section 2 the riparian area is defined. The wording in lines 4-5 reads "including but not limited to the area between the high and low water mark." With this wording it appears all recreational use could be eliminated even on navigable streams.

It should also be noted that the low water line or mark is a vague and difficult boundary to draw when discussing public use of public waters.

For most purposes, riparian habitat begins where the streamside vegetation is present. If we seek to protect riparian habitat, let us begin the discussion at this discernible mark. Below this vegetation lie the sandbars, gravel bars, backwaters, and the navigable stream itself. We are aware of no documentation that either proves or even alleges that these areas are being damaged by recreational use.

The bill reaffirms that public recreation is detrimental to riparian habitat in paragraph 7 of Section 3 (page 6, lines 13-16). Some of the most heavily used riparian areas and navigable streams in the state are within an hour's drive of Helena. Probably one of

the most intensively used riparian zones is our wildlife management area near Townsend along the Missouri River. It is used by thousands of fishermen, hunters, bird watchers, trappers, campers and others. These users come from Butte, Bozeman and other Montana communities. I believe if you toured the area you would agree the riparian habitat is of high quality even with the high recreational use that occurs.

Proposed subsection 7 also provides that recreational use is considered to be detrimental to riparian habitat. It appears that the immediately preceding subsection 6 specifically states that a conservation easement may prohibit or limit activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation. It would therefore appear that proposed subsection 7 is not necessary.

Additionally, on page 6, line 25 through page 7, line 1, the bill specifically provides that riparian habitat conservation easements would be the only conservation easements which would not be subject to the review of local planning boards.

The final provision of the bill is set forth on page 8, lines 4 through 7. The effect of the proposed subsection 2 is to make certain that the net effect of these types of conservation easements will effectively prohibit even fishing access.

It appears that if a landowner had a stream through his property which was navigable, he could simply create a conservation easement and effectively prevent any recreationist from using that stretch of stream. Thus, this bill would not only affect streams currently declared navigable, but those that might be declared navigable in the future.

In conclusion, recreational use has and should continue to be compatible with riparian habitat management and preservation. If the intent is to preserve riparian areas, that is a worthy goal and we are eager to work on that issue. It appears that Senate Bill 396 is not designed to prevent the alteration of riparian areas but focuses on eliminating recreational use on navigable streams.

We respectfully request that Senate Bill 396 do not pass.

DEPARTMENT OF STATE LAND'S TESTIMONY ON HOUSE BILL 122

BEFORE THE SENATE 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.

The oil and gas industry has expressed some concern that the primary term should be more definite. Also, there was concern that a lease term of less than 5 years was not in the best interests of the State in most cases. Therefore, the department supports an amendment to the bill which will make the statute more definite and will indicate that lease for less than 5 years will only be issued when necessary. An example of a case where a shorter term may be necessary is where the oil and gas resource is in danger of being drained. In this case a shorter lease may be required to ensure that the lessee will develop the resource as soon as possible and prevent the state from losing royalties from the production of the oil and gas.

H.B. 122 Encl., p. 2
2-16-83

AMENDMENTS TO HOUSE BILL 122

3rd Reading Copy

Page 1, line 12¹³
Following: "of"
Insert: "not more than"
Following: "or less"
Insert: "than 5 years"

Page 1, line 16 and following
Following: "lessee."
Insert: "However, leases for a period of less than 5 years may be issued
if the board determines that such shorter term is necessary to
ensure full compensation for the oil and gas resource."

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

TESTIMONY ON SENATE BILL 400

"Uniform Transboundary Pollution Reciprocal Access Act",
drafted, approved and recommended for enactment by the
National Conference of Commissioners on Uniform State Laws
(NCCUSL) and the Uniform Law Conference of Canada (ULCC)

BACKGROUND

In 1979, the Canadian and American Bar Associations each adopted a report prepared by a joint committee representing both associations pertaining to the settlement of international disputes. The report focused on the equalization of rights and remedies of U.S. and Canadian citizens affected by transboundary pollution. The report also suggested that a group be established between the NCCUSL and ULCC to draft a Transboundary Pollution Reciprocal Access Act.

Because of various "jurisdictional" problems currently existing, pollution problems arising in one jurisdiction and affecting another, usually cannot be litigated; or, if they can be litigated, they're not adequately recognized and enforced in the other jurisdiction.

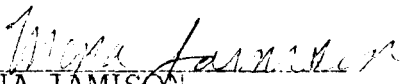
PURPOSE OF BILL

This Act is designed to eliminate the basic jurisdictional problem with respect to pollution. "Whether the pollution originated in [Alberta] or [Washington], a [Montanan] injured in [Montana], thereby would be entitled to go into a Canadian court or a [Washington] court and maintain an action for damages for injury to [Montana] land." This statute overcomes common-law existing in Canada and the states which would prevent this litigation from occurring (Act applies inter-state, inter-provincial and transboundary (US/Canada)).

"The basic thrust of reform is to change the local action rules (jurisdictional) and provide equal access for the victims of transfrontier pollution to the courts of the jurisdiction where the contaminant originated."

The Act is intended to fill a procedural gap and not to alter substantive laws or standards of either jurisdiction. If a suit is brought in a state or province where the pollution originated, the local law applies. If service of process is achieved in the pollution-harmed state, then that state would be free to apply either its own law, or the law of the alleged pollution-causing state. This situation is not changed by this bill. Note: Both the "polluting" and "polluted" jurisdictions must have enacted this act or provided substantially equal access to its courts or administrative agencies for it to be "operative."

Submitted by:


MONA JAMISON
Chief Legal Counsel

MJ/bjh

File: SENATE BILL 400

2011
Not Rec.

NAME: Robert E. Sullivan DATE: 2/16/83

ADDRESS: 40 E Broadway Bldg 11th Fl NY 10001

PHONE: 723-5941 Ext 2141

REPRESENTING WHOM? ^{Montana} Uniform Laws Commission

APPEARING ON WHICH PROPOSAL: SB # 400

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

.....February 16..... 19 83.....

MR.PRESIDENT:.....

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

having had under considerationHOUSE..... Bill No.122.....

Addy (Keating)

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

third reading bill, be amended as follows:

1. Page 1, line 13.

Following: "of"

Insert: "not more than"

Following: "or less"

Insert: "than 5 years"

2. Page 1, line 16.

Following: "lessee."

Insert: "However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource."

And, as so amended,

BE CONCURRED IN

~~DO NOT SIGN~~