

48TH LEGISLATIVE SESSION

MINUTES OF  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE

March 4, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order by Senator Harold L. Dover, Chairman, on Friday, March 4, 1983 at 1:00 p.m. in Room 405, State Capitol.

ROLL CALL: Roll was called with a quorum of members being present, Senator Keating was excused.

HOUSE BILL 615: Chairman Dover opened the hearing and called on Rep. Gay Holliday, Dist. 46, Roundup, sponsor. She stated the bill is to authorize the Dept. of State Lands to waive civil penalties for minor violations of the Montana Strip and Underground Mine Siting Act, and asked Dennis Hemmer of the Dept. of State Lands to further explain the bill.

PROPONENTS: Dennis Hemmer, Commissioner of State Lands spoke on behalf of the bill, stating it was entered at their request. He stated many of the rules are beneficial, however are severe for minor violations. He gave an example of rules that require signs on topsoil stockpiles, and if a sign falls down, a violation exists and a civil penalty must be assessed. With this bill a warning could be given in minor cases and the penalty assessed for serious violations. His testimony is attached as Exhibit '1'.

Jim Mockler, Montana Coal Council, spoke in support of the bill, stating operators that have minor violations such as a sign fallen down should not be penalized, and the bill would still allow for penalties to be assessed against bad operators for serious violations.

Kenneth Williams, representing Western Energy Company stated they also desire the flexibility allowed for the Dept. of State Lands in dealing with minor violations, which involves much administrative and legal expense. His testimony is attached as Exhibit '2'.

Tim Stearns, Northern Plains Resource Council, also spoke in support, stating their only concern would have been the distinction between minor and major violations, which are to be dealt with in rulemaking, and they felt it would improve the act. His testimony is attached as Exhibit '3'.

Minutes

Senate Natural Resources Comm.

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HB 615 (cont.)

Chairman Dover called for opponents. There were none. It was then suggested by Rep. Holliday and Dennis Hemmer that some minor corrections be made to the bill by amendment. Those were read by Howard Johnson, Environmental Quality Council staff as follows: The statement of intent needs to be amended to read "reclamation" rather than "siting", as well as the language in the bill. Amend statement of intent, Page 1, line 9, strike: "Siting", insert: "reclamation", and Page 1, line 19. following "of the" strike "Siting" and insert "Strip and Underground Mine Reclamation". Amendment to the bill is to be Title, Line 7. Following "MINE" strike "SITING" and insert "RECLAMATION". Senator Van Valkenburg moved these amendments. Vote was called and all voted 'aye', motion carried. Senator Eck moved that HB 615 Be Concurred In as amended, vote was called, all voted 'aye' and motion carried. It was requested that Senator Galt carry the bill on the floor.

HOUSE BILL 305: Chairman Dover called on Rep. Harp, Dist. 19, Flathead Co. sponsor of the bill. Rep. Harp stated this is a requested increase in the amount of timber subject to the 10 day advertisement period, from 200,000 board feet to 1 Million board feet. It is requested because in cases of emergency such as insect blight or fires, removal needs to be made quickly and a later time period for removal decreases the value of the timber. The money from this sale goes to the school programs, and it would be good to be able to give the maximum value to the schools. At the present time there is a problem of time delay of 30-90 days which involves a great deal of paperwork and advertisement by the State Lands Board.

PROPONENTS. Dennis Hemmer, Commissioner of State Lands, spoke in favor of the bill, stating it was requested by their department. He stated quick removal of the timber allows it to be sold at green price rather than dry price, and gives an increase in value. His testimony is attached as Exhibit '4'.

Keith Olson, Montana Logging Association, stated they support the statements made by Rep. Harp and Mr. Hemmer. The increase in the number of board feet would also allow cost savings, as it costs nearly the same for a logging contractor to set up for 200,000 board feet as 1 million board feet. The same is true for the advertisement costs. He stated that Mr. Holding had another meeting and couldn't attend, but wished to enter his support as well.

Chairman Dover called for opponents. There were none.

HB 305 (cont.)

ACTION ON HOUSE BILL 305: Senator Van Valkenburg moved that House Bill 305 Be Concurred In. Senator Eck inquired as to size of the area containing 1 million board feet of timber. It was explained that in most areas of timber, it would be approximately 60 to 80 acres, there is usually 15,000 board feet per acre. Senator Story commented with lodge poles, it might be a larger area of land. Vote was then called on motion that HB 305 Be Concurred In, all voted 'aye' and motion carried. Senator Mohar was assigned to carry the bill.

HOUSE BILL 255: Chairman Dover called on Rep. Norm Wallin, Dist. 76, who stated the bill was presented to be certain that purchase or sale of state lands was done on actual value of the lands. There are two societies of appraisers in the state, and use of qualified appraisers would make certain actual value is received or paid.

PROPOSERS: Chairman Dover asked for proponents, Dennis Hemmer, Commissioner of State Lands, stated they do support the bill, that they are now currently using qualified appraisers and this bill would insure that actual value is paid or being received on land. His testimony is attached as Ex. '5'.

Chairman Dover inquired as to opponents, there were none. Senator Halligan inquired as to procedure of sale or purchase with an appraisal, Mr. Hemmer stated that on a bid situation they would not be able to go below appraisal, but could accept monies over that amount. Senator Mohar inquired as to what the Dept. of State Lands was purchasing land for, it was explained they don't usually outright purchase land, they do exchange lands when needed to concentrate park areas. Senator Dover noted the bill says "when acquiring lands for the state" and inquired if this would also include highway acquisition. There was short discussion of this point, it was felt that highway lands are covered under other statutes.

ACTION ON HB 255: Senator Shaw moved that HB 255 Be Concurred In, vote was called, all voted 'aye' and motion carried. Senator Boylan was assigned to carry the bill.

HOUSE BILL 260: Chairman Dover called on Rep. Dave Brown, Dist. 83, sponsor. Rep. Brown stated during preparation of some other legislation, discussion had arisen as to whether the Resource Indemnity Trust Account was being used as the legislature had intended, and this bill would clarify that. He requested an Attorney General's opinion for the committee, and that letter is attached as Exhibit '6'. As the bill states, it is clarified that the monies may be expended for the purpose of mitigating social and economic impacts created by development of mineral resources.

Minutes  
Senate Natural Resources Comm.  
March 4, 1983

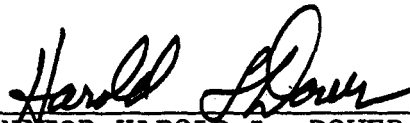
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HB 260 (cont).

Chairman Dover inquired if there were further proponents or opponents. No one wished to speak.

ACTION ON HOUSE BILL 260: Senator Eck moved that HB 260 Be Concurred In. Senator Mohar inquired as to whether this money could be spent on "tail-end" impacts or if it were only "front-end" impact. Rep. Brown stated it would be for both, and that there are two other bills which came out of the council and it is proposed to use 1/3 of the metal mines tax to deal with impacts. This money would be above those. There is not a substantial amount of funds in this account, however. Senator Mohar inquired if the money had a specific use such as in Butte? Rep. Brown stated that in the House he had testified he had no specific use in mind. After that the House had passed a bill for 30% of the funds to be used there, and he hadn't signed the bill because of his testimony to that fact. Senator Mohar noted that ASARCO is putting money into the fund, as well as other new mines, and he hoped some of the money was there when tail-end impacts begin. He was aware of the need in Butte, however. He didn't have a problem with the bill. Vote was then called on the motion, all voted 'aye' and motion carried. Senator Eck was asked to carry the bill.

There being no further business to come before the committee, the meeting was duly adjourned at 1:35 p.m.



SENATOR HAROLD L. DOVER, CHAIRMAN  
SENATE NATURAL RESOURCES COMMITTEE



Patricia Hatfield  
Committee Secretary

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date March 4, 1983

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

3-4-P3

## NATURAL RESOURCE

[illegible]

(Please leave unmarked statement with C- )

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 615  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

House Bill 615 is at the request of the Department of State Lands. The purpose of the bill is to allow the department to waive civil penalties for minor violations of the Strip and Underground Mine Reclamation Act.

In 1979, Montana amended its existing strip mine reclamation law and adopted a comprehensive set of rules. This was done to comply with federal legislation and prevent the federal government from taking over Montana's reclamation program. Many of the rules adopted at that time are beneficial, but of a technical nature and a violation of such rules does not necessarily endanger the environment or hinder the reclamation of the mined land as long as the problem is corrected within a reasonable time.

As currently written, the act requires that a civil penalty be assessed against a mine operator for every violation of the law or rules. As an example, the rules require that signs be placed on topsoil stockpiles to identify the material. As the law currently exists, if a sign falls down, a violation exists and a civil penalty must be assessed. Under this bill, the department could simply warn the mine operator that the sign must be put back up. If the mine operator heeds the warning, no civil penalty would be assessed. On the other hand, if a mine operator fails to save topsoil, this is a serious problem and a civil penalty should be assessed. Failure to salvage topsoil has the potential to hinder reclamation efforts.

Administrative rules would be necessary to provide a procedure for determining when a penalty should be waived. In this regard, the state must be careful that the process and procedure is acceptable to the federal government. If it does not meet federal requirements, Montana could lose its program and the program would be taken over by the Department of Interior.

Also, the Committee should be aware that an error was made in the Statement of Intent. On lines 9 and 19 the statement refers to the Strip and Underground Mine Siting Act. The reference should be to the Strip and Underground Mine Reclamation Act.

In summary, this bill will allow the department to be more equitable in assessing civil penalties against mine operators and will not harm the environment or endanger reclamation. The authority to adopt rules is necessary to provide a procedure and to ensure that the program will be acceptable to the federal government.

The department urges the committee to approve this bill.

NAME Dennis Hemmer BILL NO. 615  
ADDRESS Helena DATE 3-4-83  
WHOM DO YOU REPRESENT Dept of State Lands  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The bill should reference the Strip and  
Underground Mine Reclamation Act rather  
than the Mine Siting Act



NAME: James D. Mockler DATE: 3/4/83

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? MT. Coal Council

APPEARING ON WHICH PROPOSAL: HB 613

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

TESTIMONY OF  
KENNETH WILLIAMS FOR  
WESTERN ENERGY CO.

BEFORE  
SENATE COMMITTEE ON NATURAL RESOURCES

3/4/83

Mr. Chairman, Members of the Committee, My name is Kenneth Williams of Butte, MT. representing Western Energy Company. The purpose of my testimony is to speak in favor of House Bill 615.

Western Energy Company supports the Department of State Lands' desire to have administrative flexibility in dealing with violations. We would like to stress that this bill does not reduce the number of violations, but gives the Department the option to waive civil penalties for minor violations. Additionally, rule making will define the procedures for dealing with these situations.

Such an option will grant the Department needed flexibility in dealing with minor violations such as the case of a topsoil sign which has fallen down. Presently such a situation would result in the Department issuing a Notice of Violation, the operator responding and the Department assessing a penalty. Much administrative and legal expense is incurred by both the Department and the operator. Adopting this bill would reduce paperwork for both parties. Western urges the passage of House 615.

NAME: Ken Williams DATE: 3/4/83

ADDRESS: 107 East Granite - Butte, MT.

PHONE: \* 723-4349

REPRESENTING WHOM? Western Energy

APPEARING ON WHICH PROPOSAL: AB 615

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Attached testimony

NAME: Tim Stearns DATE: 3/4/83

ADDRESS: Box 858 Helena, MT

PHONE: 443-4965

REPRESENTING WHOM? NPRC

APPEARING ON WHICH PROPOSAL: HB615

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: HB 615 is bill which will improve  
the stripmine act. It will give ASL more  
flexibility to enforce the law. It will also  
give mining companies the opportunity to  
correct minor problems without facing  
penalties.

Our only concern is the distinction between  
minor and major which will be dealt with  
in rulemaking.

Civil penalties should only be assessed for  
major problems. Minor problems can be dealt  
with in good faith.

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL NO. 305  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

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.

NAME Dennis Hemmer BILL NO. 305  
ADDRESS Helena DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT Dept of State Lands  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME KEITH OLSON BILL NO. HB 305  
ADDRESS Kalispell DATE 3-4-83  
WHOM DO YOU REPRESENT MT. Logging Assn  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL NO. 255  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

The Department of State Lands supports House Bill No. 255.

At the present time the Department is requiring appraisals by qualified appraisers on all land exchange proposals. Also, the few sales that have been held over the past few years have included an appraisal by a qualified appraiser.

The Department is required to insure that the state receives full market value for all interests it grants. This bill will help insure that full market value is received.



NAME Dennis Hemmer BILL NO. 255  
ADDRESS Helena DATE 3-4-83  
WHOM DO YOU REPRESENT Dept of State Lands  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



STATE OF MONTANA  
ENVIRONMENTAL QUALITY COUNCIL

STATE CAPITOL  
HELENA, MONTANA 59620  
(406) 449-3742

Deborah B. Schmidt, Acting Executive Director

Sen. Nat. Res.  
3-4-83  
HB 260

GOV. TED SCHWINDEN  
Designated Representative:  
John North

HOUSE MEMBERS  
Dennis Iverson, Chairman  
Dave Brown, Vice Chairman  
Gay Holliday  
Dean Switzer

SENATE MEMBERS  
Harold Dover  
Dorothy Eck  
Mike Halligan  
Gary Lee

PUBLIC MEMBERS  
Dennis G. Nathe  
W. Leslie Pengelly  
Glen T. Rugg  
Frank S. Stock

December 14, 1981

The Honorable Mike Greely  
Attorney General  
State of Montana  
Capitol Station  
Helena, MT 59620

Dear Mike:

As Chairman of the Environmental Quality Council's Subcommittee on Hard-Rock Mining I have become aware of a legal question that is fundamentally significant to the study currently being conducted by us pursuant to HJR 66. The question concerns the proper use of funds collected under the Resource Indemnity Trust Act, 15-38-101, MCA. Specifically we must ascertain whether or not these monies may be appropriated and expended for the purpose of mitigating the social and economic impacts created by the development of mineral resources in Montana.

Because there exists a conflicting point of view among the various interested parties in the state, I now find it necessary and do hereby request from you an official opinion on this matter. I am enclosing for your review a brief memo prepared by the EQC staff on this question.

Please feel free to contact me or the EQC staff if you desire additional information.

Sincerely,

DAVE BROWN  
Chairman  
Subcommittee on Hard-Rock Mining

DB:ee  
Enclosure

STATE  
OF  
MONTANA  
**ATTORNEY GENERAL**  
**MIKE GREELY**

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

28 December 1981

Dave Brown, Chairman  
Subcommittee on Hard-Rock Mining  
Environmental Quality Council  
Helena, Montana 59620

Dear Mr. Brown:

Thank you for your letter in which you request an opinion concerning:

Whether funds collected under the Resource Indemnity Trust Act, section 15-38-101, MCA, may be appropriated and expended for the purpose of mitigating the social and economic impacts created by the development of mineral resources in Montana.

I have assigned Allen B. Chronister of my staff to review and report on this matter. Upon receipt of that report, I will determine whether your request provides an appropriate basis for an official opinion.

Very truly yours,



MIKE GREELY  
Attorney General

STATE  
OF  
MONTANA  
**ATTORNEY GENERAL**  
**MIKE GREELY**

STATE CAPITOL, HELENA, MONTANA 59620 TELEPHONE (406) 449-2026

29 January 1982

Deborah Schmidt  
Executive Director  
Environmental Quality Council  
1209 Eighth Avenue  
Helena, Montana 59620

Dear Ms. Schmidt:

You have requested my opinion, on behalf of the Environmental Quality Council's Subcommittee on Hard-Rock Mining, on the following question:

Whether funds collected under the Resource Indemnity Trust Act, section 15-38-101, MCA, may be appropriated and expended for the purpose of mitigating the social and economic impacts created by the development of mineral resources in Montana.

Article IX § 2 of the Montana Constitution provides in part as follows:

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.

This mandate was followed by the enactment of "The Montana Resource Indemnity Trust Act," 15-38-101 through 15-38-202, MCA. The policy of the Act is stated in 15-38-102, MCA:

It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of

Deborah Schmidt  
Page 2  
29 January 1982

our air, water, soil, flora, fauna, and also of those social, economic and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

The Act provides for an assessment and collection of a tax on mineral production (15-38-104, MCA) and for payment of those collections into a resource indemnity account (15-38-202, MCA). After the tax receipts and interest thereon reach the sum of \$10 million, the net earnings "may be appropriated and expended" by the legislature until the account reaches \$100 million. (Id.) Thereafter "all net earnings and all receipts shall be appropriated by the legislature and expended" provided that the balance in the account never falls below \$100 million. These funds "shall be used and expended to improve the total environment and to rectify damage thereto." (15-38-203, MCA.) The phrase "total environment" is defined as "air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens." (15-38-103(4), MCA.)

The Act clearly provides that the funds need not be expended until the trust account reaches \$10 million but that thereafter the available funds (that is, the excess over \$100 million) "shall be used and expended to improve the total environment and rectify damage thereto." (15-38-203, MCA). The contemplated use of these funds is to rectify loss or damage to the "total environment" caused by the extraction of nonrenewable natural resources. It is specifically recognized that part of that damage may accrue to the "social, economic, and cultural conditions that influence communities and individual citizens." (15-38-103(4), MCA.)

The constitution in Article IX § 2 does not specify the particular uses to be made of resource indemnity trust funds. That determination was left to legislative discretion. The legislature exercised that discretion by enacting 15-38-101 through 15-38-202, MCA, to provide funding to rectify damage done by the extraction of natural resources. There is no inconsistency between the constitutional mandate and the legislative response.

Deborah Schmidt  
Page 3  
29 January 1982

EX. 6 P.4  
Sen. Nat. Res.  
3-4-83  
HB 260

Therefore, funds made available by the Act may be expended to mitigate the social and economic impacts created by the development of mineral resources in Montana.

Very truly yours,



MIKE GREELY  
Attorney General

# STANDING COMMITTEE REPORT

March 4 19 83

**PRESIDENT:**

MR.

## NATURAL RESOURCES

We, your committee on .....

having had under consideration ..... **Statement of Intent,** ..... **HOUSE** ..... Bill No. **615**

Respectfully report as follows: That ..... **Statement of Intent,** ..... **HOUSE** ..... Bill No. **615**

be amended as follows:

1. Page 1, line 9.

Strike: "Siting"

Insert: "Reclamation"

2. Page 1, line 19.

Following: "of the"

Strike: "Siting"

Insert: "Strip and Underground Mine Reclamation"

And, as so amended,  
**BE CONCURRED IN**

~~DELETED~~

AC.

# STANDING COMMITTEE REPORT

March 4 19 83

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **615**

**Holliday (Galt)**

Respectfully report as follows: That **HOUSE** Bill No. **615**

**third reading, be amended as follows:**

**1. Title, line 7.**

**Following: "MINE"**

**Strike: "SITING"**

**Insert: "RECLAMATION"**

**and, as so amended,**

**BE CONCURRED IN**

**~~DEPRESSED~~**

*sc*



# STANDING COMMITTEE REPORT

March 4 19 83

MR. **PRESIDENT:**

We, your committee on **NATURAL RESOURCES**

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

**Harp (Mohar)**

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

**BE CONCURRED IN**  
**DOVER**

# STANDING COMMITTEE REPORT

March 4 19 83

MR. **PRESIDENT:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **255**

**Wallin (Boylan)**

Respectfully report as follows: That **HOUSE** Bill No. **255**

**BE CONCURRED IN**  
**DOXASS**

*HC.*

# STANDING COMMITTEE REPORT

March 4

83

19

**PRESIDENT**

We, your committee on

**NATURAL RESOURCES**

having had under consideration

**HOUSE**

Bill No.

**260**

**D. Brown (Eck)**

Respectfully report as follows: That

**HOUSE**

Bill No.

**260**

**BE CONCURRED IN**

**~~DEPRESSED~~**

*N.C.*