

MINUTES OF THE MEETING  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 15, 1985

The meeting of the Natural Resources Committee was called to order by vice-chairman Mike Kadas at 4:35 p.m. in Room 313-1 of the State Capitol.

ROLL CALL: Chairman Iverson and Reps. Harp and Peterson were excused; all other members were present.

SENATE BILL 223: Sen. Ted Neuman, District 21, introduced SB 223, which he sponsored at the request of the department of natural resources and conservation. Sen. Neuman explained that SB 223 calls for a change in the process of recording water right transfers, shifting from county clerk offices to the department. The basic process for a water rights transfer under SB 223 will stay the same, except that the transfer certificate will be filed with the department, and not with the county clerk and recorder, he said.

Sen. Neuman explained that a problem now exists because parties receiving a water rights transfer certificate often do not return that certificate to the department for recording, so department records are not up to date.

SB 223 allows that if a transfer certificate is not filed with the department within 60 days of the time it is received, the department will contact the certificate holder and take legal action if there is no response.

PROPOSERS: Gary Fritz, legal counsel for the department of natural resources and conservation, said the department supports SB 223. He stressed that water rights transfers do not require department approval, and that the changes made under the bill would simply make administration and record keeping easier for the department, and not require additional difficulties for the public.

Sue Bartlett, Lewis and Clark County clerk and recorder, spoke in favor of SB 223 on behalf of the state association of clerks and recorders. She said recordation of water rights at the county level causes as many problems for county clerks as it does for the DNRC. She said water rights transfer certificates are currently completed on a triplicate form, and county clerks have the burden of making sure that each part of the form reaches the proper office. Under SB 223, she said, the department will be assured of knowledge of which transfer certificates they should receive without relying on county clerks to forward those certificates.

There were no further proponents to SB 223, and no opponents.

Rep. Cobb questioned Mr. Fritz about the penalties for noncompliance with SB 223, asking if those penalties would be excepted for good reason. Fritz replied that the intent of the bill is to make sure water rights information is kept up to date, and that although the department has the authority to take legal action, such action is neither mandatory nor likely.

Rep. Cobb agreed to carry the bill on the House floor.

Sen. Neuman closed by saying that SB 223 would provide more accurate and up to date water rights information statewide, and that county clerks would still have access to all the water rights information they need.

SENATE BILL 272: Sen. John Mohar, District 1, introduced SB 272, which he sponsored at the request of the department of natural resources and conservation. He said the bill was written to clarify the eligibility and license compliance provisions for development of hydroelectric power generation facilities at state-owned water projects. The bill contains three major provisions, which the sponsor outlined. First, SB 272 would expand the number of people who can bid on hydroelectric power generation sites by removing the restriction stating that only utilities, electric cooperatives, or the corps of engineers can negotiate such contracts. Second, the bill would remove the requirement that the department must hold a FERC license on all such projects. Third, the bill provides that a person can submit an application for a small scale facility, and that the department may review and take action on such an application.

PROPOSERS: Gary Fritz, legal counsel for the department of natural resources and conservation, spoke in support of SB 272. He said that through SB 272, the legislature has recognized that state-owned water projects are an asset. The process for licensing the operation of these water projects has severely restricted the number of entities that can apply, he said. SB 272 would open that application process to more people, and enhance the possibility of water project construction and financial gain, said Mr. Fritz.

Peter Gross, of Pony, president of the Montana Small Hydropower Association, said that group supports SB 272. He said that small developers can currently receive federal licenses to develop water projects, but state law prevents them from doing so. He said that people who work in the area of small hydrodevelopment are looking for exactly the sort of project outlined in SB 272, that is, a project too small to attract utilities or electric cooperatives. The bill would allow small developers to take on these projects, and would allow the state to recoup lost money and potential electric power.

There were no further proponents, and no opponents to SB 272.

Rep. Miles asked Mr. Fritz to explain the provisions of Section 2 of SB 272. Mr. Fritz said that current Montana law requires that the state must hold the FERC license on all state owned water projects. However, hydrodevelopers need that license to do business, and therefore are shut out of such projects. Under the provisions of SB 272, those small hydrodevelopers would be allowed to hold the FERC license.

There were no further questions.

Representative Kadas agreed to carry the bill on the House floor.

Sen. Mohar closed by encouraging the committee to support SB 272 as a means of development a clean, renewable resource.

#### EXECUTIVE ACTION

SENATE BILL 272: Rep. Miles moved that SB 272 BE CONCURRED IN, and that motion was unanimously approved.

SENATE BILL 223: Rep. Grady moved that SB 223 BE CONCURRED IN, and that motion was unanimously approved.

The committee then returned to public hearing, and opened on SB 359.

SENATE BILL 359: SB 359 was introduced by the sponsor, Sen. Bill Yellowtail, District 50. Sen. Yellowtail explained that he introduced SB 359 at the request of the department of state lands, and that the bill amends the strip and underground mine reclamation act to make state requirements as strict as federal requirements.

PROPONENTS: Dennis Hemmer, representing the department of state lands, spoke in favor of SB 359, saying the bill would protect the state's environment without burdening operators with "outrageous costs." A copy of his testimony is attached as Exhibit 1.

Jim Mockler, speaking on behalf of the Montana Coal Council, supported SB 359.

There were no opponents to SB 359, and no questions from committee.

Sen. Yellowtail closed by asking the committee's support for this "straightforward" legislation. Rep. Miles agreed to carry the bill on the floor of the House.

EXECUTIVE ACTION

SENATE BILL 359: Rep. Asay moved that SB 359 BE CONCURRED IN. That motion was unanimously approved.

HOUSE BILL 899: Rep. Kadas moved DO PASS on HB 899, which was heard in committee on March 8. Rep. Garcia introduced proposed amendments to the bill, which would remove portions of the legislation that require newspaper participation in the recycling program. Rep. Garcia moved DO PASS on those amendments. Rep. Raney commented that he had been contacted by several newspapers from around the state, and from the Livingston Enterprise in his home district. He said that representatives of the papers made a good point, that out-of-state newspapers would not be subject to the tax imposed by HB 899, and that in-state newspapers would bear an unfair burden. Rep. Cobb said that the tax imposed in the bill would cost the state's newspapers no more than \$14,000, which they could well afford. He added that the papers contribute a good deal of recyclable waste material, and that they should be asked to shoulder the responsibility of dealing with it.

Rep. Krueger questioned whether out-of-state papers actually comprise much of the newspaper market in Montana. Rep. Ream suggested that distributors of out-of-state papers be taxed under HB 899, but Rep. Kadas said that attempting to tax distributors is not worth the effort. By far, most of the papers sold in Montana are local, said Rep. Kadas.

Rep. Grady said he supported the Garcia amendments because the big litter problem in Montana comes not from newspapers, but from paper and aluminum containers. Newspapers are not worth what they cost now, he said, and HB 899 would simply increase that cost.

Rep. Kadas countered that HB 899 is not a litter bill, but a recycling bill, and so the question of what product results in the most litter is not relevant. Rep. Grady stated that although the bill is called a recycling bill, the whole concept of recycling is designed for litter control.

Rep. Asay said that disposal of newspapers is an obvious problem, and that if the committee amends newspapers out of the bill, it would lose other supporters.

The committee then voted and the Garcia amendments were killed by a 9-7 vote. A copy of the roll call vote is attached.

Rep. Kadas then introduced his proposed amendments, which include containers for wine and non-carbonated beverages in the bill, and exempt containers on which a deposit is paid. His amendments also proposed changes in the membership of

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the board that oversees the recycling program. Other amendments would clean up some vague language in the bill, revise the taxing procedure, add a confidentiality section and a severability clause, and provide a six-year "sunset" clause, said Rep. Kadas. A copy of those amendments is attached as Exhibit 2.

Rep. Driscoll asked whether there would be a constitutional problem with taxing a corporation that has its headquarters outside Montana. He said he thought for a corporation to be taxable in Montana, it must have a substantial tie to the state. Rep. Krueger said that under the commerce clause of the U.S. Constitution, that problem does not exist.

Rep. Kadas moved DO PASS on his proposed amendments, which was approved with Reps. Smith, Jones and Grady voting no.

Rep. Kadas then moved DO PASS AS AMENDED on the bill, which was approved by a 9-7 vote. A copy of the roll call vote is attached.

There being no further business before the committee, the meeting was adjourned at 5:35 p.m.



Rep. MIKE KADAS, Vice-Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date MARCH 15, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)			X
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John			X
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou			X
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

# STANDING COMMITTEE REPORT

MARCH 15

19 85

MR. SPEAKER: .....

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

having had under consideration SENATE BILL 223 .....

Bill No. ....

THIRD reading copy ( BLUR )  
color

"

**AN ACT PROVIDING FOR THE FILING OF WATER RIGHT TRANSFER  
CERTIFICATES WITH THE DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION**

Respectfully report as follows: That SENATE BILL 223 .....

Bill No. ....

BE CONCURRED IN

~~XXXXXX~~  
~~DO PASS~~

# STANDING COMMITTEE REPORT

MARCH 15 ..... 19 85 .....

MR. SPEAKER: .....

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

having had under consideration SENATE BILL 272 ..... Bill No. ....

THIRD reading copy ( BLUE )  
color

AN ACT CLARIFYING THE ELIGIBILITY AND LICENSE COMPLIANCE  
PROVISIONS RELATED TO THE DEVELOPMENT OF HYDROELECTRIC POWER  
GENERATION AT STATE-OWNED WATER PROJECTS

Respectfully report as follows: That SENATE BILL 272 ..... Bill No. ....

BE CONCURRED IN

XXXXXX  
XXXXXX



# STANDING COMMITTEE REPORT

..... March 15, 1985 ..... 19 .....

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

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

having had under consideration .... **SENATE BILL 359** ..... **Bill No. 359** .....

THIRD reading copy ( BLUE )  
color

**AN ACT LIMITING THE MANDATORY CIVIL PENALTY FOR FAILURE  
TO COMPLY WITH AN ABATEMENT OR CESSATION ORDER UNDER THE  
STRIP AND UNDERGROUND MINE RECLAMATION ACT**

Respectfully report as follows: That ..... **SENATE BILL 359** ..... Bill No. ....

BE CONCURRED IN

~~DO PASS~~

ROLL CALL VOTE

HOUSE COMMITTEE NATURAL RESOURCES

DATE MARCH 15 BILL NO. 899 TIME 5:15

NAME	AYE	NAY
IVERSON, Dennis (Chairman)		
KADAS, Mike (Vice-Chairman)		X
ADDY, Kelly	X	
ASAY, Tom		X
COBB, John		X
DRISCOLL, Jerry		X
GARCIA, Rodney	X	
GRADY, Edward	X	
HARP, John		
JONES, Tom		X
KRUEGER, Kurt		X
MILES, Joan		X
MOORE, Janet	X	
O'HARA, Jesse		X
PETERSON, Mary Lou	X	
RANEY, Bob	X	
REAM, Bob		X
SMITH, Clyde	X	

Linda Robbins  
Secretary

Mike Kadas  
Chairman

Motion: Carried

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ROLL CALL VOTE

HOUSE COMMITTEE NATURAL RESOURCES

DATE MARCH 15 BILL NO. HB 899 TIME 5:30

NAME	AYE	NAY
IVERSON, Dennis (Chairman)		
KADAS, Mike (Vice-Chairman)	X	
ADDY, Kelly	X	
ASAY, Tom		X
COBB, John		X
DRISCOLL, Jerry	X	
GARCIA, Rodney		X
GRADY, Edward		X
HARP, John		
JONES, Tom		X
KRUEGER, Kurt	X	
MILES, Joan	X	
MOORE, Janet	X	
O'HARA, Jesse	X	
PETERSON, Mary Lou		X
RANEY, Bob	X	
REAM, Bob	X	
SMITH, Clyde		X

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*Linda Ripke*  
Secretary

*Mike Kadas*  
Chairman

Motion: Do pass as amended

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LXHIBIT 1  
3/15/85

TESTIMONY ON SENATE BILL 359

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports Senate Bill 359 to amend Section 82-4-254, MCA, for the following reasons:

1. The amendment provides for better protection of the environment and the public by requiring that positive action be taken to resolve outstanding violations that have not been abated within 30 days of the initial abatement period.
2. The amendment protects a coal mine operator from possible financial ruin by placing a limit on the assessment of additional civil penalties (\$750 x 30 days = \$22,500) while at the same time requiring the Department to take additional enforcement actions in the form of (a) ordering cessation of the operation; (b) bringing legal action for a restraining order or injunction against the operator; or (c) pursuing a misdemeanor against the operator; and
3. This amendment will allow the Montana Strip and Underground Mine Reclamation Act to have the same flexibility as outlined in the rules adopted pursuant to P.L. 95-87, the Surface Mining Control and Reclamation Act of 1977.

HB 899 Amendments  
House Natural Resources Committee  
Rep. Kadas

Organizations suggesting the following amendments:  
Montana Beer and Wine Wholesalers Assn. (MBWWA)  
Coca-Cola Bottling (CCB)  
Industry Environmental Council of Montana (IECM)

Include wine and noncarbonated soft drinks within beverage definition. (CCB)

1. Page 2, line 3.  
Following: "beverage,"  
Insert: "wine,"
2. Page 2, line 4.  
Following: "carbonated"  
Insert: "or noncarbonated"

Exclude containers that are subject to a deposit. (CCB, IECM)

3. Page 2, line 7.  
Following: "beverage"  
Insert: ", but does not include any container for which a deposit is collected"

Specify that wholesale beverage industry representative to the advisory council is from the beer industry and that beverage or beverage container industry representative is from the soft drink industry.  
(MBWWA, IECM)

4. Page 3, line 6.  
Strike: "beverage"  
Insert: "beer"
5. Page 3, lines 9 and 10.  
Following: "the"  
Strike: "beverage" on line 9 through "container" on line 10  
Insert: "soft drink bottling and distribution"

Add a grocer to the advisory council. (MBWWA)

6. Page 3, line 12.  
Strike: "and"
7. Page 3, line 13.  
Following: "organization"  
Insert: "; and (h) a representative of the retail grocery industry"

Language cleanup (House Natural Resources Committee (HNRC) staff )

8. Page 5, line 24.  
Strike: "under [section 9]"

Revise language on tax collection to avoid the potential constitutional problem of taxing corporations (especially certain distributors) which do business in Montana but are not liable for taxes imposed by Montana. (Rep. Kadas)

9. Page 7, lines 18 through 22.  
Strike: "remitted" on line 18 through line 22 in its entirety  
Insert: "paid by any entity taxable by the State of Montana which distributes beverages in such containers to retail outlets in Montana. The tax on newsprint must be paid by any entity taxable by the State of Montana which makes the initial taxable distribution in Montana of a product made from newsprint."

Provide for confidentiality of sales records. Add severability clause in the event some applications of this language are invalid. (MBWWA, CCB, IECM)

10. Page 8. (HNRC staff)  
Following: line 1  
Insert: "NEW SECTION. Section 11. Confidentiality of tax information -- penalty for violation. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or the department of revenue or any employee or agent to divulge or make known in any manner the amount of sales of beverage containers or newsprint by any specific individual or corporation subject to the tax provided for in [section 10].  
(2) The department may publish cumulative statistics in a manner that maintains as confidential all information on the amount of sales by any specific taxpayer and that prevents the identification of or attribution of identifiable reports or statistics to any specific taxpayer.  
(3) A person who violates the provisions of this section is a guilty of a misdemeanor."  
Renumber: subsequent sections

11. Page 8.  
Following: line 6  
Insert: "NEW SECTION. Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."  
Renumber: subsequent section

Add provision to require "sunset review" of this act. (Rep. Kadas)

12. Page 8.

Following: line 1

Insert: "NEW SECTION. Section 11. Program termination scheduled -- review by legislative audit committee required. (1) The recycling education and promotion program terminates on July 1, 1991, unless the legislature reauthorizes the program following the review provided for in subsection (2).

(2) The recycling education and promotion program must be reviewed by the legislative audit committee during the biennium ending July 1, 1991, following the procedures for such review established in Title 2, chapter 8, part 1."

Renumber: subsequent sections

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. SB 359

DATE MARCH 15, 1985

SPONSOR Sen. Yellowtail

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dennis Hemmer	Helena D54	✓	
Jim MacKler	Helena, MT Coal Co.	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.





VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. SB 223

DATE MARCH 15, 1985

SPONSOR Sen. Neuman

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Gary Frite	Halawa, DNRC	X	
Jill Baxton	MT Assoc. of Clerks & Records	X	
Bob Johnson	DNRC	X	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.