

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 22, 1985

The twelfth meeting of the Senate Natural Resources Committee was called to order at 12:31 p.m. by Chairman Dorothy Eck in Room 325, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

CONSIDERATION OF SB435: Senator Galt, sponsor of SB435, stated SB435 is such a simple bill that he is surprised this law is not already on the books. The bill requires a person to obtain permission from landowners before using the land for recreational purposes. Senator Galt stated the law would not only apply to persons who use a farmer's or rancher's land, but also to persons who use a private golf course. Senator Galt feels the passage of this bill will help enforce Montana's current laws regarding trespassing.

PROPONENTS: Mr. Conrad B. Fredricks, of Big Timber, Montana, submitted written testimony (Exhibit 1) in favor of SB435.

Mr. Mike Micone, representing Western Montana Environmental Trade Association, urged the committee to support SB435. Mr. Micone explained this bill will extend Montana's current big game laws to include all persons using private land for any recreational purposes. Mr. Micone stated by requiring the user to obtain permission before going on private property, the burden will be shifted to the user.

Mr. Jim Flynn, representing the Department of Fish, Wildlife and Parks, submitted written testimony (Exhibit 2) in favor of SB435.

Ms. Carol Mosher, representing the Montana Cow Belles and Women in Farm Economics, submitted written testimony (Exhibit 3) in favor of SB435.

Mr. Lorents Grosfield, from Sweetgrass County, stated SB435 will improve the relationship between landowners and land users. Mr. Grosfield feels Montana's big game law is an excellent one, and passage of SB435 will make the law even better. Mr. Grosfield hosted 863 hunters on his ranch last year without charge. Mr. Grosfield stated he would not have allowed this hunting if it were not for Montana's big game laws. Mr. Grosfield feels SB435 should be extended to cover

Minutes of the Meeting
February 22, 1985
Page 2

all recreational purposes. Mr. Grosfield does contend, however, that posting should not be a requirement of the landowners, since people are required to know where they are and what the rules are.

Mr. Ralph Holman, a rancher and hunter from MacLeod, Montana, feels Montana's current trespass laws are weak and ineffective, and trespassing is a problem for landowners. Unfortunately, the good sportsman suffers because of "slob" hunters.

There being no further proponents, the hearing was opened to opponents.

OPPONENTS: Ms. Mary Wright, representing the Montana Council of Trout Unlimited, submitted written testimony in opposition to SB435 (Exhibit 4).

Mr. Dan Heinz, representing the Montana Wildlife Federation, stated he favors HB911, which is a compromise bill. Mr. Heinz feels that although HB911 requires posting, it is a better bill.

There being no further opponents, the hearing was opened to questions from the committee.

Upon question from Senator Mohar, Mr. Flynn stated he did not have any proposed amendments regarding the minimum posting requirements.

Upon question from Chairman Eck, Mr. Heinz explained HB911 requires posting by landowners at each gate entering the land and at other points of entry normally used. It also provides for posting on rivers where people commonly enter the land.

There being no further questions from the committee, Senator Galt closed the hearing by stating SB435 will give the same protection to private landowners as enjoyed by the people who live in cities. Senator Gage urged the committee to give strong consideration to this bill.

CONSIDERATION OF SB444: Senator Halligan, sponsor of SB444, stated the purpose of the bill is to create an effective power to represent the public consumer in utility proceedings. At the current time, there is no state-wide organization whose purpose is dedicated to representing residential utility consumers at rate proceedings. SB444 will require the Montana

Public Service Commission to adopt rules for a Citizens' Utility Board (hereafter CUB) which will be a non-profit, non-partisan corporation. Senator Halligan further explained CUB will not involve the use of any tax dollars. CUB will have the ability to solicit members through the use of "inserts" placed in utility billings. Senator Halligan contends these billings are paid for by the ratepayers, since they are included in the rate base, and the mailings should, therefore, be available to CUB. Senator Halligan further explained SB444 contains a "sunset" provision. If CUB fails to obtain 1,000 members (50 from each district) by the end of a two-year period, CUB automatically terminates itself. Senator Halligan feels the Montana Public Service Commission and the Consumer Council are not representing the best interests of the consumer, because they are political groups controlled by the Legislature.

PROONENTS: Mr. Dan Oberg, representing the Public Service Commission, stated this issue was brought before the Public Service Commission last fall. At that time, the Public Service Commission decided it did not have the authority that CUB is requesting, i.e. granting access to utility envelopes. Mr. Oberg does not feel it would be unreasonable to let CUB use the envelopes to contact fellow ratepayers. CUB has presented the Legislature with an option to make sure ratepayers can have an effective part of the Public Service Commission's process.

Ms. Holly Hand, representing the Montana Environmental Information Center, submitted written testimony (Exhibit 5) in favor of SB444.

Mr. George Allen, representing the Montana Retailers' Association, stated his organization is one of the largest employers, taxpayers, and users of utility services in the state. Mr. Allen stated he would like to see page 13, section 13, amended, because his organization would like to have access to these mailings also.

Mr. Dale Stroschein, representing the Montana Low Income Coalition, submitted written testimony (Exhibit 6) in favor of SB444.

Mr. C. B. Pearson, representing the Montana Public Interest Research Group, submitted written testimony (Exhibit 7) in favor of SB444.

Mr. Earl Reilly, representing the Montana Senior Citizens' Association, submitted written testimony (Exhibit 8) in favor of SB444.

Minutes of the Meeting
February 22, 1985
Page 4

Ms. Ellen J. Knight, representing the Montana League of Women Voters, submitted written testimony (Exhibit 9) in favor of SB444.

Mr. Russ Brown, representing Northern Plains Resource Council, strongly supports SB444 and feels a ratepayer's organization is needed in Montana.

Mr. Bob Decker, Chairman of the Lewis and Clark County Commissioners, stated his organization endorses the creation of CUB. When the Commissioners held a public hearing on CUB, Mr. Decker stated the idea received strong support from the public.

Mr. Clyde Jarvis submitted written testimony (Exhibit 10) in favor of SB444. Mr. Jarvis feels Montana's most valuable natural resource is its people. Mr. Jarvis reminded the committee the people of Montana elected them, so they should vote for the people on this issue.

Mr. Tom Lonsway, President of the Wisconsin CUB, submitted written testimony (Exhibit 11) in favor of SB444.

Mr. Jon Motl, representing Montana Common Cause, submitted a Memorandum of Law (Exhibit 12) in support of the constitutionality of the CUB bill.

Ms. Jo Anne Peterson, representing the Montana Education Association, submitted written testimony (Exhibit 13) in favor of SB444.

Mr. Wade Wilkison stated he is a proponent of SB444. Mr. Wilkison represents the Montana Low Income Association.

Mr. Chester Kenzie, representing the Montana Farmers' Union, supports SB444 and asked the committee to give the bill a favorable recommendation.

Mr. Howard Ellis, a member of the Public Service Commission, testified that he supports SB444. Mr. Ellis feels passage of the bill will improve residential ratepayers' ability to participate in rate proceedings. As a member of the Public Service Commission, Mr. Ellis feels this participation will be helpful.

There being no further proponents, the hearing on SB444 was opened to opponents.

Mr. Tom Monahan, a member of the Public Service Commission, submitted written testimony (Exhibit 14) in opposition to SB444.

Minutes of the Meeting
February 22, 1985
Page 5

Mr. John Alke, representing Montana Dakota Utilites, feels the utility bill is the private property of the utility and should not be used by other parties. Mr. Alke feels because the utility is a monopoly, it is reasonable to regulate rates through the Public Service Commission, but it is not reasonable to authorize CUB. Mr. Alke stated the question is whether the Legislature can force a utility to use its private property to assist CUB with its political goals. By stamping the outside of the bill with "important consumer information inside," CUB will be asking the utility to attest to that fact. Mr. Alke feels this will be in violation of the First and Fifth Amendments to the U. S. Constitution.

Ms. Carla Gray, representing The Montana Power Company, stated Montana already has a CUB and submitted Articles of Incorporation (Exhibit 15). Ms. Gray believes Montana leads the way in consumer regulatory schemes. The elected commissioners are pro-consumer, and the state also has a Consumer Council mandated by our State Constitution. Montana also enjoys one of the lowest electricity rates in the United States. Ms. Gray testified The Montana Power Company does not object to the formation of CUB, but does object to the use of inserts in The Montana Power Company's monthly billing. Ms. Gray feels this is a dangerous concept.

Chairman Eck stated due to the lack of time, the hearing on SB444 would be closed until the committee meets again upon adjournment of the Senate.

The following persons stated their names as opponents to SB444: Mr. Jim Hughes, representing Mountain Bell; Mr. Russ Ritter, representing the City of Helena; Mr. Robert McNellis, an interested citizen; Mr. Forest Boles, representing the Montana Chamber of Commerce; Mr. Dix Shevalier, an interested citizen; Mr. Geoff Quick, representing the Missoula Chamber of Commerce; and, Mr. Gene Phillips, representing Pacific Power and Light Company. Written testimony was submitted by K. M. Kelly (Exhibit 16) in opposition to SB444.

The hearing on SB444 was then closed.

ACTION ON SB258: Senator Mohar moved the previous amendments to SB258 be striken and the proposed amendments BE ADOPTED. The motion carried. Senator Mohar moved SB258 DO PASS AS AMENDED. The motion carried.

FURTHER CONSIDERATION OF SB277: Mr. Bob Thompson submitted a copy of SB277 with proposed changes (Exhibit 17). Senator Fuller inquired what the differences were between SB277 and Representative Brown's bill, HB913. Mr. Gene Huntington explained the major difference was the earmarking of funds contained in HB913.

Minutes of the Meeting
February 22, 1985
Page 6

Upon question from Senator Mohar, Mr. Huntington explained HB913 allocates one-third of the fund for recreation.

Mr. Thompson explained to Senator Mohar the language on page 6 was added to alleviate the concern of liability.

Senator Fuller was concerned with the language on page 2, lines 12-13, and feels this will cause problems for future legislative sessions. Senator Eck explained this is language from the original bill, and it is the same language contained in HB913.

Senator Gage feels amendment 21 to SB277 might be beyond the scope of the bill.

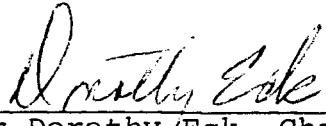
Senator Fuller moved the language on page 2, lines 12-13, be stricken from the bill. The motion carried with Senators Eck, Halligan, Tveit and Gage voting in opposition.

Senator Gage was informed by Chairman Eck there was an account referred to as the Resource Indemnity Trust Fund Interest Account.

Senator Gage moved amendment 13 be changed to strike "is." Senator Halligan made a substitute motion to strike "that" on page 6, line 24. The motion carried with Senator Shaw voting in opposition.

Senator Gage moved the committee not adopt proposed amendments 14 and 15 to SB277. The motion carried with Senators Fuller, Mohar, Weeding and Christiaens voting in opposition.

The committee decided due to time constraints, SB277 would be discussed at a later time. The committee adjourned at 2:30 p.m.



Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 02/22/85

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman)</u>	✓		
<u>HALLIGAN, Mike (Vice Chairman)</u>	✓		
<u>WHEEDING, Cecil</u>	✓		
<u>MOHAR, John</u>	✓		
<u>DANIELS, M. K.</u>	✓		
<u>FULLER, David</u>	✓		
<u>CHRISTIAENS, Chris</u>	✓		
<u>TVEIT, Larry</u>	✓		
<u>GAGE, Delwyn</u>	✓		
<u>ANDERSON, John</u>	✓		
<u>SHAW, James</u>	✓		
<u>HARDING, Ethel</u>	✓		

Each day attach to minutes.

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
K.M. Kelly	Mont. Irrigators	SB 444		X
EARL CONVER	SELF	SB 444		X
DIX C. SHELDON				X
Loren's Grosfield	Swat6m, County Preservation Arn	SB 435	X	
Jim Hughes	MTM. BELL	SB 444	X	
Tom Mahan	Self	SB 444		X
John Ward	Montana F.I.C.	SB 444	X	
Robert E. McNeil	Self	435		X
Mildred Hazel	Self	435	X	
Shirley Hardy	Self	435	X	
CB. REAVISON	Mont PIRC	444	X	
CH. Bala	Mont Chamber	444		X
Geoff Burch	Missoula Chamber	444	X	
Karla Gray	MPC	444		X
Mike McLean	WEITA	435	X	
Alain M. Johnson	Self	435	X	
Geoff Burch	Self	435	X	
GENE PHILLIPS	PACIFIC POWER & LIGHT	444		X
Carol Mosher	Mont. Low Bellas	435	X	
Carol Mosher	W.I.F.E.	435	X	
Dale Wilson	CCC GREAT FALL	444		X
WADE WILSON	LISCA	444		X
Russ Ritter	City of Helena	444		✓
Bill Lorraine	CITY OF Helena	444		✓
Julie Johnson	Mont PIRC	444		✓
David Eller	MPSC	444		✓

DATE

Q2228.5

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Norman Ober	PSC	4444	X	
Bob Decker	Lewis & Clark County	444	X	
Tommy Koenig	MLIC / Belvoir	444	X	
Charles Kerney	MLIC - MSCC - FU	444	X	
John Kett	Lower Custer	444	X	
Stuart Doggett	MT. Stockgrowers Ass Mt. Ass. of Grazing Districts	435	X	
Pat Farnsworth	Mont. Farm Bldg Co	435	X	
Tom Johnson	Mont. C. C. T. C.	444	X	
Erica Neilly	M. S. C. A. 1461 East	444	X	
Ross Brown	Northern Plains Resources	444	X	
Tommy Peterson	Mont. Ass.	444	X	
Tom Morton	District XI HPDC	444	X	
Tom Goss	Miss. Chamber of Commerce	444	X	
GENE PHILLIPS	PACIFIC POWER & LIGHT	4444	X	

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 2/22/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Asso'

APPEARING ON WHICH PROPOSAL: 5B ~~100~~ 435

DO YOU: SUPPORT? X AMEND? _____ OPPOSE?

COMMENT: See attached written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 022285

BILL NO. 5B435

BILL NO. 587 00

TESTIMONY RE SENATE BILL NO. 435

Submitted by Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 435 is a bill designed to alleviate a problem which exists with regard to persons who use the lands of another for recreational purposes without permission.

At the present time, there is a statute on the books (Section 87-3-304, M.C.A.), enacted in 1965, which requires a person to obtain permission of the landowner, lessee, or their agents before hunting big game animals on private property.

This statute has helped to maintain better landowner-hunter relations by making it easier for the landowner to control big game hunting on his property, easier for the landowner to protect his livestock, crops and other property from uncontrolled hunting, and easier for the landowner to fix liability when his livestock or other property is damaged or destroyed.

However, Section 87-3-304 only applies to big game hunting, and does not apply to other uses of property which are also dangerous and troublesome to the landowner and his property, such as bird hunting, predator hunting, bow hunting, non-game animal hunting, target practice, camping, firebuilding and use of off-road vehicles, including snowmobiles.

The Department of Fish and Game has recognized the problem and, apparently, supports the concept of Senate Bill No. 435, as is evidenced by the Department's "ASK FIRST" campaign. This bill merely, as a practical matter, gives statutory sanction to the "ASK FIRST" campaign and only requires what common courtesy and a concern for private property dictates as a matter of course.

Certainly, no one who has any respect for private property or the rights of landowners to protect and control the use of their property, which they bought and paid for and pay taxes on, could object to a requirement that a person obtain permission before using private property for recreational purposes. This would seem to be particularly true in Montana, where large amounts of public land are available for public recreation.

The State and Federal Governments have the power to, and do, promulgate and enforce regulations governing the use of

public lands. Certainly it is only fair for the State of Montana, through its Legislature, to afford the same protections to private property.

It is submitted that only a person who has no respect for private property or a landowner's right to protect his property from damage or destruction would oppose this legislation. Unfortunately, there are persons in this category and it is those persons that this legislation is designed to apply to.

It may be argued that permission should not be required unless the landowner posts his land, showing that permission is required to use it. First, the burden should be on the person who wants to use another's property to make arrangements to use it, and the burden should not be on the landowner to post property, with the resultant expense and trouble. Secondly, there can be little doubt that posting does not work for the type of people who would want to use a landowner's private property without permission, as is witnessed by the frequent tearing down and disappearance of signs erected by landowners to post their property. The responsibility should be on the shoulders of the persons who want to use private property for recreational purposes, not on the landowner. Big game hunters have shouldered this responsibility for years -- why shouldn't other hunters and recreational users?

It is respectfully submitted that this Committee should pass this bill to the Senate with a "do pass" recommendation.

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

February 22, 1985

The department supports the expansion of authority for state game wardens to clearly enforce all recreational trespass. Under present law, such clarity only exists for big game hunting.

Additionally, we can support the premise in Section 1 of this bill that permission should be gained to use private property for recreational purposes.

However, we are concerned that this legislation eliminates the need for proper notice by posting before trespassing can occur. This legislation not only doesn't require such notice for other recreational uses, but would appear to remove the present statutory requirement for big game hunting.

As I have mentioned, there is no question that an individual who is recreating should have permission from the landowner if private land is to be used for recreation. But we must keep in mind that Montana is a large and diversified state with many different types of intermingled landownership. Some of this land is clearly fenced and some is not. Some is publicly owned and some is not. As a result, there are a variety of circumstances afield which can and do lead to unknowing trespass.

While it is not realistic to require an undue amount of posting, neither is it realistic to allow for no posting.

We would suggest that the committee consider a requirement for proper notice before trespass can occur.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 022285

BILL NO. 3B435

TESTIMONY
BEFORE THE SENATE RESOURCES COMMITTEE
IN SUPPORT OF S.B. 444

February 22, 1985

Madame Chairwoman and members of the committee, I appear today on behalf of the Montana Low Income Coalition. We speak today in support of S.B. 444, the bill that would allow ratepayers to organize their own advocacy organization.

As members of this committee know, utility bills are a necessity. People need heat and light and therefore they must pay their utility bills. It only seems fair that people also be given an opportunity to involve themselves in the policy making that sets the rates they must pay. At this time ratepayers have no effective way to get involved. They can stand back and watch as the PSC or the Legislative Consumer Counsel take stands but ratepayers themselves cannot effectively get involved. To be sure they can present testimony such as we are doing today but utility hearings last for weeks and they are the domain of lawyers. You will see a sample of that shortly when the utilities send their lawyers in front of you to argue against this bill. We know that ratepayers will have a chance to organize if you pass this bill. Without it things stay as they are and the utility will not face an organized ratepayer group.

We ask you, give us a chance. Pass S.B. 444.

Thank you. *Dale Stroschein*
Concerned Citizens Coalition + M.L.C.
Great Falls Mont

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 6
DATE 022285
BILL NO. SB444

(This sheet to be used by those testifying on a bill.)

NAME: Carol Masher

DATE: Feb. 22, 1985

ADDRESS: Augusta

PHONE: 562-3315

REPRESENTING WHOM? Montana Bow Beiles

APPEARING ON WHICH PROPOSAL: SB 435

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

COMMENT: _____

I fully support the language of SB 435. I certainly agree that game wardens should have the power of peace officers and that it will not take a substantial amount of their time. It is much easier to contact game wardens than it is deputy Sheriffs. It has been stated at other hearings that a person may not know where he is. Our position is that anyone should know where they are or not be there at all. Retaliation from disgruntled recreationists is a threat we live with in the west areas of the state and most difficult to deal with, so there must be adequate enforcement.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 022285

BILL NO. SB435

(This sheet to be used by those testifying on a bill.)

NAME: Carol Mosher DATE: Feb. 22, 1983

ADDRESS: Augusta, Mt.

PHONE: 562-3315

REPRESENTING WHOM? W. I. F. E.

APPEARING ON WHICH PROPOSAL: SB 435

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

COMMENT: _____

I fully support the language and intent of this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 02/22/85

BILL NO. SB435

TESTIMONY ON S.B. 435

MONTANA COUNCIL, TROUT UNLIMITED

FEBRUARY 22, 1985

Mr. Chairman and members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

We question certain aspects of this bill. While we support the concept of obtaining landowner permission before using private land for recreation, we believe that this bill imposes too heavy a burden on recreational users to know the land ownership and boundaries at all times. A sportsman could use all the usual tools at his disposal, including maps, posting, inquiries and personal knowledge, and still be mistaken about ownership and boundaries. Many thousands of acres of land have changed from public to private ownership since maps have been revised, and not all lands are accurately posted. Therefore, this bill would criminalize good faith behavior on the part of a sportsman who made a thorough good faith effort to do the right thing.

In addition, we do not believe that the term "incidental to and necessary for" the recreational use of surface waters is sufficiently clear to give guidance to the same class of sportsmen who are trying to do the right thing. We would also point out that the penalty for violation would include not only a fine and possible jail sentence,

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 4

DATE 02/22/85

BILL NO. SB435

but also loss of the privilege to hunt, fish or trap for a period of at least two years following the date of conviction. We believe that the penalty is inappropriate for what would be essentially a trespass situation which could occur without knowledge, intent or even negligence on the part of the defendant.

Our position is not that there is no need for legislation in this area. The purpose of the bill could be accomplished in other ways, for example, by a legislative statement of what constitutes adequate posting on the part of a landowner. That approach could provide more certainty for the landowner while not requiring sportsmen to shoulder a potentially impossible burden.

As introduced, however, we must oppose S.B. 435 and request that the Committee not take favorable action on it.

Thank you very much for the opportunity to testify here today.



LENA HANNAH LARSON © 1984

The Montana Environmental Information Center

- P.O. Box 1184, Helena, Montana 59624
- Flathead Office 433 S. Main, Kalispell 59901

(406) 443-2520
(406) 755-7763

TESTIMONY BEFORE THE NATURAL RESOURCES COMMITTEE IN SUPPORT OF SB 444

FEB. 22, 1985

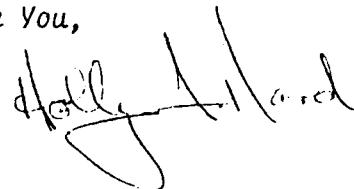
Madame Chairwoman and members of the Committee, my name is Holly Hand and I appear on behalf of the Montana Environmental Information Center (MEIC). I speak today in strong support of SB 444, the bill that would allow the creation of a Montana Citizens Utility Board, Montana CUB.

MEIC believes a Montana CUB is needed because it would allow Montana ratepayers to organize into an effective statewide ratepayers' organization. A ratepayers' organization is needed to work on a wide ranging number of issues. The issues that need the attention of a ratepayers organization range from AT&T divestiture and the ensuring changes in phone services and rates to broad scale policy analysis of energy production options.

I have attached to my testimony copies of summaries of interviews with several Montanans who list additional issues Montana CUB could work on. I have highlighted those issues mentioned by these individuals.

In closing, this testimony has briefly mentioned several issues that would benefit from the input of a ratepayers organization. MEIC believes that ratepayers can be of assistance in working on these and other issues and therefore strongly urges this committee to support SB 444. Ratepayers, as well as utilities, should be allowed an organized voice on utility matters and SB 444 will provide for that voice. We urge your support.

Thank You,



CUB Supporters Comment

Two of the most frequently asked questions in respect to the formation of Montana CUB are (1) Why is there a need for Montana CUB? and (2) what future utility issues would benefit from

Dr. James Lopach

Dr. Lopach is a professor of Political Science at the University of Montana and profiled the PSC in his book "We the People of Montana."

"Montana CUB is needed for two reasons. One, legal and political developments in the state have increased the pressure placed on the PSC in its role of being a passive, neutral arbitrator. Since the utilities will always be able to present a strong case on their behalf, it is very important that residential ratepayers also be able to aggressively and persuasively present their case. Secondly, Montana CUB can act as a mediating group between the PSC and residential ratepayers by better explaining various PSC decisions and increasing the understanding of how utility regulation in Montana is conducted."

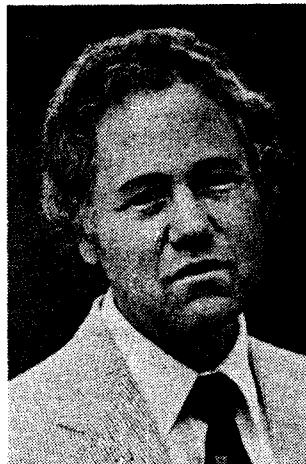
"The crucial future issue that Montana CUB can help the PSC work on is the development of reasonable rate structures for residential ratepayers.

Jeanne Kemmis

Ms. Kemmis is an attorney with District XI Human Resources Council.

"There definitely is a need for Montana CUB because residential ratepayers, as a class of ratepayers with its own special needs, are not being represented in the present set-up. It is not that residential ratepayers are not testifying in front of the PSC, or the PSC is not listening to them. The problem is that residential ratepayers are not providing the type of testimony the PSC needs. The PSC needs testimony that is effectively supported by the necessary documentation for the record. But because this information is so technical and expensive to develop it is beyond the capability of individuals or citizens' groups to produce it. Montana CUB, on the other hand, would have the funds needed to hire the attorneys, expert witnesses and others who can develop and present this kind of testimony on behalf of residential ratepayers."

"I think a future issue in which Montana CUB can play a leading role is helping the PSC move energy production from the present centralized system symbolized by Colstrip to a decentralized system symbolized by small and competitive energy sources."



the input of a group like Montana CUB? Four individuals well acquainted with utility regulations in Montana gave us their responses to these questions. (Interviews conducted by Neal Friedman.)

Linda Stoll Anderson

Ms. Anderson is a commissioner on the Lewis and Clark County Commission, one of the eight county commissions to endorse Montana CUB.

"I think that Montana CUB is needed because there is a need to involve Montana's citizens on a grass-roots level in the PSC decision-making process.

"Presently, residential ratepayers find it difficult to get involved in the PSC decision-making process. Montana CUB will provide the means for needed citizen involvement. It offers concerned citizens a cheap and easy method to develop a strong utility advocacy group representing their important concerns."

"I think Montana CUB can help the PSC by representing the concerns of ratepayers who cannot afford the cost of any increase in their utility bills. Last year alone we had 300 utility shut-offs in Lewis and Clark County. Clearly, a better system needs to be developed so our senior citizens and others on limited income who cannot afford the increasing utility bills are not faced with a utility shut-off."

James Paine

Mr. Paine is the director of the Office of the Consumer Council, the legislatively directed office which intervenes on behalf of Montana consumers on various utility rate hike requests.

"There presently is a need for Montana CUB because the PSC is looking for, and needs, more input at its hearings from ratepayers. Specifically, the PSC needs technical input which will provide them with viable options and plans for utility regulation as well as supportive input which encourages the PSC to adopt pro-ratepayer proposals."

"I think the future issue where the PSC can really use the input of a group like Montana CUB is in telephone regulation. The AT&T divestiture adversely affects sparsely populated states like Montana and the PSC has the responsibility to figure out what to do about it. As a result of the break-up, the pressure on maintaining reasonable local exchange rates has increased dramatically and proposals are needed describing how these rates can be kept as low as possible."



Groups Endorsing Montana CUB

Action for Eastern Montana
Associated Students Univ. of Mt., Central
Board
Butte Community Union
Common Cause of Montana
Disabled American Vets, Missoula,
Chapt. #5
HRDC (District XI, Missoula)
League of Women Voters of Montana
Lewis and Clark County Retired Teachers
Association
Low Income Group for Human Treatment
Low Income Senior Citizens Advocates
(LISCA)
Missoula City Council
Missoula County Commissioners
Montana Coalition Against Poverty
Montana Education Association
Montana Environmental Information Center
Montana Power to the People
Montana Public Interest Research Group
Montana Senior Citizens Association
National Association of Retired Federal
Employees (Montana Chapter)
Power, Thomas, Chair of Univ. of Mt.
Econ. Dept.
SUMMIT
United Veterans Council of Missoula
University of Montana Teachers Union
VFW post 209 (Missoula)
VFW post 5607 (Milltown)
Womens Resource Center
Montana Solar Energy Industries
Association
Mineral County Commissioners
Montana HRDC Directors Association
Concerned Citizens Council of Belt
Prairie County Commissioners
Phillips County Commissioners
Roosevelt County Commissioners
Fallon County Commissioners
Valley County Commissioners
Lewis & Clark County Commissioners
Opportunities, Inc. (Great Falls)
Montana Public Service Commissioners:
Danny Oberg, Dist. 1
Clyde Jarvis, Dist. 3
Howard Ellis, Dist. 5



Montana Public Interest Research Group

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TESTIMONY BEFORE THE
SENATE NATURAL RESOURCES COMMITTEE
IN SUPPORT OF S.B. 444
FEBRUARY 22, 1985

MADAME CHAIRMAN AND MEMBERS OF THE COMMITTEE. I APPEAR ON BEHALF OF THE MONTANA PUBLIC INTEREST RESEARCH GROUP (MONTPIRG). I SPEAK IN SUPPORT OF S.B. 444, THE BILL THAT WOULD ESTABLISH A MONTANA RATEPAYERS' ORGANIZATION.

I ENDORSE THE COMMENTS MADE EARLIER AND TAKE THIS TIME TO TALK SPECIFICALLY ABOUT THE LEGISLATIVE CONSUMER COUNSEL. IT HAS BEEN ARGUED THAT A RATEPAYERS ORGANIZATION WOULD DUPLICATE THE EFFORTS OF THE LEGISLATIVE CONSUMER COUNSEL. THIS IS NOT THE CASE. IN A WORK SENSE THE CONSUMER COUNSEL HAS A BROADER MISSION THEN THE RATEPAYERS ORGANIZATION WOULD, IN THAT THE CONSUMER COUNSEL REPRESENTS A NUMBER OF USER CLASSES INCLUDING RESIDENTIAL AND COMMERCIAL. THE RATEPAYER ORGANIZATION WOULD REPRESENT THE RESIDENTIAL RATEPAYER, A USER CLASS THAT IS LEAST REPRESENTED BEFORE THE PSC. FURTHER, THERE ARE A MULTITUDE OF ISSUES REMAINING TO BE ADDRESSED; EVEN IF THE TWO ORGANIZATIONS WERE SIMILAR BOTH WOULD BE NEEDED.

MONTPIRG'S STRONGEST REASON FOR ENDORSING THE RATEPAYERS ORGANIZATION STEMS FROM ITS ORGANIZATIONAL STRUCTURE. THE CUB WOULD BE RUN AND FUNDED BY RATEPAYERS AND IT WOULD ALLOW AN ACTIVE CITIZENRY TO SELF-EDUCATE ITSELF AND GIVE IT A NEW ROLE IN UTILITY RELATED DECISIONS. WE BELIEVE THIS IS THE STRONGEST REASON TO VOTE IN FAVOR OF S.B. 444. CITIZENS ARE REPRESENTED BY THE CONSUMER COUNSEL. THEY ARE THE CUB AND IT WILL GIVE THEM A DIRECT INVOLVEMENT BEYOND THAT OF THE COUNSEL.

IN CLOSING, WE ASK YOU, WHY SHOULD CITIZENS BE SHUT OUT OF THE SYSTEM? S.B. 444 WOULD GIVE RATEPAYERS THE ABILITY TO ORGANIZE. LOOK WHO SUPPORTS THIS BILL - TEACHERS, STUDENTS, SENIORS, LOCAL GOVERNMENT. WHO OPPOSES IT? UTILITIES. WE URGE THIS COMMITTEE TO GIVE RATEPAYERS A CHANCE TO ORGANIZE. THEY HAVE THE DESIRE AND S.B. 444 WOULD GIVE THEM THE ABILITY TO CREATE THEIR OWN ORGANIZATION.

Senate Natural Resources Committee

EXHIBIT NO. 7

DATE

02/22/85

BILL NO.

SB444

Opinion

Missoulian, Friday, February 17, 1984

CUB idea deserves citizens' backing

issoulian editorial

The idea of setting up a Citizen Utility Board represent consumers before the Montana Public Service Commission is catching hold.

The CUB idea has received support from a variety of sources, including the Missoula County

people, \$7.50 for those with low income. All contributions would be voluntary. No tax money would be involved.

The money would support a non-profit independent organization to represent residential consumers at PSC utility rate hearings. The CUB also would keep citizen members informed about utility policy issues, planning and rates.

The CUB idea comes at a good time. The Montana Power Co.'s rates are about to rise dramatically. For Colstrip power plant 3, the company is asking for increases that will lift residential rates by more than 55 percent. While the full \$36.4 million rate increase MPC desires is unlikely to be granted, rates are expected to rise quite a bit. When Colstrip 4 goes on line next year, rates will increase again.

Such enormous rate increases will cause enormous protest. The protest will exist, and unless it has a rational outlet is apt to strike blindly in various directions — at the polls against incumbent

PSC members, against legislators, against Montana Power.

A Citizen Utility Board at first blush sounds like another liberal hassler of the established system. Under the established system, a utility asks for rate increases from the Public Service Commission, which gathers data, holds hearings, and eventually decides what the new rates will be.

During that process, the Montana Consumer Counsel is charged with the job of representing and protecting consumers from unjust rates.

The Consumer Counsel would seem to have the same responsibility as a CUB, but the Consumer Counsel represents all customers — residential and industrial alike. The Consumer Counsel's office has no special obligation to residential customers and, in addition, is controlled by the Legislature.

A CUB would be independent of all government agencies. It would go to bat only for residential consumers.

By setting up a CUB, a mechanism would exist to collect, into a responsible channel, consumer anger over rising utility rates. Rather than striking out in blind anger against utilities and government agencies, ordinary people distressed by higher electric rates would be able to focus their support behind a well-informed organization.

That organization, in turn, would accept the

job of keeping its members well informed. That

would hold down misinformed rumors that could

cause foolish actions.

It sounds idealistic, and it is, except that the

CUB idea is working well in Wisconsin. A CUB

gives the ordinary citizen a voice in the densely

complicated business of setting fair utility rates.

It's a timely idea that deserves support now from Montana consumers.

— Sam Reynolds

Testimony Before The
Senate Natural Resources Committee
In Support of S.B. 444
FEBRUARY 22, 1985

Madame Chairwoman and members of the Committee, my name is Earl Reilly and I appear on behalf of the Montana Senior Citizens Association, MSCA. I speak today in support of S.B. 444, the bill that would allow the creation of a ratepayers organization.

I have talked to some utility lobbyists on this issue and they tell me that this is an issue of we ratepayers trying to force our way into their private property. They call our bill a scam.

I am here to tell you that from the standpoint of senior citizens, the utilities are wrong. This bill is about people. It is about ratepayers organizing and forming their own ratepayers' organization. It is about ratepayers gaining some type of access to utility billing envelopes so they can find each other and join in a common effort.

It seems to us this is only fair. I am holding three stuffers. You have all seen this type of stuffer. They come in your utility billing envelope because the utility company - on the top of the decision-making heap - decided it wanted to put something in your billing envelope. The utility pays for the cost of printing these stuffers but all the rest of the cost of

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 8
DATE 022285

the billing envelope carrying this stuffer - that is the paper, the ink and the postage - is paid for by the ratepayer.

When we are paying the costs then I ask you why can't ratepayers - those on the bottom of the heap - get some sort of access to the utility billing envelope so we can organize. I strongly resent the aspertions cast on us by the utilities who seem to think the ratepayers are some sort of captive money machine with no mind or existence of their own. We ask only to organize. S.B. 444 will give us that ability. We ask that you pass the bill.

Thank you.



Ellen J. Knight
Energy Chair
Mt. League of Women Voters
5800 Rattlesnake
Missoula, Mt. 59802

February 21, 1985

To: Senate Natural Resources Committee
Re: SB 444, CITIZENS UTILITY BOARD
SUPPORT POSITION

I regret that I cannot be here in person to tell you how very important the Citizens Utility Board is.

The League was formed to promote citizen participation in government. The Montana League has had a long and active acquaintance with energy issues. These two factors are the basis of our endorsement of CUB.

We feel that a coordinated voice addressing citizen's interests in the energy issues of forecasting and determining how to meet that need would be invaluable. These issues relate not only to the obvious and basic concern of the cost, availability, and reliability of the energy we buy, but to concerns about jobs and the environment as well.

The Citizens Utility Board would help define issues and represent these interests in depth before the Public Service Commissioners who need to have issues raised before they can pursue them. I would like to emphasize that there is no other adequate way for citizen interests to have this kind of expert representation on these complex issues.

I would like to expand on this issue from a personal perspective as a League energy activist. I have been following energy issues for over 10 years, and particularly over the last 4 to 5 years. In order to keep informed I have spent hours and hours as well as money out of pocket following the various players in the energy scene. I know how complex energy issues are. I also know how important they are. Finally, I know all too well how extraordinarily difficult it is for citizen volunteers to keep knowledgeable enough of the economic and technical questions that are a critical part of producing worthwhile testimony on energy issues. The Citizens Utility Board can hire legal and economic staff to address this need directly and also serve as an up-to-date information source for citizens who would like to follow issues on their own.

Please know that the Montana League of Women Voters and myself personally are very sincere in our support for this bill. It is needed.

Sincerely,

Ellen J. Knight
Ellen J. Knight

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 9

DATE 02/22/85

BILL NO. SB 444

(This sheet to be used by those testifying on a bill.)

NAME: CLYDE JARVIS DATE: 2/23/85

ADDRESS: HELENA

PHONE: 444-6169 / 458-5332

REPRESENTING WHOM? MYSELF & 1000's of RESIDENTS

APPEARING ON WHICH PROPOSAL: SB 444

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE?

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 10
DATE 022285
BILL NO. SB444

TESTIMONY
BEFORE THE SENATE NATURAL
RESOURCES COMMITTEE
IN SUPPORT OF S.B. 444
FEBRUARY 22, 1985

Madame Chairwoman and members of the Committee, my name is Tom Lonsway and I am the President of the Wisconsin Citizens Utility Board, Wisconsin CUB. I appear today because several of the citizen groups in this room have pooled their resources to bring me before this Committee so that I could testify regarding S.B. 444, the bill that would create a Montana group similar to the CUB in Wisconsin. I realize that this Committee is limited in time so I will address just two points. I do want you to know that I am available throughout today and I can talk to any Senator who wishes to meet with me.

The first point I wish to address is one of the practical consequences of this bill. When CUB was first proposed in Wisconsin some utilities argued that their mailings could not handle the ratepayers bill stuffers because the billing envelope was already "full" and could not take a ratepayers stuffer without exceeding the one ounce weight limit that would necessitate more postage. I can assure you that any such problems were solvable and did get solved. Wisconsin CUB has mailed stuffers in the envelopes of utilities both large and small throughout Wisconsin. Chaos did not develop and the utilities were easily able to handle the CUB stuffer. I have brought with me a copy of the 1981 report of the Interim Board of Directors of Wisconsin CUB to the Governor of Wisconsin. This report discusses the first year of operation of Wisconsin CUB and it documents a lack of

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 11

DATE 02/22/85

PAGE NO. 5B444

any significant problems associated with the billing stuffers. My point in regard to the ratepayer bill stuffer is that it worked well during its first year of operation in Wisconsin and it has continued to work well in the four years since. There is no doubt that Wisconsin CUB owes its growth and success - it now has more than 100,000 ratepayer members - to its ability to organize using the billing envelope. I am here to tell you that any practical problems utilities bring up in respect to the envelope can be solved. They were solved in Wisconsin and I am sure they can be solved here.

Second, I wish to address the language of S.B.444. This bill closely follows the legislation that created Wisconsin CUB, which was patterned after model legislation outlined in a 1976 article in the Harvard Journal of Legislation. Specifically, S.B.444 proposes that the CUB be run by an interim board of directors appointed by the Governor to steer the group through the initial membership gathering period. This interim board would soon be replaced by a regular Board of Directors, elected from and by the Montana CUB members across the state. This system has worked well in Wisconsin. Our Board of Directors represents a good cross-section of the Wisconsin ratepaying public. I myself, for example, am a small businessman from Appleton, Wisconsin. I was elected to the Board of Directors of Wisconsin CUB by the members and I serve on the Board as a volunteer. I believe the Wisconsin board is an effective and competent representative of Wisconsin's ratepayers and I believe it provides a way for many ratepayers such as myself to become involved in utility matters.

In closing, I believe Wisconsin CUB is an extremely valuable resource for Wisconsin ratepayers and I believe S.B.444 would create a similarly valuable resource for Montana ratepayers. I thank you for the opportunity to testify.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

In re: In the Matter of the)
Joint Petition of Montana)
Citizens Utility Board) Docket No. 84.10.69
(Montana CUB) For A)
Declaratory Ruling and)
Rulemaking)

MEMORANDUM OF LAW IN SUPPORT OF THE JOINT PETITION
OF MONTANA CUB ON CONSTITUTIONAL ISSUES RELATING TO
THE ESTABLISHMENT OF A CITIZENS UTILITY BOARD

This memorandum is filed on behalf of the Montana Senior Citizens Association, a membership association composed of senior citizens in Montana, in response to the Montana Public Service Commission's Notice of Opportunity for Comment on Docket No. 84.10.69, "In the Matter of the Joint Petition of Montana Citizens Utility Board (Montana CUB) For A Declaratory Ruling and Rulemaking" (Nov. 14, 1984).¹ The purpose of this memorandum is

1. This memorandum was prepared by the Institute for Public Representation, a public interest law firm and law school clinical education program which was founded by Georgetown University Law Center and the Ford Foundation in 1971. Since its founding, the Institute has provided legal services to groups and individuals who are unable to obtain effective legal representation on matters which have significant impact on issues of broad public importance. The Institute has represented clients concerned with civil rights and civil liberties, corporate responsibility, environmental protection, health and safety, rights of the handicapped, immigration policy and other issues. The Institute has been a participant in the proceedings to establish a CUB before the New York Public Service Commission since November 1983, and most recently submitted to the New York PSC a petition for access and an extensive legal analysis on behalf of 24 organizations in New York.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 12

DATE 02/22/85

SB444

to examine the constitutional issues which arise when a state public service commission grants a ratepayer representative organization exclusive access to utility billing envelopes.² As described in the Joint Petition filed by Montana CUB, this ratepayer organization will be democratically elected by residential ratepayers and will represent only their concerns before the state legislature, state courts and state agencies. Montana CUB's petition has asked the PSC to require each utility to reserve for CUB's use between .35 and .5 ounces in utility billing envelopes twice a year.

This memorandum concludes that the U.S. Constitution does not prohibit the Montana Public Service Commission from requiring utility companies to provide access to their billing envelopes for a ratepayer representative organization such as the proposed CUB. In other states, utilities have made three constitutional arguments against granting CUB access to the billing envelopes: that such access violates the utilities' First Amendment right of free speech; that granting CUB access deprives the utilities of their property without just compensation in violation of the Fifth Amendment; and that granting access to a single residential

2. We recognize that the PSC has asked for information and briefing on jurisdictional questions. The constitutional issues addressed in this memorandum will define, at least in part, the scope of the PSC's authority to take the requested action.

ratepayer representative organization violates the equal protection rights of non-residential ratepayers and of other organizations which have not been granted access. As explained below, none of these arguments are valid.

1. The First Amendment Rights of Utilities

a. General Concerns

Utilities may argue that providing CUB access to their billing envelopes violates their First Amendment rights by preventing them from using the billing envelope to express their own views. This claim is incorrect, since utilities will remain free to include their own inserts to present company information and express their viewpoints. Indeed, under present practices the PSC already requires utilities to include in their billing envelopes inserts stating messages about which the utilities may disagree;³ and utilities often include messages of their own along side of PSC inserts.

The CUB proposal is therefore entirely different from the PSC regulation found unconstitutional by the United States Supreme Court in Consolidated Edison Co. v. Public Service Commission of New York.⁴ There, the Supreme Court held that the New York PSC could not absolutely ban utility inserts that promoted "the

3. See, e.g., §§38.5.1502-03, A.R.M.

4. 447 U.S. 530 (1980).

benefits of nuclear power." Such a ban, the Court found, violated the utility's First Amendment rights because it restricted the ability of the utility to communicate.⁵ However, the Court did not suggest anywhere in its opinion that the utility's First Amendment rights would be violated if the utility were required to supplement its billing envelopes with inserts expressing opposing views.⁶ Because granting access to CUB does not prevent utilities from including inserts advocating utility viewpoints of whatever nature, the CUB proposal is consistent with the Court's holding in Consolidated Edison.

Utilities may also argue, however, that allowing CUB access to billing envelopes forces a utility to "sponsor" speech with which it disagrees, thereby violating the utility's First Amendment rights. This argument is also incorrect. The utility's First Amendment rights are not infringed simply because the PSC decides that residential ratepayers should have access to the envelopes in which they receive their bills. In Pruneyard

5. Id. at 533-544.

6. Indeed, the Court stated that the record did not show "that the presence of the bill inserts at issue would preclude the inclusion of other inserts that Consolidated Edison might be ordered lawfully to include in the billing envelope." 447 U.S. at 543. Thus, the Court recognized that the PSC may require the utility to include envelope inserts without violating the utility's constitutional rights.

Shopping Center v. Robins,⁷ the Supreme Court held that a state may constitutionally require the owner of a public facility to allow use of his private property as a forum for the speech of others. In Pruneyard, students petitioned passersby in a privately owned shopping center. The California Supreme Court held that the California Constitution guaranteed the students access to the privately-owned shopping center as a speaking forum and that such access did not infringe any federal constitutional rights of the owner of the shopping center. In affirming the California Supreme Court decision, the United States Supreme Court rejected the argument that the First Amendment rights of the owner of the shopping center were violated and pointed to three relevant considerations. Id. at 87. The Court in Pruneyard pointed to these considerations to distinguish Wooley v. Maynard,⁸ a case where the Court held that a state could not constitutionally require a motorist to display the state's motto "Live Free or Die" on his license plates. 447 U.S. at 85-87. First, the Court found that, given the nature of the forum, the views of the students were not likely to be identified with those of the owner of the shopping center.⁹ As in Pruneyard, the opinions of CUB are not likely to be confused with those of the utility; indeed, CUB

7. 447 U.S. 74 (1980).

8. 430 U.S. 705 (1977).

9. 447 U.S. at 87.

should be required to state on the insert that the expressed opinions do not necessarily reflect those of the utility. Second, the Court noted in Pruneyard that the owner could expressly disavow any connection with the message by simply posting signs where students petitioned passersby.¹⁰ Such signs, for example, could disclaim any sponsorship of the message and could explain that the students were communicating their own messages. Similarly, in response to CUB inserts, utilities are free not only to disavow any connection with the CUB insert, but also to make opposing arguments within the billing envelope.

Finally, the Court noted in Pruneyard that because the state did not dictate a specific message, there was no danger of governmental discrimination for or against a particular message.¹¹ The Pruneyard Court's emphasis on the term "specific message" was especially critical in distinguishing Wooley v. Maynard.¹² In Wooley, the motto on the state's license plates, "Live Free or Die," represented the state's viewpoint, forced upon one of its citizens. In contrast to the message on the license plate in Wooley, the students' signs in Pruneyard represented diverse messages, uncontrolled by the state. Similarly, the CUB insert will represent the various viewpoints of ratepayers, not those of

10. Id.

11. Id.

12. 430 U.S. 705 (1977).

the state or of the PSC. CUB should be structured so that it must be politically independent from the PSC and the state. Unlike a specific state motto, the interests represented by CUB will cover a large gamut of fluctuating concerns and positions. Indeed, on some issues, CUB may assert ratepayer views with which the utilities concur and the PSC disagrees. In this sense, the concern in Wooley about government prescription of a specific message is not present here. Thus, following the Pruneyard analysis, CUB access to the utilities' billing envelopes does not violate the utilities' first amendment rights by forcing them to "sponsor" speech with which they disagree.

CUB access to utility bills, like the students' access in Pruneyard, is also distinguishable from the factual situation in two other Supreme Court cases dealing with freedom of expression. In the first, Miami Herald Publishing Co. v. Tornillo,¹³ the Court struck down a Florida statute requiring a newspaper to publish a political candidate's reply to criticism previously published in that newspaper. The Court stressed the importance of the press and the function of editors in preserving a free society.¹⁴ Its

13. 418 U.S. 421 (1974).

14. Id. at 258 ("Even if a newspaper would face no additional costs to comply with a compulsory access law and would not be forced to forego publication of news or opinion by the inclusion of a reply, the Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors.").

core holding was that the content regulation authorized by the statute would inhibit newspapers from running political editorials and endorsements, thereby creating a "chilling effect" on editors.¹⁵ In contrast, CUB access to utility bills would have no such effect. It involves no content regulation, no infringement on editorial discretion, and no chilling of the utility company's speech. CUB inserts must be placed in the bill regardless of what the utility prints or does not print. The utility's speech is unaffected.

CUB access to utility billing envelopes is also distinguishable from the situation in Abood v. Detroit Board of Education.¹⁶ In Abood, the Court held that a non-union member could not be forced to pay service charges equal to union dues that supported political activities with which the non-union member disagreed. In contrast to Abood, however, the CUB proposal does not require a utility to donate any money or services that may support political activities. CUB must reimburse the utility for its fair share of the expenses incurred; thus, the utility -- unlike the non-union member -- does not financially support any CUB activities. In the unlikely event that a CUB insert pushed the weight of the envelope over an ounce, thus necessitating extra postage costs, the utility and its shareholders would not pay for

15. Id.

16. 431 U.S. 209 (1977).

those costs. Because ratepayers finance the mailing of the billing envelope, the ratepayers, and not the utility or its shareholders, would bear any extra postage costs of a CUB insert.

**b. Requiring Utilities to Reserve Space
In the Envelope for CUB Inserts**

The Montana CUB proposal calls for utilities to reserve a fraction of an ounce -- between .35 and .5 ounces -- in each billing envelope for a CUB insert. As long as the insert is below that weight, CUB would not have to pay any postage costs; however, if CUB inserts exceed this weight for a particular month, then CUB must pay the utility for its portion of the additional postage costs.

This limited guarantee is essential if CUB is to succeed in Montana. Without it, utilities could undermine CUB and could drive up its administrative costs simply by "stuffing" the billing envelope with inserts which they do not now include. If these additional utility inserts brought the weight of the envelope close to an ounce, the inclusion of any CUB insert would result in an additional 20 cents postage. These unnecessary postage costs could bankrupt CUB, which must keep its membership fees low to maximize the number of members.

The solution to this problem is to guarantee that CUB will only be charged for postage if its inserts are above a specified weight. This assures that the weight reserved for CUB is low enough not to interfere with any statements the utilities want to

make, but will also ensure that the utilities cannot arbitrarily exclude the CUB inserts. Guaranteeing CUB between .35 and .5 ounces in the billing envelope without a postage charge is a reasonable balance between these two concerns.

Reserving space in the envelope for CUB will have no effect on the First Amendment rights of utilities because the reservation of space places no additional burdens on their rights to speak. For purposes of the First Amendment, the CUB access proposal is no different from current PSC regulations that require inserts in utility envelopes. Present PSC regulations already give the Commission the authority to reserve space in utility billing envelopes for PSC and other notices.¹⁷ The utilities do not claim that such inserts violate their right to free speech. The CUB access proposal simply requires utilities to include one more insert, twice a year; its effect on utility speech is no more than any other PSC insert.

Further, even if the PSC did not already require similar inserts, granting CUB free access to .35-.5 ounces in the utility billing envelope does not violate utilities' first amendment rights because such access will impose little, if any, burden on utility speech. The weight taken up by the CUB insert will, as a practical matter, have no impact on the utilities' speech at all; even if the CUB inserts are included, the utilities can continue

17. See, e.g., §§38.5.1502-03 A.R.M.

to speak through the medium of the billing envelope in precisely the same way they have in the past.

Moreover, even if the CUB insert did result in an increase in postage costs for the utilities' mailings, the prospect of such additional expense will not restrict or chill utilities' speech, since it will be the ratepayers, and not the utilities, who must pay those costs. Under current law, if a utility decides to send nonpromotional material to ratepayers, the costs of mailing that material (including postage costs) are included in the ratebase, and not set off against shareholder profits.¹⁸ If the utility sends promotional material to ratepayers, PSC regulations require that shareholders pay for inserting the materials; however, the postage costs are still included in the ratebase.¹⁹ The result of this accounting system is that shareholders pay the same amount -- only the costs of the promotional materials inserted by the utilities -- regardless of whether CUB inserts are included in the envelope. Because the utility's inserts in the billing envelope will cost the utility and its shareholders the same amount regardless of the weight of the CUB inserts, the presence of CUB inserts has no effect on utility speech.

This discussion shows that guaranteeing CUB access will not create higher costs or otherwise burden utility speech. The

18. See §69-3-307 M.C.A.; Uniform System of Accounts, Form 903.

19. See Uniform System of Accounts, Form 917.

utilities may contend, however, despite their past practice of leaving space in their envelopes which would be adequate for the CUB inserts, that it might at times be necessary to forego their own speech in order to reserve space in the envelope for the CUB insert. In fact, there is no reason why the utilities would have to forego their speech at all. The CUB access regulation would at most encourage each utility to print its message so that it will weigh no more than inserts they have included in the past. This may mean using somewhat lighter paper or slightly smaller type, but does not mean restricting utility speech. Alternatively, the utilities could include the inserts, in their original format, in the ten monthly mailings out of twelve in which there is no CUB insert.

Even under the most extreme conditions, this analysis leads to the conclusion that the CUB access regulation is, at most, a reasonable time, place and manner regulation of utility speech. Where the purpose of government regulations is the regulation of conduct, and the effect on speech is incidental, the courts apply a balancing test to determine whether the governmental interest outweighs the harm to First Amendment rights.²⁰ According to the Supreme Court, it is clear that "reasonable 'time, place and manner' regulations may be necessary to further significant

20. Konigsberg v. State Bar of California, 396 U.S. 36, 50-51 (1961).

governmental interests, and are permitted.²¹ In weighing the impact on First Amendment rights, the Court looks to see whether alternative channels of communication remain open to express the message easily and effectively.²² Thus, the Court has upheld laws that regulate the amplification of sound,²³ the location of a parade,²⁴ the timing of a parade,²⁵ and the location of a demonstration.²⁶

The CUB access proposal is, at most, a reasonable time, place and manner regulation. It aims at reserving space for CUB, not at restricting the ability of the utility to communicate. Even if the utility must change its conduct to avoid additional speech costs (which normally is unnecessary because of existing extra space and the allocation of any additional postage costs to the database) the change required (making its insert in another month's bill or using lighter paper or smaller type in a particular month's envelope) imposes minimal burdens. These options mean that the utility has other channels ~~through~~ which to voice its opinions. At the same time, the regulation is narrowly

21. Grayned v. City of Rockford, 408 U.S. 104, 115 (1972).

22. Friedman v. Rogers, 440 U.S. 1, 9 (1976).

23. Kovacs v. Cooper, 336 U.S. 77 (1949).

24. Cox v. New Hampshire, 312 U.S. 569 (1941).

25. Cox v. Louisiana, 379 U.S. 536 (1965).

26. Grayned v. Rockford, *supra*.

tailored to serve a significant state interest. The PSC may reasonably conclude that it needs greater input from residential ratepayers to ensure just and reasonable rates, and that a financially viable CUB is the best mechanism to provide this representation. To prevent utilities from frustrating that state interest by stuffing envelopes with unnecessary inserts and thus preventing CUB from effective representation and participation, it is necessary to protect CUB's access to the billing envelope. Protecting CUB's right to include inserts weighing between .35 and .5 ounces in the billing envelope without a postage charge serves this important state interest without unlawfully burdening utility speech.

2. The Fifth Amendment Prohibition Against the Taking of Property

Utilities may argue that including a .35-.5 ounce CUB insert in billing envelopes constitutes a "taking" under the fifth amendment of the U.S. Constitution because CUB access deprives them of both the use of and monetary returns from their property. Neither common sense nor case law supports this claim. Presently, the Public Service Law and PSC regulations require utilities to include a variety of inserts in their envelopes.²⁷ Utility companies have included those inserts without objection and at minimal extra cost. CUB inserts do not deprive utilities of their

27. See supra note 17.

ownership rights any more than the other inserts already required by law.

Moreover, the Supreme Court has never defined this type of regulation as a "taking". The Court uses two standards to determine when an unconstitutional taking has occurred. The first, set out in Loretto v. Teleprompter Manhattan CATV Corp.,²⁸ establishes the rule that a permanent physical occupation of property is a "taking" per se. However, inclusion of a CUB insert only twice in a twelve month period is clearly not "permanent," since the utility has control of the content at all other times. Nor is the inclusion of the inserts an "occupation." Utilities normally use less than a full ounce of space in their envelopes. Therefore, CUB inserts will not "occupy" space used by utilities for other purposes, but will merely fill previously empty space. Thus, providing CUB with access is not a per se "taking" under the rule established by the Supreme Court in Loretto.

Where government action does not constitute a "taking" per se, the Supreme Court has utilized a three-factor analysis in its case-by-case determinations of whether a "taking" has occurred. In Pruneyard Shopping Center v. Robins,²⁹ Kaiser Aetna v. United States,³⁰ and Penn. Central Transportation Co. v. New York City,³¹

28. 548 U.S. 419 (1982).

29. 447 U.S. 74 (1980).

30. 444 U.S. 164 (1979).

31. 438 U.S. 104 (1978).

the Court weighed the economic impact of the government action, the investment-backed expectations of the property owners, and the character of the government action in order to determine whether there was a "taking".

Applying the same analysis here leads to the conclusion that no "taking" is involved. First, the regulation has minimal, if any, economic impact. Since utilities generally fill less than an ounce in their envelopes, inclusion of a .35-.5 ounce CUB insert involves no cost to the utility. If a utility wants to avoid the additional postage cost resulting from its own decision to include material weighing more than .5-.65 ounces, the utility may use lighter paper or smaller print, or simply wait until the next month to include additional inserts in an envelope not containing a CUB insert. Moreover, as discussed above, any excess costs are borne by ratepayers, and not by the owners of the utility.

Inclusion of the CUB insert is easily distinguished from the situation facing the Court in Kaiser Aetna v. United States,³² where the state required the owners of a private marina to provide access to the public. While recognizing that property owners generally have the right to exclude others from their property, the Court in Kaiser applied the same three-factor analysis mentioned above, and found a "taking" because of the severe

32. 444 U.S. 169 (1979).

economic impact of the government action. Unlike utilities required to include CUB inserts, the property owners in Kaiser found that the value of their previously private marina and marina community decreased substantially when the state required the owners to provide public access. The Court reached an opposite result when, as under the CUB proposal, the government action did not diminish the value of the private property. In Pruneyard Shopping Center v. Robins,³³ a later case, the Court held that nothing is "taken" where government action compelling public access to private property has no substantial economic impact on the owner of the property. Thus, because the economic impact of CUB is so insignificant, a "taking" cannot be found on these grounds.

Nor would a required CUB insert interfere with any investment-backed expectations. Utilities may argue that their shareholder investors will experience a loss of revenue if required to include CUB inserts instead of advertisements inserted by organizations which pay for the material to be inserted. This claim is incorrect. Any revenue generated through advertising would be contributed to the database, and not to shareholder profits.³⁴ Thus, the utility and its shareholders are unaffected.

33. 447 U.S. 74 (1980).

34. In fact, this argument is purely theoretical. According to several private attorneys and the PSC staff in Montana, utilities in Montana do not insert advertisements from other organizations into utility bills.

Finally, the character of the government action is entirely appropriate. In view of the statutory mandate of the PSC to set reasonable rates and to assure ratepayer representation, a regulation requiring utilities to provide CUB with .35-.5 ounces of space is reasonable. A PSC regulation requiring inclusion of .35-.5 ounce CUB inserts would be no different than present regulations requiring inclusion of other PSC inserts. Since utilities already include the PSC inserts without objection, requiring inclusion of CUB inserts is no less reasonable a regulation. Thus, the PSC regulation is a legitimate exercise of the authority granted to the PSC.³⁵

3. The Equal Protection Clause

The final argument that utilities might raise against granting CUB access to utility billing envelopes is that such access discriminates against ratepayers who do not belong to CUB and therefore are not granted access to the envelopes. Although utilities have raised this argument in two contexts -- on behalf

35. Utilities may also assert that CUB access improperly restricts the power of the utilities to manage their own property. This argument ignores the heavily regulated nature of utilities. As monopolies, they are already subject to many restrictions of their property. The CUB regulations impose few additional burdens on an industry that is already heavily regulated. Moreover, as long as state regulation does not rise to the level of a taking, discussed above, such restrictions are constitutionally proper.

of nonresidential ratepayers who CUB cannot, by law, represent, and on behalf of residential ratepayers who, theoretically, could organize an alternative CUB-type organization if they could gain access to the envelopes -- the argument boils down to a claim that granting access to some ratepayers, and not to others, is a violation of the equal protection clause of the Fourteenth Amendment. This argument is without merit.

a. Overview

There is no question that state laws can treat different classes of people in different ways. The PSC, for example, routinely approves different utility rates for residential consumers than for business consumers. Those differences are normally not violations of the equal protection clause. The issue in determining the constitutionality of such differential treatment, according to the Supreme Court, is whether there is an appropriate government interest that justifies the differences in treatment. See Police Department of Chicago v. Mosely, 408 U.S. 92, 95 (1972).

The courts use two basic tests to determine whether differential treatment is justified. The first is the rational basis test, under which courts will uphold any law that rationally furthers a legitimate state interest.³⁶ Under this

36. U.S. v. Carolene Products Co., 304 U.S. 144 (1938).

test, the state need only show that its legislation might conceivably solve the problem addressed by the state in passing the law; the state law need not be a complete or necessary solution.³⁷ Under the rational basis test, the courts will defer to the wisdom of the legislature, unless the legislative enactment is clearly irrational; indeed, "the existence of facts supporting the legislative judgment is to be presumed."³⁸ As the Court declared in Williamson v. Lee Optical Co.,³⁹ while upholding a state statute based on the rational basis test,

Evils in the same field may be of different dimensions and proportions, requiring different remedies.... Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others.

[Citations omitted.]

The Court then concluded that legislative distinction based on such factors did not, without more, constitute the "invidious discrimination" prohibited by the Equal Protection Clause.

The courts apply the rational basis test unless there are special circumstances which raise the level of judicial review.

37. Id. at 151; Railway Express Agency v. New York, 336 U.S. 106, 110 (1949).

38. Carolene Products, 304 U.S. at 152; see also Railway Express, 336 U.S. at 110.

39. 345 U.S. 483, 489 (1955).

When those circumstances are present, the test is one of "strict scrutiny;" that is, the courts will conduct an independent analysis of the importance of the state's interest and the state's method of furthering that interest.⁴⁰ If the court finds that the state interest is not "compelling,"⁴¹ or that the state could achieve the same goals using less restrictive means,⁴² then the state law is unconstitutional.

Courts use this higher standard of review if the state law discriminates on the basis of a "suspect" classification, or if the state law discriminates against the fundamental rights of any class. Suspect classifications have been defined as "discreet and insular minorities" which have been subject to a history of prejudice and which are based on the existence of "an immutable characteristic determined solely by the accident of birth."⁴³ They include classifications based on race or ancestry,⁴⁴ and classifications based on alienage.⁴⁵ State laws which

40. See Shapiro v. Thompson, 394 U.S. 618, 637 (1969); Bullock v. Carter, 405 U.S. 134, 144 (1977).

41. Shapiro, 394 U.S. at 634.

42. Id. at 637, Bullock, 405 U.S. at 147, Police Department of Chicago v. Mosely, 408 U.S. at 102.

43. U.S. v. Carolene Products, 304 U.S. 144, 152-53 n.4 (1978).

44. Loving v. Virginia, 388 U.S. 1 (1967).

45. Nyquist v. Mauclet, 432 U.S. 1, 7 (1977). The courts also give close scrutiny (although not as "strict" as for race discrimination) to classifications based on gender. See Frontiero v. Richardson, 411 U.S. 677 (1973).

discriminate against persons on this basis are unconstitutional unless they are justified by a "legitimate and substantial" state interest which cannot be furthered by less discriminatory means.⁴⁶

More relevant to the present situation, where CUB would be granted access to utility billing envelopes, is the higher standard of review triggered by laws which restrict "fundamental" rights of any class of persons. Courts have used this test to protect constitutional rights, such as the right to vote,⁴⁷ the right to travel,⁴⁸ and First Amendment rights.⁴⁹ The courts have also considered certain important individual interests, such as the interest in retaining a driver's license or receiving food stamps, as triggering a higher standard of review than the rational basis test, although in those cases the courts do not subject the state action to the strictest scrutiny used to test restrictions on clearly defined constitutional rights.⁵⁰

46. Id.

47. Bullock v. Carter, 405 U.S. 134 (1972); Harper v. Virginia Board of Education, 383 U.S. 663 (1966)).

48. Shapiro v. Thompson, 394 U.S. 618 (1969).

49. Police Department of Chicago v. Mosely, 408 U.S. 92 (1972).

50. See L. Tribe, American Constitutional Law 1089-90 (1978).

b. Application to CUB Access

The CUB proposal before the PSC would provide access to utility billing envelopes to persons who are members of CUB, but would not provide access to persons who choose not to join CUB or to persons who could not join CUB because they are not residential ratepayers. As a practical matter, granting access to CUB does not "discriminate" against anyone. All residential ratepayers can join CUB and obtain the same access as any other residential ratepayer. Although nonresidential ratepayers cannot join CUB, they can form their own organization and pay for access to utility envelopes. Because, in general, nonresidential ratepayers (i.e. businesses) can afford to purchase such access while residential ratepayers cannot, providing CUB with free access does not discriminate against nonresidential ratepayers. However, in legal terms, because the PSC's grant of access to CUB and not to other ratepayers does treat some ratepayers differently from others, its actions may trigger an equal protection analysis. Under such an analysis, the PSC's actions would be constitutionally valid.

The PSC's grant of access to CUB would be reviewed under the rational basis test because the grant of access implicates neither suspect classifications nor fundamental rights. The only possible classes of persons who could claim to be discriminated against by the PSC action would be the class of non-CUB member residential ratepayers and the class of nonresidential ratepayers. Neither of

these classes are based on suspect classifications such as race or national origin, or on any other classification which receives heightened judicial scrutiny, such as age or gender. Likewise, neither of these classes can claim to have been deprived of a fundamental right because of discrimination. No ratepayers, including CUB members themselves, have a First Amendment right to obtain access to the utility billing envelope. The basis of the PSC's grant of access to CUB is not the federal or state constitution, but Montana statutes, which require the PSC to regulate utilities to ensure reasonable rates and adequate services. The PSC's statutory powers and duties give it the discretion to grant access to residential ratepayers to further those statutory objectives. However, nothing in the U.S. Constitution requires the PSC to grant residential ratepayers that access. Thus, because the PSC action would not invidiously discriminate on the basis of a suspect classification, and would not restrict fundamental rights, it is constitutional if it is a rational attempt to further legitimate state objectives.

As discussed above, the PSC's goals are legitimate. The primary purpose of granting a CUB access to utility billing envelopes is to allow the development of an organization which will represent the concerns of residential ratepayers before the PSC. Another purpose is to inform ratepayers of action taken by the PSC, the state legislature and the utilities which concern them. Both of these goals are legitimate state objectives, since

they will improve the quality of the PSC's own decision making and enhance its ability to carry out its statutorily defined obligations.

Further, the PSC's limitation of such access to an exclusive representative of residential ratepayers is a rational method of achieving those objectives. The PSC can reasonably conclude that residential ratepayers, as opposed to other types of ratepayers, are especially in need of representation before the PSC. It can also conclude that access should be limited to one organization, particularly since it can adopt regulations which ensure that the organization is broadly based and fully responsive to the interests of residential ratepayers.⁵¹ The PSC has a rational basis for deciding, for example, that a single organization will be the most economical way for residential ratepayers to participate, since the organization will be able to achieve economies of scale in solicitation and record-keeping. The PSC can also conclude that a CUB must have an adequate funding base in order to participate efficiently in PSC proceedings, and that granting access to the billing envelope to many groups will undermine the organization's financial viability. The PSC can therefore reasonably conclude that a single organization will best

51. Indeed, because participation in the CUB itself is open to any residential ratepayer, every residential ratepayer can have a voice in the policies that a single CUB pursues. Thus, no ratepayers will be "excluded" from access to the envelope unless they choose not to participate in this democratic process.

serve both the interests of residential ratepayers and the interests of the Commission itself.

Utilities may argue, nevertheless, that granting CUB access to utility billing envelopes deprives some ratepayers of fundamental First Amendment rights and therefore must be reviewed under the strict scrutiny test. The utilities might claim that, even if ratepayers do not normally have a First Amendment right of access to the billing envelopes, the PSC's granting of access to CUB makes the envelopes a "public forum." In that case, all members of the public, including nonresidential ratepayers and non-CUB members, would arguably enjoy an equal right of access to the envelopes. The utilities would conclude that the PSC's preference of CUB-member ratepayers over other ratepayers would therefore restrict the fundamental First Amendment rights of the other ratepayers in violation of the Equal Protection Clause of the U.S. Constitution.

This argument is incorrect because granting CUB access to utility billing envelopes does not establish a public forum in those envelopes, and therefore does not create a First Amendment right to access to the envelopes for all ratepayers. The Supreme Court has established that the mere use of an instrumentality for communication of ideas does not transform that instrumentality into a public forum for first amendment purposes. For example, in U.S. Postal Service v. Council of Greenburgh Civic Associations,⁵² the Court noted that "it is a giant leap from the traditional

'soapbox' to the letterbox," and held that federal mailboxes were not public forums. In U.S. Postal Service, Justice Rehnquist noted that in Greer v. Spock,⁵³ a cafeteria bulletin board at Fort Dix, although specifically used for communication, was no more a public forum than were the streets and parking lots of the military base.⁵⁴ Similarly, in Lehman v. City of Shaker Heights,⁵⁵ the Court found that advertising space on buses, while specifically used for the communication of information and ideas, was not a public forum. In a situation analogous to the one before the PSC, the Court found that the city transit system management could refuse to accept advertising on buses from political candidates without violating first amendment principles.

The closest case to the situation considered by the PSC is Perry Education Association v. Perry Local Educators Association.⁵⁶ There, a local school district granted to the union representing teachers access to the school's mailboxes and mail system, while denying access to a rival teachers' union. The rival union claimed that the grant of access to one union made the mailboxes a public forum, thereby giving the rival union First

53. 424 U.S. 828 (1976).

54. 453 U.S. at 130, n.6.

55. 418 U.S. 298 (1974).

56. ___ U.S. ___, 51 U.S.L.W. 4165 (1983).

Amendment rights to communicate through that forum. The Supreme Court rejected that argument, reasoning that because the internal mail system was not open to the general public (even though one union and a handful of civic associations, such as the Girl Scouts, had been granted access), the mailboxes and the mail system were not public forums. The Court noted that mailboxes and mail systems had never been considered public forums, and that granting access to one organization did not change their status. According to the Court, if the school district had "opened its mail system for indiscriminate use by the general public, then [the rival union] could justifiably argue a public forum ha[d] been created."⁵⁷ Because the school district continued to exercise discretion in granting access to groups and individuals, the Court concluded that the mail system was not a public forum.⁵⁸

Although speech in places traditionally considered to be public forums, such as city streets, sidewalks, and parks, must be afforded First Amendment protection, a billing envelope has never been found to constitute such a public forum. When the Supreme

57. Id. at 4168.

58. Because the mail system was not a public forum, the Court concluded that the state could exclude speech "on the basis of subject matter and speaker identity," as long as the exclusion rationally furthered a legitimate state purpose. Id. at 4168-69. In the case before the Court, the grant of exclusive access to the certified union was appropriate because that union had a special relationship with the school board due to its status as the teachers' bargaining agent. Id. at 4169.

Court specifically addressed the issue of regulation of envelopes in Consolidated Edison v. PSC,⁵⁹ it made no finding that the envelope was a public forum; indeed, it distinguished the public forum cases from the case in which the issue was access to utility billing envelopes.⁶⁰

Nor does the envelope become a public forum simply because it is regulated by the state. Concurring in Lehman v. City of Shaker Heights,⁶¹ Justice Douglas noted that government ownership and operation of the transit system did not, without more, create a public forum. If government ownership and operation does not create a public forum, mere government regulation of utility billing envelopes falls far short of creating such a forum. Equally erroneous is the assertion that because CUB membership is open to the "public," the envelope which it uses to communicate with its members becomes a public forum. As discussed above, the Supreme Court has held that public access to mailboxes, bulletin boards, and bus advertising space is insufficient to invoke the First Amendment protections required in public forums.

In sum, the PSC's proposed requirement that CUB be granted access to utility billing envelopes would not create or deprive

59. 447 U.S. 530 (1980).

60. Consolidated Edison, 447 U.S. at 539-40; see also PEA v. PLEA, 51 U.S.L.W. 4165, 4169, n.9 (1983).

61. 418 U.S. at 306.

any person or organization of fundamental rights, including First Amendment rights. The PSC's action would therefore be constitutionally valid and appropriate because it would be a rational method of pursuing legitimate state objectives.

Respectfully submitted,

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Helena, Montana 59624



Montana Education Association

for children and public education

February 22, 1985

Hearing SB 444 (Halligan)

Citizen Utility Board

Before: Senate Natural Resources, Dorothy Eck, Chairman

Testimony by Jo Anne Peterson, Montana Education Association, in support of House Bill 444.

Madame Chairman and members of the committee my name is Jo Anne Peterson, Legislative Intern for the Montana Education Association. We would like to go on record in support of SB 444, the bill that would establish a ratepayers organization called the Citizens Utility Board or CUB.

The bill recognizes that the CUB organization is to be run by its ratepayer members and it sets up a system whereby the directors are elected by the members. This type of system works well for MEA and other citizen groups. It gives members direct control while insuring that leaders are chosen in democratic fashion.

SB 444 carefully sets out a number of guides for our organization including an annual audit, a requirement of non-parisanship campaign financing requirements and an interim board of director appointed by the Governor. It is an approach that has worked well in Wisconsin and we believe it will work equally well in Montana. We urge this committee to pass this legislation. Thank You.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 13
DATE 02/22/85
BILL NO. SB444

Tom Monahan

Legislative approval of the Citizen Utility Board's request for access to utility bills should be denied because it puts tremendous power into the hands of a group which has not passed any sort of screening, has no controls or oversight nor any apparent qualifications.

Members of the legislature are screened by the electorate. Their actions in seeking office are sharply circumscribed, funds and expenditures must be accounted for, activities must conform to established standards and personal investments must be listed.

There is no question but what clever and persuasive solicitations to the customers of Montana Power Company, Mountain Bell, Montana Dakota Utilities and the other utilities can produce a vast amount of money. This money, raised with legislative approval, will be in private hands and can be used for private purposes.

I do not know any members of the CUB organization. They may be, and probably are, wonderful, dedicated people. However, they are not immortal. We have no way of knowing who will succeed to the management of CUB. More critically, we have no way of knowing who will take over the group. There will certainly be enough money available for travel, salaries, expenses and other perks to make a takeover very possible if not inevitable.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 14
DATE 02/22/85
BILL NO. SB44

While the possibility for financial abuse would certainly exist if the legislature approves CUB's request, there is also an alarming potential for the misuse of the political power large sums of money inevitably deliver . If a legislator disagreed with the position of CUB or displeased them with his voting record, he could well find a hand picked, well financed opponent in the next election.

The argument has been advanced that an organization such as CUB needs this utility rate payer access because the Consumer Counsel must represent all classes of rate payers. If this is a real factor, a much simpler solution would be to give legislative direction to the Consumer Counsel to establish a residential section.

And finally, why should one group be singled out over any other? If CUB is allowed access to utility bills, then logically should not Senior Citizens also be included? Senior Citizens are probably more susceptible to utility rate impact than any other single group. Minority groups also should be able to help themselves fight utility rate increases if the Consumer Counsel can't do the job.

Even casual consideration shows that singling out one particular group, whose only qualification seem to be that they came up with the idea, simply doesn't make sense.

Opinion and comment

Monahan is right about utility board

Surprisingly, Public Service Commissioner Tom Monahan is opposing a bill that would give a ratepayers' group free access to utility billing envelopes.

Monahan's position is based on some solid reasoning, and should be considered by legislators who will vote on the bill.

The bill, sponsored by Sen. Mike Halligan, D-Missoula, would give the Montana Citizens Utility Board (CUB) the right to solicit members through utility mailings. The mailings would be free to the CUB.

The CUB proposes to charge members dues to raise money to hire witnesses to testify in rate cases.

The other four commissioners have endorsed the bill. But Monahan, though often highly critical of public utilities, is against it.

In effect, Monahan asks, "Who elected them?" He notes that the Montana CUB, "has not passed any sort of screening, has no controls nor any apparent qualifications."

He points out that unlike elected public officials, CUB leaders and members aren't screened by the public, have no clearly defined duties, and are under no requirements to account for donations and expenditures.

And he questions the wisdom of giving such a group legislative approval to raise money that will be privately controlled and subject to private uses.

Monahan emphasizes that he has no reason to think the current CUB members aren't dedicated people. But, he says, no one knows who will be running the organization in the

future, or for what purposes.

The potential for financial or political abuse, he says, makes it unwise to give legislative blessings to the CUB's efforts.

And finally, Monahan questions whether the Legislature should grant privileges to one private interest group and not others. For example, he asks, should senior citizens, minority groups and others have similar access to utility bill mailings?

We think the key point is Monahan's implied question of "Who elected them?"

The Montana CUB claims to be the representative of "residential ratepayers."

Says who?

Says the leadership of the CUB, that's who.

That's a flimsy foundation on which to base special legislative recognition.

As we've noted before, the Montana CUB represents the members of the Montana CUB. It's presumptuous for the group to claim to represent all residential ratepayers, many of whom may not agree with anything it does.

By all means, let the CUB do its thing, on its own.

If the Legislature is convinced that residential ratepayers need more representation in rate cases, it should instruct the Legislative Consumer Counsel to establish a residential ratepayer section.

Monahan said that, too.

Monahan has put the CUB issue in perspective.

Let's hope the Legislature sees it as clearly.

SECRETARY OF STATE
STATE OF MONTANA

Jim Waltermire
Secretary of State

State Capitol
Helena, Montana 59620

CERTIFICATION

I hereby certify that the attached is a true and complete copy of the 6 page document(s) on file in this office.

DATED: February 20, 1985

Jim Waltermire
SECRETARY OF STATE

By: Florence Amagast Deputy

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 15
DATE 022285
BILL NO. SB444

SECRETARY OF STATE

STATE OF MONTANA

CERTIFICATE OF INCORPORATION

I, JIM WALTERMIRE, Secretary of State of the State of Montana, do hereby certify that the Articles of Incorporation for the incorporation of **MONTANA CITIZENS UTILITY BOARD, INCORPORATED**, a Montana corporation, duly executed pursuant to the provisions of Section 35-2-203, Montana Code Annotated, have been received in my office and conform to law.

NOW, THEREFORE, I, JIM WALTERMIRE, as such Secretary of State, by virtue of the authority vested in me by law, hereby issue this Certificate of Incorporation to **MONTANA CITIZENS UTILITY BOARD, INCORPORATED**, a Montana corporation, and attach hereto a copy of the Articles of Incorporation.

(GREAT SEAL)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this February 24, A.D. 1984.



JIM WALTERMIRE
Secretary, Natural Resources Committee

EXHIBIT NO. 15

DATE 02/22/85

BILL NO. SB-144

292528
STATE OF MONTANA
FILED

ARTICLES OF INCORPORATION
OF
MONTANA CITIZENS UTILITY BOARD,
INCORPORATED
ARTICLE ONE
NAME

FER 24 1984

JIM WALTERMIRE
SECRETARY OF STATE

*1/20/84
J.W. WALTERMIRE*

The name of this corporation shall be the Montana
Citizens Utility Board, Incorporated.

ARTICLE TWO
LENGTH OF EXISTENCE

This corporation shall have perpetual existence.

ARTICLE THREE
CORPORATE PURPOSES

The purposes for which this corporation is organized are
to articulate and pursue through the media, the public service
commission, the legislature, the courts and other institutions
of government the concerns of Montana's residential utility
rate payers on issues affecting utility rates.

ARTICLE FOUR
NON-PROFIT

This Corporation is organized and shall operate
exclusively as a non-profit corporation for charitable and
educational purposes pursuant to the requirements of Section
501(c)(4) of the Tax Reform Act of 1969 and related sections
of the Internal Revenue Code of 1954, as amended, and the
regulations promulgated thereunder.

This Corporation shall not engage in any form of trade or
business for profit, and no part of its net earnings shall
inure to the benefit of any private shareholder, individual or
director.

This Corporation shall not participate in any political
campaign on behalf of or in opposition to any candidate for
public office.

ARTICLE FIVE
DISSOLUTION

Upon the dissolution, termination or other winding-up of
this corporation, any surplus funds, including the proceeds
from the sale or other disposition of physical assets, shall
thereby be dedicated to the purposes for which this
Corporation was formed, and, after the payment of all debts
and obligations, these surplus funds shall then be distributed

by the Board of Directors. No Director, officer or employee of the Corporation shall be entitled to any distribution of division of the Corporation's surplus funds upon dissolution.

ARTICLE SIX MEMBERS AND DIRECTORS

Each Montana residential utility consumer shall be eligible, as defined by the by-laws, to join the Citizens Utility Board as a member and thereby serve or be represented on the Corporation's Board of Directors. The by-laws of this Corporation shall establish criteria for determining the number of directors and the qualifications for such directors.

Directors shall have the exclusive right to vote at meetings of the Board of Directors. Each director shall have one vote.

ARTICLE SEVEN MEETINGS OF THE BOARD OF DIRECTORS

The number of meetings of the Board of Directors shall be defined in the by-laws of this corporation. Except as for times designated as Executive Session, all meetings of the Board of Directors shall be open to all CUB members. The Board shall designate one of its Board meetings to be held at the same time as an annual conference of CUB members.

ARTICLE EIGHT INITIATIVE AND REFERENDUM

Policies of this organization are subject to the following provisions. Proposals to establish or amend policies of this organization may be proposed by a petition(s) duly signed by at least 25% of the members in each Montana Public Service Commission District. Those signatures shall be validated as to each district by a committee set for that purpose from each district which membership shall be composed of two people, one being a CUB Board member from that district and the other being a person who assisted in passing the petition to CUB members in the district. Certification of validity of signatures must occur within 30 days following submittal of signatures for validation and no signature shall be counted as valid unless it is known as being gathered within 180 days prior to the date of validation by the above described committee. Upon certification of validity of the required number of signatures the Board shall cause a referendum to be submitted to the members. Adoption or rejection of the policy shall be by a majority vote of those members voting in such referendum.

ARTICLE NINE RECALL

The members of a director's district may file a petition with the President of CUB asking for recall of the director no sooner than 6 months after his or her election and not later than 6 months prior to the end of the director's term of office. To be valid the petition shall have the valid signatures of at least 33% of the number of votes cast in the director's district in the last preceding director election. The signatures may not have a date which is more than 60 days before the date of filing. Any CUB member residing in the district may sign the recall petition regardless of whether he/she voted in the last preceding director election. A recall decision shall be decided by majority vote.

ARTICLE TEN AMENDMENTS TO ARTICLES OF INCORPORATION AND BY-LAWS

Proposals to amend the Articles of Incorporation and By-laws may be made by the members of the CUB in accordance with the provisions of Article Eight, except that adoption shall require a 2/3 vote of those voting in such referendum. Proposals to amend the Articles of Incorporation and By-laws may also be proposed by a majority vote of the Board in which case the Board shall cause such amendments to be submitted to the membership no later than 80 days following such action. Adoption of such amendments is subject to a 2/3 vote of those voting in such referendum.

ARTICLE ELEVEN REGISTERED OFFICE

The corporation's registered office in the State of Montana is located at 421 North Last Chance Gulch Helena, Montana 59601 and the name of its initial registered agent at such address is Jonathan Motl.

ARTICLE TWELVE INITIAL DIRECTORS

The initial Board of Directors of CUB shall have all the powers granted to a corporation under Montana law. However, the initial Board of Directors, as defined below in Article Thirteen, shall serve only for the time needed to establish an organizational base for CUB. At the time the membership of CUB first reaches 1000 members, as further defined in the by-laws, the initial directors shall call for nominations for directors from among the CUB members and shall be replaced by the new directors elected by a vote of members. All members of the Board of Directors other than the initial Board of Directors shall be elected as described in the corporate by laws.

ARTICLE THIRTEEN
NAMES OF INITIAL DIRECTORS

The number of Directors constituting the initial Board of Directors is 20.

The names and addresses of the persons who are to serve as Directors until their successors are duly elected according to the terms of these Articles and the by-laws are:

Maggie Beller 123 N. Merrill Glendive, MT 59601	Joyce Butler 1034 Shinn Billings, MT 59105
Patty Callaghan 123 Merrill Glendive, MT 59330	Carl Donovan 22 Division Road #3 Great Falls, MT 59404
Eric Feaver 901 Flowerree Helena, MT 59601	Mark Good 804 A. 3rd Great Falls, MT 59405
Dale Horton 901 Lolo Missoula, MT 59801	Carole Hunter 729 Bridgeview Helena, MT 59601
Jeanne Kemmis 504 Blaine Missoula, MT 59801	Rose Magnuson 424 Woodworth Missoula, MT 59801
Jonathan Motl 1404 1/2 8th Ave. Helena, MT 59601	C.B. Pearson 908 S. 6th W. Missoula, MT 59801
Don Reed P.O. Box 1184 Helena, MT 59624	Earl Reily 3129 W. Shore Drive Helena, MT 59601
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Sam Ryan 700 West Main St. Helena, MT 59601	David Sexton 931 E. State Helena, MT 59601
Robert Waltmire P.O. Box 1456 Columbia Falls, MT 59912	Wade Wilkison 708 8th Ave. Helena, MT 59601

The number of Directors named above may be increased at

any time up to the date their successors are duly elected according to the terms of these Articles and By-laws.

ARTICLE FOURTEEN
INCORPORATION

The name and address of the incorporator of this corporation is Jonathan Motl.

Signature of Incorporator: Jt Motl

Date: 2-23-84

(This sheet to be used by those testifying on a bill.)

NAME: K. M. Kelly

DATE: 2/22/85

ADDRESS: 4605 Glass Drive Helena

PHONE: 458-5861

Montana Irrigators, Inc.

REPRESENTING WHOM? Montana Dairy Industry - Processor

APPEARING ON WHICH PROPOSAL: SB 444

DO YOU: SUPPORT?

AMEND?

OPPOSE? X

COMMENT: Montana Irrigators had no problem in organizing in 1931 to resist a 423% rate increase from pumping rates.

The law is as broad as to include any political issues including initiatives, referendums or other issue favored by CUB.

If this bill was limited to utility rates it might be different.

In the event this access is granted to CUB the Montana Irrigators want the same service.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

W

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 16

DATE 02/22/85

BILL NO. SB444

1 or restoration.

2 (2) "Board" means the board of natural resources and
3 conservation provided for in 2-15-3302.

4 (3) "Department" means the department of natural
5 resources and conservation provided for in Title 2, chapter
6 15, part 33.

7 (4) "Financially feasible" means that adequate funds
8 are available to complete the project as approved.

9 (5) "Legacy Program special revenue account" means a
10 separate account created by [section 4] within the state
11 special revenue fund of the state treasury for the purposes
12 of the legacy program set forth in [sections 1 through 10].

13 (6) "Project" means the feasibility study, design, and
14 construction of physical works.

15 (7) "Public benefits" means those benefits which
16 accrue to the citizens as a group and enhance the common
17 well-being of the people of Montana.

18 (8) "Technically feasible" means that a project or
19 activity can be designed, constructed, operated, or carried
20 out to accomplish the purpose or purposes for which it was
21 planned, utilizing accepted engineering and other technical
22 principles and concepts. The project or activity must be
23 cost effective and must address an identified problem or
24 need in order to be considered technically feasible.

25 NEW SECTION. Section 4. Legacy program special

1 revenue account created -- revenues -- allocation --

2 limitations on appropriations. (1) There is created a
3 legacy program special revenue account within the state
4 special revenue fund established in 17-2-102.

5 (2) There must be paid into the legacy program special
6 revenue account all money ~~available~~
~~available~~^{available} for appropriation from
7 the resource indemnity trust account set forth in Title 15,
8 chapter 38, with the exception of those allocations made in
9 15-38-202.

10 (3) Appropriations may be made from the legacy program
11 special revenue account for the following purposes:

12 (a) grants for legacy program projects and activities;
13 and
14 (b) administrative expenses, including but not limited
15 to the salaries and expenses of personnel, equipment, office
16 space, and other expenses necessarily incurred in the
17 administration of the legacy program.

18 NEW SECTION. Section 5. State and local grants.
19 (1) The department may recommend to the governor that
20 grants be made from the legacy program special revenue
21 account established by [section 4] to any department,
22 agency, board, commission, or other division of state
23 government or to any city, county, or other political
24 subdivision or local government body of the state.

25 (2) Grants may be made for the purchase, lease,

1 development, or construction of projects or activities; for
2 feasibility and design studies of eligible projects; and for
3 monitoring environmental impacts, problem analysis,
4 demonstration projects, and research.

5 (3) The department shall solicit and consider in its
6 evaluation of proposed projects and activities the views of
7 interested and affected departments, boards, agencies, and
8 other subdivisions of state and federal government and of
9 other interested and affected persons.

10 (4) The governor shall submit ~~the proposals with his~~
~~recommendations~~ ~~proposals~~ ~~having this~~
~~approvew~~ to the legislature by the 20th day of any ~~regular~~
12 legislative session. The legislature may approve by
13 appropriation or other appropriate means those grants it
14 finds consistent with the policies and purposes of the
15 program. The implementation of approved projects and
16 activities must be administered by the department.

17 (5) In addition to implementing the projects approved
18 by the legislature, the department may request up to 10% of
19 the funds available for grants from the legacy program
20 special revenue account in any biennium to be used for
21 emergencies that cannot be anticipated by the legislature.

22 Emergency projects must be reviewed by the department and
23 approved by the governor. Written notification of a project
24 approved by the governor must be given to the legislative
25 finance committee created in 5-12-201. Emergency projects

1 are defined as those projects which if delayed until
2 legislative approval can be obtained will result in
3 substantial damages or legal liability to the project
4 sponsor. ~~such projects funded under this program must~~
~~be consistent with the plan and purpose statement (section 1).~~
5 NEW SECTION. Section 6. Eligibility requirements:
6 (1) To be eligible for funding under the legacy program,
7 the proposed project must provide benefits in one or more of
8 the following categories:
9 (a) provide mined land reclamation ~~then no party is~~
10 ~~liable for reclamation of the land and money from the~~
~~federal abandoned mine reclamation fund, established in the~~
~~Surface Mining Control and Reclamation Act of 1977, is not~~
11 ~~available;~~
12 (b) provide reclamation for past oil and gas
13 extraction, exploration, and processing ~~then no liable party~~
14 ~~can be identified;~~
15 (c) provide for reforestation of areas damaged by
16 mining or smelting activities ~~for which a liable party~~
17 ~~cannot be identified;~~
18 (d) provide recreational areas or natural areas to
19 compensate for loss or anticipated loss of recreation or
20 natural areas because of resource extraction;
21 (e) provide for mitigation of social and economic
22 impacts of natural resource development that ~~is~~ consistent
23 ~~with but not covered by other statutes;~~

1 (f) provide for research demonstration and technical
 2 assistance ~~to promote the wise use of~~ ~~Montana's natural~~
 3 ~~resources~~ and to make processing ~~more~~ ~~Montana's natural~~
 4 compatible;

5 (g) protect the state's renewable resources through
 6 sound soil and water conservation, weed control, and other
 7 restoration programs;

8 (h) provide for research to assess past or potential
 9 environmental damage resulting from natural resource
 10 development;

11 (i) provide investigation and remediation of sites
 12 when hazardous and toxic wastes threaten the environment and
 13 when funding either from responsible parties or the
 14 Comprehensive Environmental Response, Compensation, and
 15 Liability Act of 1980 is unavailable.

16 (2) In order to be eligible for funding under the
 17 legacy program the proposed projects must:

18 (a) be technically and financially feasible;

19 (b) be the best cost-effective alternative to address
 20 an identified problem;

21 (c) comply with statutory and regulatory standards
 22 protecting the quality of resources such as air, water,
 23 soil, flora, fauna, forests, and recreational opportunities;
 24 and

25 (d) be from an applicant who is able and willing to

1 enter into a contract with the department for the
 2 construction or development of the proposed project or
 3 activity.

4 Amend 16.

4 NEW SECTION. Section 7. Evaluation criteria. (1) The
 5 department shall consider the following criteria in
 6 evaluating eligible applications and in selecting those
 7 projects or activities to be recommended for funding:

8 (a) the degree to which the proposed project or
 9 activity will provide benefits in its eligibility category
 10 or categories;

11 (b) the degree to which the proposed project or
 12 activity will provide public benefits;

13 (c) the degree to which the proposed project or
 14 activity will promote, enhance, or advance the purpose,
 15 policies, and objectives of the legacy program;

16 (d) the degree to which the proposed project or
 17 activity will ~~minimize~~ ~~maximize~~ use of natural resources,
 18 including energy, air, water, soil, flora, fauna, and
 19 forests, and therefore provide for conservation of these
 20 resources ~~as used in this subsection~~, ~~and efficient~~
 21 use is one that minimizes waste;

22 (e) the degree of need and urgency for the project;

23 (f) the extent to which the project sponsor or local
 24 entity is contributing to the costs of the project; and
 25 ~~49(f)~~ such other criteria as the department considers

(e) the degree to which ~~grants~~ are needed for persons who
 need job training, assume public assistance, or
 are chronically unemployed; and

Proposed Amendments to SB 277:

1. TITLE, line 7

Following: "SECTIONS"

Insert: "15-35-108," ..

2. Page 2, line 3

Following: "resources."

Insert: "It is not the intent of this state, however, to compensate for the loss or damage to the environment from the extraction of nonrenewable resources if remedial funding from other sources exists."

3. Page 2, lines 12-13

Strike: "economic development based on natural resources"

Insert: "a vital and diversified economy"

4. Page 4, line 6

Strike: "available"

Insert: "allocated"

5. Page 4, line 7

Following: "trust"

Insert: "interest"

6. Page 5, lines 10-11

Strike: "the proposals having his approval"

Insert: "all proposals with his recommended priorities"

7. Page 5, line 11

Following: "any"

Insert: "regular"

8. Page 6, line 4

Following: "sponsor."

Insert: "Emergency projects funded under this provision must also be consistent with the policy and purposes stated in [section 2]."

9. Page 6, lines 9-13

Following: "land reclamation"

Strike: "when no party is liable for reclamation of the land and money from the federal abandoned mine reclamation fund, established in the Surface Mining Control and Reclamation Act of 1977, is not available"

11. Page 6, lines 15-16

Strike: "when no liable party can be identified"

12. Page 6, lines 18-19

Strike: "for which a liable party cannot be identified"

13. Page 6, lines 24-25

Strike: "is consistent with but"

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 18

DATE 022285

BILL NO. SB277

take out

14. Page 7, lines 2-3
Strike: "to promote the wise use of Montana's natural resources and"

15. Page 7, line 3
Following: "processing"
Insert: "of Montana's natural resources"

16. Page 8, following line 3
Insert: "(3) Proposed projects are not eligible for funding under the legacy program if they are eligible for funding from other state or federal reclamation programs or any other program or act that provides funding to remediate environmental damage, or if they are permitted under Title 82, chapters 4 or 11."

17. Page 8, line 17
Strike: "be an efficient use"
Insert: "minimize misuse"

18. Page 8, lines 20-21
Strike: "(as used in this subsection (1)(d), an efficient use is one that minimizes waste)"

19. Page 8, line 24
Following: "project"
Insert: "or is generating additional non-state funds"
Strike: "and"

20. Page 8, following line 24
Insert: "(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and"
Reletter: subsequent section.

21. Page 10, following line 9
Insert: "Section 11. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2½% until December 31, 1979, and thereafter 4½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26½% until July 1, 1979, and thereafter 37½% to the state special revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the state special revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the state special revenue fund for state equalization aid to public schools of the state;

(f) 1% to the state special revenue fund to the credit of the county land planning account;

(g) 1½ % to the credit of the renewable resource development bond fund, until July 1, 1987;

(h) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to the state special revenue fund for conservation districts;

(k) 1½% until July 1, 1987; and 2.3125% thereafter until July 1, 1989; and thereafter 2.5% to the debt service fund type to the credit of the water development debt service fund;

(l) for the fiscal years following June 30, 1987, until July 1, 1989, .1875% to the rangeland improvement loan special revenue account;

tit (m) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state." "

Renumber subsequent sections.