

MINUTES OF THE MEETING  
SENATE NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE  
March 8, 1985

The seventeenth meeting of the Senate Natural Resources Committee was called to order by Chairman Dorothy Eck at 1:04 p.m., March 8, 1985, Room 405, State Capitol Building.

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

CONSIDERATION OF HB755: Representative Dave Brown, sponsor of HB755, stated he is introducing HB755 at the request of the Department of Natural Resources and Conservation (hereafter DNRC). Representative Brown stated DNRC is unable to process certain applications for the amount of the fee under the current fee schedule. HB755 also provides for notification and a hearing when DNRC is contemplating suspension of a certificate.

PROPOSERS: Mr. Laurence Siroky, Administrator of the Energy Division of DNRC, submitted written testimony (Exhibit 1) in favor of HB755.

Mr. Ken Williams, representing the Montana Coal Council, urged the committee for passage of HB755.

Mr. Don Reed, representing the Montana Environmental Information Center, stated he favors HB755.

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

Senator Gage inquired whether DNRC has ever been required to give a refund of fees as provided on page 4, subsection (5). Mr. Siroky stated this section is used when a applicant only pays a portion of the filing fee and is billed monthly thereafter. Therefore, refunds are not needed.

Senator Weeding questioned whether pre-filing requirements would also be reduced. Mr. Siroky stated there is a requirement for filing a long-range plan two years in advance; however, HB755 will not affect this requirement.

Upon question from Senator Mohar, Mr. Siroky stated although testimony referred to a "cap" on fees, there actually is no "cap," but rather the fees level off after they reach a certain amount.

Mr. Van Jamison, representing the Energy Division of DNRC, stated DNRC has been unable to perform its duties with the amount of money provided for in the current fee statute.

There being no further questions from the committee, the hearing on HB755 was closed.

ACTION ON HB755: Senator Halligan moved HB755 BE CONCURRED IN.  
The motion carried.

CONSIDERATION OF HB543: Representative Miles, sponsor of HB543, opened the hearing by informing the committee she is sponsoring this bill at the request of the utility companies. HB543 provides for a one-word change in the Major Facility Siting Act, i.e. changing the date for filing long-range plans from April 1, to July 1. Representative Miles stated the major problem is utilities do not receive the figures from the winter months until spring, making it impossible for them to meet the current deadline.

PROPONENTS: Mr. John Lahr, representing The Montana Power Company, supports HB543 and asked the committee for a do pass recommendation.

Mr. Laurence Siroky, representing DNRC, stated the proposed date change causes no problems for DNRC.

Mr. Don Reed, representing the Montana Environmental Information Center, asked to go on record as being a proponent of HB543.

There being no further proponents, no opponents and no questions from the committee, the hearing on HB543 was closed.

ACTION ON HB543: Senator Mohar moved HB543 BE CONCURRED IN.  
The motion carried.

CONSIDERATION OF HB367: Representative Wallin opened the hearing on HB 367 by stating the bill involves allowing professional land surveyors to review floor plans for condominiums being built from existing structures.

PROPONENTS: Mr. Mike Foley, representing the Montana Association of Registered Land Surveyors, submitted written testimony (Exhibit 2) in favor of HB367.

Mr. Bob Custer, representing the Montana Association of Land Surveyors, stated he is a proponent of HB367.

Mr. H. S. Hanson, a design professional, stated he supports this legislation and informed the committee the bill refers only to registered land surveyors.

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

Senator Mohar thought it was interesting HB367 refers to a professional land surveyor when the bill changing the title to include the word professional was only recently passed out of committee.

Senator Christiaens inquired whether he would need all three professionals to draw up and authorize floor plans or only one. Mr. Foley replied if HB367 passes, only the services of a professional land surveyor would be needed.

There being no further questions from the committee, the hearing was closed.

ACTION ON HB367: Senator Christiaens moved HB367 BE CONCURRED IN. The motion carried.

CONSIDERATION OF HB582: Representative Wallin, sponsor of HB582, stated HB582 is being introduced because many engineering graduates can earn an annual salary of \$30,000, and Montana's counties do not have the ability to pay this amount. The result is an inability to fill the office of county surveyor. HB582 allows registered land surveyors to fill the position of county surveyor. Representative Wallin feels registered land surveyors are qualified to fill this position and only lack the expertise to test bridges.

PROPOSERS: Mr. Earl Best, representing the Gallatin County Surveyors and the Montana Association of Registered Land Surveyors, and who is a retired county surveyor, urged the committee for a favorable recommendation. Mr. Best stated he would be available to answer any questions the committee may have.

Mr. Mike Foley, representing the Montana Association of Registered Land Surveyors, submitted written testimony (Exhibit 3) in favor of HB582.

Mr. Bob Custer, representing the Montana Association of Land Surveyors, supports HB582.

Written testimony in support of HB582 was also submitted by Les Muhlbein (Exhibit 4).

OPPOSERS: Mr. Steve Spalding, representing the Missoula County Commissioners, stated most county surveyors oppose HB582. Mr. Spalding submitted written testimony from Richard H. Colvill, Missoula County Surveyor, (Exhibit 5) in opposition to HB582.

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

Mr. Bob Thompson, staff researcher, stated there were problems with the bill referring to Section 7-4-2812, MCA, which states a land surveyor must deal with highways and prepare plans and estimates relating to engineering.

Senator Harding suggested amending HB582 to exclude counties with a population over 20,000.

Senator Halligan stated HB582 should not contain an age requirement. Senator Halligan feels age has no relationship with the office of county surveyor and should be stricken from the bill.

Upon question from Senator Mohar, Mr. Foley explained that although current statutes require the office of county surveyor be filled by a professional engineer, many counties such as Yellowstone County do not have professional engineers in this position.

Senator Harding explained to Chairman Eck that county officials certify they are qualified to fill the position. In some instances, this may result in positions filled by unqualified personnel.

Mr. Thompson stated he would check with the Montana Secretary of State's Office to determine whether filling a county position with unqualified personnel is a major problem.

Ms. Ann Mary Dussault, a Missoula County Commissioner, stated the Missoula County Commissioners feel lowering the qualifications for county surveyor is not a good idea.

Upon question from Senator Mohar, Mr. Foley explained civil and electrical engineers would not be qualified, since they are not registered to practice in the civil engineering area.

Mr. Hanson added registered engineers are subject to disciplinary actions if they practice outside the scope of their field.

Senator Mohar questioned why the House of Representatives struck the word "civil" from the language of the bill. Representative Wallin stated a civil engineer would be the only engineer competent to do civil engineering. Senator Gage feels a chemical or electrical engineer would probably not file for the position of county surveyor for fear of losing his registration.

Mr. Earl Best suggested using "registered engineer," so this person would fall under the scope of the board.

ACTION ON HB582: Senator Daniels moved the word "registered" be inserted after the word "a" on page 1, line 11, and to strike

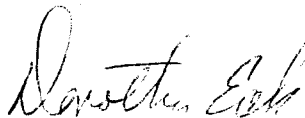
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March 8, 1985  
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"not less than ~~22~~ 25 years of age," on lines 12 and 13, page 1.  
The proposed amendments were ADOPTED.

Senator Mohar stated since it was obvious counties were going to hire whomever they want to fill the position, the office of county surveyor should, possibly, not be an elected position.

Mr. Thompson reminded the committee Section 7-4-2812, MCA, may also have to be changed, since it could require the county surveyor to perform tasks which he is not qualified to do. The committee expressed concerns about going beyond the scope of the bill.

There being no further questions from the committee, the meeting was adjourned at 2:05 p.m.



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Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 030885

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.

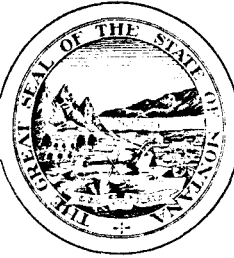
030885

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# VISITORS' REGISTER

[illegible]

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
ENERGY DIVISION



TED SCHWINDEN, GOVERNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 444-6697 ADMINISTRATOR & PLANNING AND ANALYSIS BUREAU  
(406) 444-6696 CONSERVATION & RENEWABLE ENERGY BUREAU  
(406) 444-6812 FACILITY SITING BUREAU

HELENA, MONTANA 59620

TESTIMONY ON HOUSE BILL 755

My name is Laurence Siroky, Administrator of the Energy Division in the Department of Natural Resources and Conservation. The Department supports House Bill 755.

The current graduated fee schedule in the Siting Act explicitly recognizes that the cost of reviewing a facility are a decreasing percentage of estimated costs as the cost of the facility increases. What the present schedule fails to account for is that there are also fixed costs associated with processing any application regardless of the cost of the facility. This bill would provide sufficient revenue for the Department to adequately process small transmission line applications and at the same time reduce the filing fee on larger projects where the additional funds are not needed for the Department to fulfill its statutory responsibilities. Recent discussions between the Department and prospective applicants, plus our recent experience in processing small transmission line projects, have indicated that adjustments at both ends of the fee schedule need to be made.

The 2 percent figure currently in the Siting Act is not sufficient to adequately perform statutory duties for all small transmission lines that include reviewing applications for completeness, conducting field studies and other independent analyses to verify the work done by the applicant. The Department must evaluate the need for a proposed facility, alternatives to the facility, and environmental impacts of the facility. The Department must then draft, publish, and disseminate both draft and final environmental impact statements, conduct public hearings in the area affected by the proposed facility, respond to comments received during the hearing process, and make recommendations to the Board of Natural Resources and Conservation. The

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 030885

publications & graphs

BILL NO. HB 755



Department must also participate in the Board hearings, including paying the cost of any hearings officer retained by the Board.

The increase from 2 to 4 percent is necessary to cover the fixed costs of processing any application and ensures that adequate analyses can be done to make defensible decisions by the Board. It should be noted that the Department uses filing fees only to cover necessary and actual expenses and in cases where processing an application takes less money than the statutory fee, the applicant is not required to pay the entire amount. The Department has not spent more in processing an application than has been provided by the present fee schedules. But is concerned about being able to meet the minimum requirements for evaluating and approving a certificate.

Reducing the applicant's maximum filing fee obligation on all projects estimated to cost over \$1 billion from 0.125 percent to 0.05 percent will reduce the front-end capital commitment for the applicant without jeopardizing the environmental analysis required by the Siting Act. Economies of scale make these additional filing fee funds unnecessary for the Department's review of an application for these larger facilities.

The proposed amendment to Section 75-20-403 in Section 2 requires that the Board of Natural Resources and Conservation provide notice and an opportunity for a hearing when revoking or suspending a certificate. This change makes explicit the current policy that the Board adheres to in its proceedings.

I urge the committee to give House Bill 755 a "do pass" recommendation.

March 5, 1985

Senator Esther G Bengtson  
Capitol Station  
Helena Montana 59620

Dear Esther:

Thank you for your support in regard  
to House Bill 582.

Enclosed find several copies of the Qualifications  
as noted in the Revised Codes of Montana, with  
special attention to the Attorney General Opinion.

This opinion was upheld in District Court by Judge  
Sande in "Lund vs Klundt".

It is therefore a waste of time for further action  
on this bill since by court ruling any Registered  
land surveyor is already qualified to run for the  
office of county Surveyor.

Will you please forward copies of this letter and  
enclosures to the Natural Resources Committee.

Again my sincere thanks

Les Muhlbeier

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 4

DATE 030885

BILL NO. HB582

## DECISIONS UNDER FORMER LAW

## Superintendence of Poor

While the county auditor was made the superintendent of the poor under former section 16-3211 and was required to care for and examine all claims that might be

made upon the county for charity, he was required to do so under such rules and regulations as the commissioners might prescribe in their discretion. *Jones v. Cooney*, 81 M 340, 348, 263 P 429.

## CHAPTER 33

## COUNTY SURVEYOR

- Section 16-3301. Qualifications of county surveyor and deputies.  
 16-3302. County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor.  
 16-3303. Records of surveys and plats, etc.  
 16-3304. Office and equipment to be furnished county surveyor.  
 16-3305. County surveyor to make surveys, keep record of them, furnish copies, etc.  
 16-3306. Surveys of lands in two counties.  
 16-3307. Order for survey where title to lands in two counties disputed.  
 16-3308. Courses to be run by true meridian—variation and date to be noted.  
 16-3309. Surveyor to employ assistants, when.  
 16-3310. Appointment of disinterested person when county surveyor interested in lands.  
 16-3311. Repealed.  
 16-3312. Repealed.  
 16-3313. Other surveyor may be employed.

**16-3301. (4835) Qualifications of county surveyor and deputies.** A county surveyor shall be a professional engineer, not less than twenty-two years of age, who shall have been in active practice of his profession for at least three years, and who shall have had responsible charge of work as principal or assistant for at least one year; graduation from a school of engineering shall be considered as equivalent to two years of active practice. All deputies must also have a practical knowledge of engineering.

**History:** En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R. O. M. 1921.

**NOTE.**—This section held in violation of section 11, article IX of the constitution as it imposes additional qualifications for one to hold the office of county surveyor than those required by the constitution. *Opinions of Attorney General Vol. 16, No. 186.*

**References**

*Hicks v. Stillwater County*, 84 M 38, 42, 274 P 296.

**Collateral References**

*Counties* 64.

20 C.J.S. *Counties* §§ 102, 103.

Constitutionality of statute regulating land surveyors. 55 ALR 307.

**Cross-Reference**

Bond, secs. 6-203 to 6-209.

**16-3302. (4836) County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor.** (1) The county surveyor shall work under the direction of the board of county commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the prior order or approval of the board.

(2) He shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

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Gene A. Pearl  
125 White Circle  
Billings, MT 59101

March 8, 1985

Senate Natural Resources Committee  
Room 405  
Capitol Building  
Helena, MT 59620

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 030885

BILL NO. HB367

Re: House Bill 367 - Statement in Support of

Ladies & Gentlemen:

My name is Michael Foley. I am appearing on behalf of the Montana Association of Registered Land Surveyors (M.A.R.L.S.). We urge the Senate Natural Resources Committee to give H.B. 367 a do pass recommendation.

We, as surveyors, do not wish to supplant architects or engineers in their roles as design professionals. However, we do feel that the professional land surveyor should be included in the Unit Ownership Act as one of a team of professionals allowed to certify to condominium floor plans.

We do not presume to be professionally qualified to design buildings, nor do we want this responsibility. There is one area of the Unit Ownership Act where we surveyors feel that we are uniquely qualified; that is in the conversion of existing buildings to condominiums. In many instances where existing buildings are being converted, no floor plans exist. In this case, the building must be measured, or "as built", by the professional certifying to the floor plans in the condominium declaration. We feel that the professional land surveyor, by virtue of his training and experience, is uniquely qualified to perform this task.

Please note that the certification required by the Unit Ownership Act only requires that the professional in charge, be he architect, engineer or land surveyor, certify that the plans "... fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built,..." No certification is required as to architectural or structural suitability, nor do we as surveyors want that responsibility.

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I thank the committee for allowing me to present our position today.  
Once again we urge the committee to give H.B. 367 a do pass  
recommendation.

Best regards,

A handwritten signature in dark ink, appearing to read 'Mike', with a large, sweeping flourish extending to the right.

Michael Foley, P.L.S.

MF/ak

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Gene A. Pearl  
125 White Circle  
Billings, MT 59101

March 8, 1985

Senate Natural Resources Committee  
Room 405  
Capitol Building  
Helena, MT 59620

Re: House Bill 582 - Statement in Support of

Ladies & Gentlemen:

My name is Michael Foley. I am appearing today on behalf of the Montana Association of Registered Land Surveyors (M.A.R.L.S.). We urge the Senate Natural Resources Committee to give H.B. 582 a do pass recommendation.

M.A.R.L.S. supports this bill for the following reasons:

- 1) The present law allows only professional engineers to fill the position of County Surveyor. This law was written at a time before the current registration laws were enacted. When the terms engineer and surveyor were synonymous.
- 2) There appears to be some confusion at the county level as to the applicability of the current statute. At the present time, according to data furnished by the Office of the Secretary of State, 13 counties presently have County Surveyors. Of these, 4 are professional engineers, 6 are professional land surveyors and 3 have no apparent qualifications whatsoever.
- 3) Increasing emphasis on land use planning requires that the County Surveyor spend an increasing proportion of his time dealing with land use problems and/or as Examining Land Surveyor. As an example, Missoula County presently has 2 full time professional land surveyors working on land use problems. With today's emphasis on land use, one of the most important functions of the County Surveyors is the position of Examining Land Surveyor, a position only a professional land surveyor can fill.

**SENATE NATURAL RESOURCES COMMITTEE**

EXHIBIT NO. 3

DATE 030885

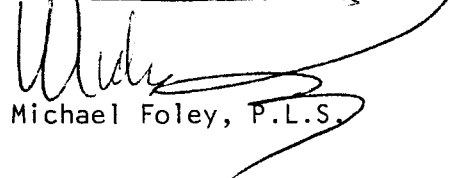
BILL NO. HB582

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In closing, I wish to state that we do not propose that a professional land surveyor be allowed to practice engineering, just as we do not propose that the professional engineer be allowed to practice land surveying. What we do feel is that many, if not most, of the duties of County Surveyor can be performed by either. When work calling for expertise not possessed by the County Surveyor, be he engineer or surveyor, the County Surveyor should be able to call upon firms in the private sector to provide the necessary specialized service.

I thank the committee for allowing me this time to present our position and urge the committee to give H. B. 582 a do pass recommendation.

Best regards,



Michael Foley, P.L.S.

MF/ak



# MISSOULA COUNTY

## MISSOULA COUNTY SURVEYOR

Missoula County Courthouse

Missoula, Montana 59802

Telephone (406) 721-5700

March 7, 1985

S85-095

Senator Dorothy Eck  
Chairman, Senate Natural Resources Committee  
Capitol Station  
Helena, Montana 59624

Dear Senator Eck:

This letter is in opposition to House Bill No. 582 revising the qualification for County Surveyor. Basically this Bill lowers the qualifications of the County Surveyor from Professional Engineer to Professional Surveyor. I use the term "lowers" because it requires more education and training to be an Engineer than to be a Surveyor.

In the long run House Bill No. 582 will not benefit the larger Counties, those Counties that need a County Engineer and not a County Surveyor. The duties of the County Surveyor in Counties over 20,000 registered voters are shown in RCM 7-4-2812. These are basically engineering duties. As both a Registered Engineer and a Registered Land Surveyor with 10 years experience as Missoula County Surveyor I clearly recognize that I am basically using my engineering skills and training and not my surveying skills in managing my department. The management training I received in college is a big plus not available to most Surveyors.

I recognize that in Montana a problem exists getting qualified people to run for the elected Office of County Surveyor. For a larger County, lowering the qualifications of County Surveyor is not the answer to the problem. If you can't get an attorney to run for County Attorney you don't lower the qualifications to a Business Administration Degree. I recommend you simply delete the elected Office of County Surveyor for those Counties over 20,000 voters and let House Bill No. 582 pass for the smaller Counties. In the small Counties the County Surveyor is a part-time position controlled by the County Commissioners. In the larger Counties the Commissioners can set the qualifications and salary to meet their needs.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 5

DATE 030885

BILL NO. HB582



# MISSOULA COUNTY

## MISSOULA COUNTY SURVEYOR

Missoula County Courthouse

Missoula, Montana 59802

Telephone (406) 721-5700

March 7, 1985

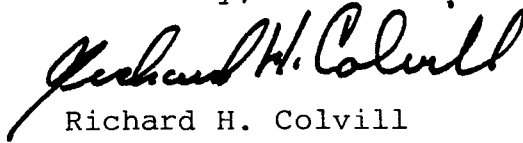
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Senator Rex Manuel

The "County Surveyor" is a turn-of-the-century office that is archaic in modern County government.

Please enter this letter into the record of the Senate Natural Resources' Hearing on this bill.

Sincerely,



Richard H. Colvill  
County Surveyor

RHC/jk

cc: Missoula Area Senators

# STANDING COMMITTEE REPORT

MARCH 9, 1985

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 755

THIRD reading copy ( blue )  
(FULLER) color

SITING ACT FEES; REVOCATION OR SUSPENSION HEARINGS

Respectfully report as follows: That HOUSE BILL No. 755

BE CONCURRED IN

~~HOUSE~~

~~HOUSE~~

SENATOR DOROTHY ECK

Chairman.

# STANDING COMMITTEE REPORT

MARCH 9, 1985

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 543

THIRD reading copy ( blue )  
(MOHAR) color

**REQUESTS DATE CHANGE FOR FILING LONG RANGE PLANS UNDER MAJOR  
FACILITY SITING ACT**

Respectfully report as follows: That HOUSE BILL No. 543

BE CONCURRED IN

~~XPORAS~~

~~XPORAS~~

SENATOR DOROTHY ECK

Chairman.

# STANDING COMMITTEE REPORT

MARCH 9,

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MR. PRESIDENT

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

having had under consideration.....**HOUSE BILL**..... No. **367**.....

**THIRD** reading copy ( **blue** )  
**(CHRISTIAENS)** color

**REGISTERED PROFESSIONAL LAND SURVEYOR DO CERTAIN CONDO FLOOR PLANS**

Respectfully report as follows: That.....**HOUSE BILL**..... No. **367**.....

**BE CONCURRED IN**

**~~XXXXXX~~**

**~~XXXXXXXXXX~~**

.....**SENATOR DOROTHY ECK**.....

Chairman.