

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
March 20, 1985

The twenty-third meeting of the Senate Natural Resources Committee was called to order by Chairman Dorothy Eck at 12:30 p.m., March 20, 1985, Room 405, State Capitol Building.

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

CONSIDERATION OF HB637: Representative Iverson, sponsor of HB637, stated HB637 is one of a series of three bills. Under the current statutes, if an operator fails to file an annual report, the Department of State Lands will initiate a civil action. However, this procedure is not effective if the operator has left the area and cannot be located. Representative Iverson feels this problem can be alleviated if the Department is allowed to first notify the operator by certified mail of his failure to file an annual report. If, after notice the report is not filed, the permit will be revoked.

PROPOSERS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 1) in favor of HB637.

Ms. Jeanne-Marie Souvigney, representing Northern Plains Resource Council, asked to go on record as a proponent of HB637.

Mr. Gary Langley, representing the Montana Mining Association, feels the current law keeps people from being good citizens by providing for a civil penalty. Mr. Langley is in favor of HB637.

Mr. George Ochenski, representing the Environmental Information Center, supports HB637.

Written testimony was also submitted by Mr. Thomas E. Schessler (Exhibit 2) and Mr. Don C. Cowles (Exhibit 3) in favor of HB637.

There being no further proponents, no opponents and no questions from the committee, the hearing on HB637 was closed.

CONSIDERATION OF HB670: Representative Iverson, sponsor of HB670, stated this bill will have an affect on the mining industry. Under the Hard-Rock Mining Act, tailings are not

subject to reclamation. Although this has not been a problem in the past, miners are now beginning to go through these tailings to recover minerals. Representative Iverson believes these tailings should be covered by the Hard-Rock Mining Act.

PROPOSERS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 4) in favor of HB670.

Ms. Jeanne-Marie Souvigney, representing Northern Plains Resource Council, stated she would like to go on record as being a proponent of HB670.

Mr. Gary Langley, representing the Montana Mining Association, stated he worked on the preparation of HB670 with Dennis Hemmer and is in favor of the bill.

Mr. George Ochenski, representing the Environmental Information Center, stated he would like to go on record as supporting HB670. Mr. Ochenski believes this bill will provide a better future for Montana.

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

Senator Shaw questioned whether this bill would affect the gold mine presently operating near Boulder, Montana. Mr. Hemmer replied the mine was already covered by the Hard-Rock Mining Act.

Senator Weeding questioned whether the bill would include tailings from rock-crushing operations or highway projects. Mr. Hemmer explained these operations would not be affected since they do not include mineral extraction.

Senator Halligan questioned why the definition of "disturbed lands" does not include tailings. Mr. Hemmer explained that tailings were not included in the definition, because they are considered to be abandoned deposits.

Chairman Eck questioned Mr. Hemmer as to what custom mills are and if they were addressed by HB670. Mr. Hemmer explained custom mills could be portable and process ore which comes partially from one mine and partially from another. Mr. Hemmer further explained these mills were covered by Section 3, page 7.

Mr. Hemmer explained to Senator Mohar the Department of State Lands was expecting more requests for permits to come in as the price of gold rises.

Senator Tveit stated it was interesting to see the relationship that has developed between industry and the Northern Plains Resource Council.

Representative Iverson closed the hearing on HB670 by stating everyone involved had done an excellent job in preparing HB670. Representative Iverson hopes passage of HB670 will clean up spoils which otherwise would have been neglected.

Senator Fuller moved HB670 BE CONCURRED IN. Senator Weeding stated he had a problem with the section of the Montana Codes Annotated referred to on page 16, line 8. Mr. Bob Thompson, staff researcher, stated he would look into the matter, and Senator Fuller withdrew his motion.

CONSIDERATION OF HB695: Representative Asay, sponsor of HB695, stated the bill is attempting to alleviate a conflict between counties and the Department of State Lands by exempting counties from having to file reports on inactive gravel pits. Representative Asay would like to see counties operate gravel pits without being in violation of the current statutes while still falling within the reclamation requirements of the State of Montana. Representative Asay feels the amendments added by the House of Representatives make this impossible, and stated if the committee does not remove these amendments, the bill does not need to go any further.

PROPOSERS: Mr. Gordon Morris, representing the Montana Association of Counties, stated the original intent of HB695 is to relieve counties from being held by the same standards as the private sector. Mr. Morris feels the amendments on page 6, line 14, makes HB695 worthless. Mr. Morris feels counties should be exempt from filing reports, because they are always available if further reclamation is needed. Mr. Morris does not feel counties should have to file a performance bond and feels notification to the Department of State Lands and the Department's ability to perform a site inspection should be sufficient.

Mr. Dennis Hemmer, representing the Department of State Lands, stated the reason the bill was "gutted" in the House of Representatives is because the Department of State Lands opposes dropping the initial application process. Mr. Hemmer stated his Department needs to be informed where the pit will be located, whether the county has obtained the surface owner's consent and if the area can be reasonably reclaimed. Mr. Hemmer stated he would be willing to work with the counties to resolve this problem.

Mr. George Ochenski, representing the Environmental Information Center, stated he did not like the bill as presented in the House of Representatives, because it sets a bad example. Mr. Ochenski feels a reclamation plan is necessary before any construction begins. Mr. Ochenski also stated even though a county may always be there, it may not always have funding available for reclamation.

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

Mr. Morris explained to Senator Harding this bill was discussed at the counties' district meetings, but mostly the bill originated from Rosebud County.

Representative Asay stated it is not his intention that counties escape reclamation, but only that regulation is done in such a manner it does not impose an undue hardship on the counties.

Upon question from Senator Gage, Mr. Hemmer stated in most cases, the Department performed on-site inspections.

Senator Gage suggested instead of counties submitting a reclamation plan, that they only be required to receive permission from the Department of State Lands to proceed. Mr. Hemmer replied the counties do not do a lot more than this at the present time.

Upon question from Senator Mohar, Mr. Morris explained the counties of Meagher and Rosebud spend 20-45 days preparing the reports, and the paperwork is voluminous.

Upon question from Senator Weeding as to whether the counties are doing more work than is actually needed, Mr. Hemmer stated the reclamation plan he received from Sheridan County took only one-half day to complete. Mr. Hemmer stated he would obtain a copy of this plan for the committee members to review.

Chairman Eck asked Mr. Hemmer whether he believed the problem reflected a resentment on the part of the counties of having to meet these regulations. Mr. Hemmer stated, in his opinion, there was resentment on the part of the counties.

Senator Halligan inquired whether the Department of State Lands actually used the information supplied by the counties. Mr. Hemmer stated the information was used in preparing the Department's annual report.

When questioned by Senator Harding as to how many counties are objecting to this requirement, Mr. Hemmer stated he knew of two counties, while Mr. Gordon stated 17 counties are unanimous in their objection. These 17 counties are mostly located in eastern Montana. Senator Gage stated the reason most of these counties in eastern Montana are objecting is because the eastern part of the state does not share the environmental concerns of the rest of Montana.

There being no further questions from the committee, the hearing on HB695 was closed.

CONSIDERATION OF HB912: Representative Dave Brown, sponsor of HB912, stated he worked with staff researcher, Mr. Bob Thompson, in drafting HB912. HB912 gives a firm definition of "local government unit," and "large-scale mineral development." A large-scale mineral development will refer to operations employing more than 75 people. Representative Brown asked the committee to allow the small miner exemption to remain in the bill.

PROPONENTS: Mr. Jim Richard, speaking for the local government of Stillwater County, supports HB912.

Ms. Jeanne-Marie Souvigney, representing Northern Plains Resource Council, agrees with the amendments proposed by Representative Brown.

Mr. John Beaudry, representing Stillwater County, has been involved with the preparation of an impact plan. Mr. Beaudry feels the proposed amendments benefit the counties and mining industry.

Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 5) in favor of HB912.

Mr. Gary Langley, representing the Montana Mining Association, stated HB912 is the result of a two-year study conducted by a subcommittee. Mr. Langley feels HB912 is an improvement over the current statutes and will eliminate confusion.

Ms. Carol Ferguson, representing Hard-Rock Mining Impact Board, stated her organization has tried not to take sides on this issue but, rather, bring the problems to everyone's attention.

Mr. George Ochenski, representing the Environmental Information Center, supports HB912 and asked the clause regarding small miners be put back into the bill.

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Mr. Mike Miconi, representing Western Environmental Trade Association, believes HB912 is an improvement in the current law.

Mr. Joe Danni, representing Homestake Mining, endorses HB912.

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

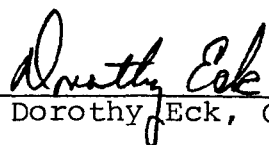
Senator Halligan suggested to Ms. Souvigney they go back to the original language of "local government unit" in order to include everyone and to protect the members of her organization. Ms. Souvigney stated there never was a question regarding what local government units would be covered and believes no one would be left out. Ms. Souvigney further explained some districts, like the conservation districts, would still go through the county.

There being no further questions from the committee, the hearing on HB912 was closed.

ACTION ON HB860: Senator Fuller moved HB860 BE CONCURRED IN. The motion carried.

ACTION ON HB698: Senator Halligan moved HB698 BE CONCURRED IN. Senator Daniels made a substitute motion HB698 NOT BE CONCURRED IN. The motion failed, and the committee asked the vote be reversed to reflect the bill BE CONCURRED IN.

There being no further business to come before the committee the meeting was adjourned at 2:27 p.m.



Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 032085

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.

C32C 85

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

TESTIMONY ON HOUSE BILL 637

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports H.B. 637 to amend the Montana Metal Mine Reclamation Act. This amendment would allow the Department to suspend an operating permit, after 30 days notice, if the operator fails to file an annual report rather than pursuing a violation and civil penalty. After the annual report is filed the Department may reinstate the permit.

Under the existing law, if an operator fails to file an annual report, the only recourse the Department has is to pursue a Notice of Violation and the subsequent civil penalty. Although this is adequate, it is costly and time consuming and does not resolve the real problem, and that is, it is the operator's responsibility to make the annual report and keep his permit up-to-date. Additionally we may be trying to prosecute someone who is long gone. Another problem is that when an annual report is not filed, the Department does not know whether the permit has been abandoned or if it is just an oversight on the part of the operator.

In summary, the Department requests your support of this amendment because it allows the Department to require that an annual report be filed by the operator, but if it isn't the permit is suspended and no mining activities can take place until the suspension is lifted. This bill allows a streamlining of the violation-civil penalty system for both the operator and the state, while at the same time giving the Department the flexibility to know the status of a mining operation while eliminating an unnecessary violation and civil penalty for the operator.

I urge your support of the bill.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 032085

FILE NO.

HR 637

EX-2
Thomas E. Schessler
7010 Bristol Lane
Bozeman, MT 59715
13 February, 1985

Honorable Peter R. Story
Senate of the State of Montana
Helena, MT 59620

Dear Senator Story:

I am replying, although not very adequately, to your February 6 request for comments on House Bills 637 and 638. As a Montana native who has only recently returned after many years' absence, I fear I haven't yet sufficient background in the State's mining laws. I am highly interested, and will correct that deficiency in short order, I hope. My primary experience has been at the level of Federal mining legislation and regulation.

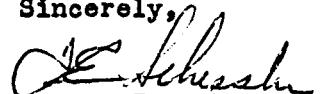
HB 638. Pp. 7&8, the underlined portions.

Q - Is the bill, or the Act to which it is related, meant to help control and regulate small mine operations, or is it meant to penalize and stultify the initiative of "small" individuals and concerns? It seems to me that that aspect should be looked at very closely.

I've no quarrel with the proposed revision of 82-4-361. It does seem to me, however(and here is where I lack background in the basic legislation), wilful violations, after proper notice from the appropriate agency that something has gone haywire, should be the criterion for fines and other sanctions. This is probably properly taken care of somewhere in the statutes since I have no problems with the proposed language of HB 637 or with the wording of the penalty provisions as they now exist in 82-4-362, (2).

Incidentally, by your place of residence, are you by chance related to Mr. Malcolm Story? I met him only twice, and we talked at some length both times. A very fine man, whom I admire. He and my father-in-law knew one another.

Sincerely,


Thomas E. Schessler

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 032085

BILL NO. HB637

Oceanside Ca.
Feb. 14, 85

Dear Pete -

Your letter regarding House Bills 637 & 638 has been forwarded to me and sorry for the delay in answering.

As our State motto "Eureka Placita" attests, Gold & Silver and later other metals were extremely important in the development of Montana.

Although many people and particularly environmentalists ignore this, nevertheless the future of Montana economically is tied to our natural resources; Ranching, Farming, Mining, & Timber.

The small miner is essential. He is generally a prospector who pokes a few holes but never makes any thing. Later these same discoveries are the starting points

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 032085

FILE NO. HB637

2. Mineral is where you find it
and very few places on this earth
have been blessed with the
unlimited, unexplored and un-
developed abundance of this
great variety of minerals we
have in Montana.

The small miner has been
discouraged from prospecting in
many ways, Wilderness designation,
Forest Service regulations, and other
legal and filing regulations. These
bills are just another notch in
an already too tight belt.

What little damage or
unsightly disturbance he may cause
is greatly outweighed by the
benefits he is likely to create for
all of us.

(over)

and reason for a large company to develop interest.

I have been very familiar with the head water country of the main Boulder River in Park & Sweetgrass Counties for over 60 years. I know of 100's of prospect holes, mostly out of sight in the timber or high in the rocks on the side of a mountain, or in locations where people never go. They cause no environmental damage and only the extreme ecologist would complain of them.

They, however, serve the valuable purpose of sometime in the future lead the way to a large economic development for Montana and of strategic importance to the welfare of the United States.

I do appreciate your writing
me very much. Thank you.

Sincerely

J. C. Cortes

TESTIMONY ON HOUSE BILL 670

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports House Bill 670 to amend sections 82-4-303, 82-4-304, 82-4-335, 82-4-336, 82-4-337, 82-4-340, and 82-4-351, MCA, of the Montana Metal Mine Reclamation Act because the amendment provides a solution to several issues that need additional clarification.

The first issue deals with the remining and reprocessing of old tailings and waste rock. At the present time, many mining companies are examining old historic tailings piles and waste rock dumps to determine the mineral values that remain. As a result, these companies have proposed reprocessing of those materials to recover those values. Under the existing provisions of the Metal Mine Reclamation Act, the remining and reprocessing are not included. They should be, however, because the potential impacts to the public and the environment can be the same as that of a new mine development. Often times the old tailings have reached equilibrium. Remining redisturbs the area resulting in a new potential for environmental problems. In addition, if those remined areas are required to be permitted, the opportunity to improve an area where historic environmental problems exist due to mining becomes available. It should be noted that the operator would not be required to reclaim the area to a better condition than existed prior to the effective date of this bill and the promulgation of rules.

The second issue deals with the permitting of custom mills that process ore mined by other various mine operators and mine specific mills that are owned and operated by individual mining operations, but are located away from the permitted mine site. The present interpretation of the Montana Metal Mine Reclamation Act is that these types of mills are not necessarily covered and therefore an operating permit is not required. This interpretation needs to be amended because the potential impact on the public and the environment is the same for these types of mills as they are for mills that are permitted at a mine site. The issues of mill siting, tailings pond siting, design, stability and impact on ground and surface wastes needs to be thoroughly evaluated before construction. It should be noted that this amendment would only apply to those mills that are constructed or expanded upon after promulgation of the rules.

In summary, I urge your support of these amendments to resolve these issues and provide additional protection of the public and the environment by requiring the permitting of off mine site and custom mills and the reprocessing of old tailings.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 4DATE 032085BILL NO. HB670

TESTIMONY ON HOUSE BILL 912
FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

Although the counties and the Hard Rock Impact Board review impact plans for sufficiency, the Department of State Lands through its reclamation permit review determines whether an operator is a hard rock mineral developer and is therefore required to file an impact plan.

From its perspective, State Lands perceives two problems with the Impact Act. First, the fifteen percent criterion is difficult to apply and is applied by the wrong agency. The Impact Board and the Department of Commerce, not State Lands, have the expertise in local government, demographics, and economics. To remedy this situation, State Lands and Commerce have signed a memorandum of understanding whereby Commerce advises State Lands on the fifteen percent determination. This is an imperfect solution because, if Commerce is wrong, State Lands loses the lawsuit.

The second problem is that the Impact Act does not indicate what State Lands should do when an operator that was not a major mineral developer when it obtained its reclamation permit reaches the 100 employee threshold. State Lands has been writing into the reclamation permit a stipulation that defers the question until the situation arises. Fortunately, it has not arisen.

House Bill 912 resolves the problems and ambiguities I have described. It eliminates the fifteen percent criterion. It grandfathers operations existing when the Impact Act was passed and gives relief to those operators who become major mineral developers after commencing operations.

State Lands commends the EQC, and especially Representative Brown, Senator Eck, Representative Lory, and Tad Dale, for their work and recommends approval of House Bill 912.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 5

DATE 032085

BILL NO HB912

ROLL CALL VOTESENATE COMMITTEE Natural ResourcesDate 032085 House _____ Bill No. 698 Time 2:56

NAME	YES	NO
ANDERSON, John		X
CHRISTAENS, Chris		X
DANIELS, M. K.	X	
FULLER, David		X
GAGE, Delwyn	X	
HALLIGAN, Mike (Vice Chairman)		X
HARDING, Ethel	X	
MOHAR, John		X
SHAW, Jim	X	
TVEIT, Larry	X	
WEEDING, Cecil		X
ECK, Dorothy (Chairman)		X

Cynthia W. Peterson
SecretaryDorothy Eck
ChairmanMotion: Senator Daniels moved HB698 DO NOT BE CONCURRED IN.The motion failed, and the committee asked the vote to be
reversed to reflect the bill BE CONCURRED IN.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 6DATE 032085BILL NO. HB698

STANDING COMMITTEE REPORT

MARCH 20

85

19.....

MR. PRESIDENT

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

having had under consideration..... **HOUSE BILL** No. **860**

THIRD reading copy (**BLUE**)
(SHAW) color

**STATE LIBRARY TO IMPLEMENT NATURAL RESOURCES INFORMATION SYSTEM
AND NATURAL HERITAGE PROGRAM**

Respectfully report as follows: That..... **HOUSE BILL** No. **860**

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXX~~

SENATOR DOROTHY ECK

Chairman.

STANDING COMMITTEE REPORT

MARCH 20

19.85

MR. PRESIDENT

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE BILL** No. **698**

THIRD
(MOHAR) reading copy (**BLUE**)
color

**DETAILS METAL MINE APPLICATION AND RECLAMATION PLAN REQUIREMENTS
AND STATE'S ACTIONS**

Respectfully report as follows: That **HOUSE BILL** No. **698**

BE CONCURRED IN

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XXXXXXXXXX

SENATOR DOROTHY ECK

Chairman.

STANDING COMMITTEE REPORT

MARCH 20

1985

RESIDENT

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE BILL** No. **637**

THIRD reading copy (**BLUE**)
(FULLER) color

REVISE ENFORCEMENT PROCEDURE FOR HARD-ROCK ANNUAL FEES AND REPORTS

Respectfully report as follows: That **HOUSE BILL** No. **637**

BE CONCURRED IN

ENDPAGE

XXXXXXXXXX
DO NOT PASS

SENATOR DOROTHY ECK

Chairman.