

MINUTES OF THE MEETING
NATURAL RESOURCES SUBCOMMITTEE ON THE LEGACY PROGRAM
SB277 and HB913
March 27, 1985

The third meeting of the Senate Natural Resources subcommittee on the Legacy Program was called to order by Chairman Mohar at 12:05 p.m., on March 27, 1985, Room 405, State Capitol Building.

ROLL CALL: The following Senators were present: Senator Mohar, Senator Eck, Senator Gage and Senator Weeding. Mr. Bob Thompson, staff researcher, was also present.

Chairman Mohar opened the hearing by stating it is the consensus of the Long-Range Building Committee the earmarking contained in HB913 is not desirable, since they have experienced problems in the past with the earmarking of funds. Chairman Mohar feels a prioritized list will be sufficient and a process for taking applications for funds will be initiated.

Mr. Gene Huntington, representing the Governor's Office, stated his idea is to make reference to the specific policy goals and decide whether these goals will be set by each session or by interim committees. A list of priorities could be set by each legislative session, or the Environmental Quality Council could submit a list of programs to be considered at the beginning of each legislative session.

Chairman Mohar requested the subcommittee members review amendments drafted by Mr. Thompson (Exhibit 1). These amendments omit private parties from being eligible for funds and combine the four categories into one. The water development program will be a separate category, and private parties will be able to apply for these funds. Chairman Mohar was concerned a private party could apply for state funds and then receive federal money to match. Chairman Mohar feels if this were the case, the State would be taking over a private individual's responsibility. Mr. Thompson reminded the subcommittee the amendments proposed by Representative Brown to HB913 would make certain the responsible party is liable for clean up.

Senator Eck stated if Anaconda was proven liable under common law, they would be ineligible to apply for funds as provided in proposed amendment No. 10 submitted by Representative Brown. Senator Eck suggested putting in language which applies to land damaged by natural resource extraction.

Chairman Mohar asked the subcommittee to address amendment 3, proposed by Chairman Mohar addressing the problem of earmarking for a prioritized list of projects. By eliminating earmarking,

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 032985

HB913

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the 6 percent allocated for hazardous waste and the 30 percent allocated for water development will be lost. Senator Eck stated this problem could be addressed by eliminating the categories. Senator Gage felt by doing this, earmarking would be left in the bill.

Chairman Mohar suggested deleting the words "process, use, or development" on page 12, line 24, because he feels this language relates to MHD.

Mr. Thompson reviewed the amendments proposed by Representative Brown, explaining to the subcommittee the first amendment deals with when projects are evaluated for funding eligibility. The second amendment provides a severability clause for protection in the event a lawsuit is filed. The other amendments are the same amendments representative Brown submitted to the committee. Senator Eck stated she has problems with the use of "qualified" in amendment 4. Chairman Mohar agreed, stating "qualified" is too vague.

Chairman Mohar requested Mr. Thompson explain the differences between SB277 and HB913 regarding the issue of liability. Mr. Thompson explained the clause "or under common law" proposed for HB913 will provide that a company with a lawsuit pending against it will not be eligible for funding. It would be unlikely that a mining company which was started after the environmental laws went into effect would be eligible for funding.

Mr. George Ochenski, representing the Environmental Information Center, stated there are times when a person may be liable for damages but cannot be located. Mr. Ochenski feels the money should be available to address the problems, but it should not be the intent of the program to clean up damage done to private property by private persons. Mr. Ochenski also pointed out the feasibility of doing this would have to be determined by the acre value of the property and whether the value would be enhanced.

Chairman Mohar stated it is difficult to remove earmarking from HB913, and he feels SB277 is a much cleaner bill if the committee decides to do away with earmarking.

Senator Eck moved the subcommittee recommend the committee adopt the amendments proposed by Representative Brown, with the exception of No. 4.

Senator Gage stated he had problems with the first amendment proposed by Representative Brown, since this will create jobs which, at the present time, cannot be pinpointed. Senator Eck feels projects which will create employment should be given encouragement.

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Senator Eck made a substitute motion the subcommittee recommend to the committee that amendments 1-10, excluding No. 4, be adopted. The motion carried.

Senator Eck moved the subcommittee recommend to the committee that proposed amendments 1 and 2, page 4, be adopted. The motion carried.

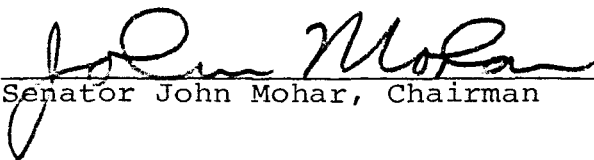
Chairman Mohar also had proposed amendments for the subcommittee's review, but requested the subcommittee look at these at a different time, since he wanted to know the committee's feelings towards earmarking funds.

Senator Eck explained that her proposed amendments 10-16 change the word "mineral" to "natural resource," because Senator Eck feels "mineral" is too narrow. Natural Resource will include water development.

Senator Gage inquired whether "natural resource" was defined in HB913. Senator Gage is concerned because he has always felt the young people of Montana were a natural resource. Mr. Thompson stated he would define natural resource.

Senator Eck stated there are three ways of addressing the Legacy Program: (1) Using a sliding scale for determining funding; (2) using Brown's amendments and earmarking; or (3) using no earmarking at all.

The subcommittee decided to present the amendments recommended for adoption to the committee. The meeting adjourned at 1:09.



Senator John Mohar, Chairman

Senate Natural Resources Subcommittee on HB 913:

Amendments Adopted By the Subcommittee:

1. Page 5, lines 10-11.
Following: "session"
Strike: "a prioritized list of projects that he recommends to receive grants or loans under the Montana mineral legacy program"
Insert: "all projects determined eligible for grants or loans under the Montana mineral legacy program with his recommended priorities"
2. Page 3, following line 8.
Insert: "(6) "Public benefits" means those benefits which accrue to the citizens as a group and enhance the common well-being of the people of Montana."

Proposed Amendments to HB 913 (Senator Eck):

Insert the policy expressed in 15-38-102 (Resource Indemnity Trust Tax) to insure that the policies do not conflict.

1. Page 1, line 25.
Following: "purpose."
Insert: "It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources."
2. Page 2, line 12.
Following: "economy"
Strike: "based on natural resource development"

The following amendments are designed to insure funding for data resource collection systems and for implementing recommendations of standing and interim legislative committees.

3. Page 8, following line 13.
Insert: "(2) The legislature [shall] [may] appropriate funds it determines necessary for resource and data management by the Montana water resources research center, the Montana groundwater information center, the department of natural resources and conservation's water resource data collection system, and the state library's natural resource information system and natural heritage program."
(3) The legislature [shall] [may] appropriate funds it determines necessary to implement recommendations of standing and interim legislative committees, provided the recommendations promote projects or activities consistent with the policy and purposes stated in [section 2]."
Renumber: subsequent subsections.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 032785

BILL NO. HB 913

A range of percentages is proposed to allow for the variety of projects that will be funded by the legacy program in future bienniums. These amendments allow an area to receive less funding if few quality projects are proposed in that area during a biennium and to receive more funding if several quality projects are proposed.

4. Page 8, line 18.
Strike: "37%"
Insert: "30 to 45%"
5. Page 8, line 20.
Strike: "37%"
Insert: "30 to 45%"
6. Page 8, line 22.
Strike: "15%"
Insert: "10 to 20%"
7. Page 8, line 24.
Strike: "11%"
Insert: "6 to 12%"
8. Page 9, line 7
Strike: "5% of the total"
9. Page 9, line 8
Strike: "is"
Insert: "are"

Amendments 10 through 16 change the name of the mineral reclamation and research program to the natural resource reclamation and research program.

10. Page 11, line 19.
Strike: "Mineral"
Insert: "Natural resource"
11. Page 11, line 20.
Strike: "mineral"
Insert: "natural resource"
12. Page 11, line 22.
Strike: "mineral"
Insert: "natural resource"
13. Page 12, line 2.
Strike: "mineral"
Insert: "natural resource"
14. Page 12, line 5.
Strike: "mineral"
Insert: "natural resource:"

15. Page 12, line 6.
Strike: "mineral"
Insert: "natural resource"
16. Page 12, line 12.
Following: "mineral"
Insert: "or natural resource"

Amendment 17 allows further funding of the programs mentioned in amendment 3 if the programs propose special data collection projects. These projects would compete with other projects for funding.

17. Page 13, lines 5 and 6.
Strike: ", operation, and administration"
Insert: "of special data collection projects proposed by the Montana water resources research center, the Montana groundwater information center, the department of natural resources and conservation's water resource data collection system, and the state library's natural resource information system and natural heritage program."

The following amendment is designed to decrease the weight given to previously funded projects in the application evaluation process.

18. Page 13, line 19.
Strike: "promote"
Insert: "consider"

This amendment is designed to address the \$100 million cap and its dwindling value relative to inflation.

19. Page 17, line 18
Following: "million"
Insert: "in [1980] dollars"

This amendment would require an additional reporting to the legislature concerning the state water plan and the water reservation process.

20. Page 26, line 22
Following: "status"
Insert: "of the state water plan, the water reservation process, and"

Proposed Amendments to HB 913 (Senator Mohar):

1. Page 4, line 3.

Strike: "person or"

2. Page 4, line 6.

Following: "program."

Insert: "Persons may submit an application only for those projects which fall within the water development program policy, objectives and limitations stated in 85-1-601, 85-1-602, and 85-1-604."

3. Page 7, following line 23.

Insert: "[(3) An annual appropriation of \$200,000 is made from the mineral legacy account to the environmental contingency account.]

(4) Appropriations may be made from the Montana mineral legacy account for the following purposes:

(a) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the mineral legacy program;

(c) grants, loans, and allocations to implement mineral legacy program objectives, including:

(i) grants and loans for water development projects;

(ii) grants for for mineral reclamation and research projects;

(iii) grants for renewable resource development projects; and

(iv) allocations for hazardous waste management."

Subcommittee consideration: 6% hazardous waste and 30% water development allocations will be removed. Should they be inserted?

4. Page 7, line 24, through Page 9, line 17. Strike: Section 7 in its entirety.

5. Other changes will be required to implement these amendments.

Additional Proposed Amendments to HB 913 (Representative Brown):

1. Page 14, following line 2. *following line 2. following line 2. self-sustaining.*

Insert: "(e) consider the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and"

2. Page 32, following line 9.

Insert: "NEW SECTION. Section 31. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections.

HB 913 Amendments
Rep. Dave Brown
Senate Natural Resources Committee
March 15, 1985

Insure that the Legislature does not give funds directly to private parties; funds would first be appropriated to DNRC as is done for private projects under the existing water development program.

1. Page 5, line 13.
Following: "appropriation"
Insert: "to the department"

Remove requirement that DNRC make rules defining liability for mineral reclamation projects.

2. Page 6.
Following: line 17
Insert: "and"
3. Page 6, lines 18 through 25.
Strike: subsection (7) in its entirety
Renumber: subsequent subsection

Permit funds to be shifted between project categories if not enough qualified applications are received to utilize all funds allocated to a specific project category. Projects eligible for such a fund shift must be "exceptionally well qualified" or the unexpended funds will simply revert to the legacy account.

4. Page 9.
Following: line 10
Insert: "(4) If qualified proposals are not received to meet the allocations set forth for any category in subsection (3), remaining funds available for expenditure may be recommended by the department and allocated by the legislature for exceptionally well qualified projects in another category. If no such projects remain to be funded, unallocated funds in any category must remain in the Montana mineral legacy account."
Renumber: subsequent subsections

Specify that any fees received by DHES from users of hazardous waste facilities be used for hazardous waste management.

5. Page 9.
Following: line 14
Insert: "(5) Any fees collected by the department of health and environmental sciences from users of any facility funded under subsection (3) (d) (ii) must be allocated to the department to pay operational costs of such facilities or, if such operational costs are adequately funded, to obtain matching funds under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Fees collected in excess of these needs must be deposited in the Montana mineral legacy account."
Renumber: subsequent subsection

Clarify details relating to the administration of the Governor's environmental contingency account; specify that interest from this account accrues to the entire mineral legacy account.

6. Page 9, line 19.
Following: "(1)"
Insert: "There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the office of the governor. (2)"
Strike: "(3)"
Insert: "(5)"
7. Page 9, lines 22 and 23.
Strike: "controlled" on line 22 through "governor" on line 23.
8. Page 9, line 24.
Strike: "(2)"
Insert: "(3)"
9. Page 10.
Following: line 21
Insert: "(4) Interest from funds in the environmental contingency account accrues to the Montana mineral legacy account."
Re-number: subsequent subsections

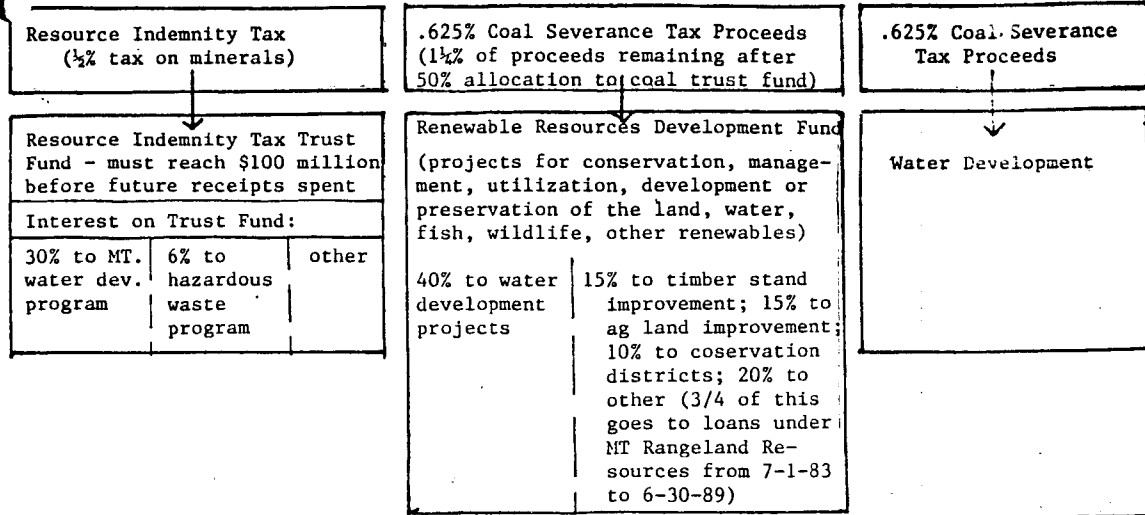
Provide a standard of liability for DNRC to apply when determining whether a project should be eligible for a grant through the Mineral Reclamation and Research Program.

10. Page 14, lines 7 through 9.
Strike: "a" on line 7 through "liability" on line 9 ^{for}
Insert: "the obligations or liabilities of any person under federal or state law, including common law, with respect to reclamation of mined land or to releases of hazardous substances or other pollutants or contaminants"

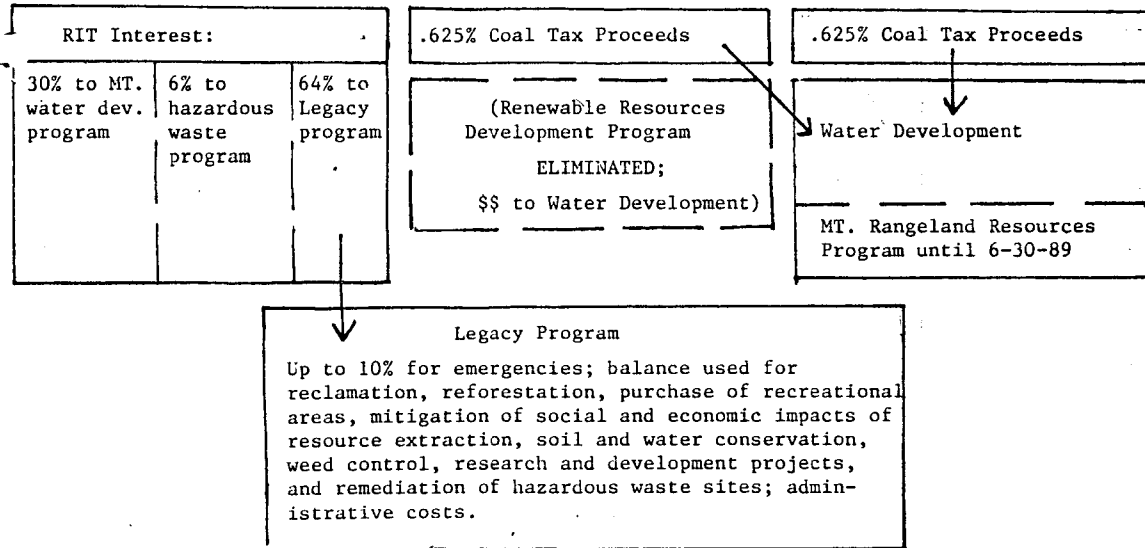
relieve the person of
any obligations or liabilities

LEGACY PROGRAM PROPOSALS

Currently:



Under SB 277 (Blaylock):



Under HB 913 (D. Brown):

