

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on January 30, 1989, at 3:04 p.m.

ROLL CALL

Members Present: All members except:

Members Excused: Rep. Harper

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: REP. RANEY announced that the committee will be hearing 3 bills on both Wednesday and Friday of this week.

HEARING ON HB 362

Presentation and Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte, stated that he was carrying the bill for both the Department of State Lands (DSL) and the Department of Health and Environmental Sciences (DHES). He said that under the Federal CERCLA regulation, through which the state and federal government are attempting to identify and clean up areas of hazardous waste contamination, there are some instances where property must be condemned before the necessary reclamation begins. He stated that the bill addresses the condemnation and sale of those parcels of land.

REP. BROWN stated DHES does not have condemnation authority, so the lands are condemned by the federal government, and the state must then accept title to these lands. Section 77-1-211, MCA, prohibits this acceptance of title without legislative authority. This has caused delays in the clean-up process in the Mill Creek area in Silver Bow County. This bill would allow the state, without legislative authorization, to accept title to

lands condemned by the federal government under the Superfund Act.

List of Testifying Proponents and What Group They Represent:

John North, Interim Commissioner, Department of State Lands

Tom Eggert, Department of Health and Environmental Sciences, Legal Division

List of Testifying Opponents and What Group They Represent:

None

Testimony:

JOHN NORTH, DSL, testified in favor of the bill (EXHIBIT 1). He stated that the statute addressed, Section 77-1-211, MCA, had recently created a problem in the administration of the Superfund law because the state couldn't acquire title to lands condemned by the federal government. Other means were used to acquire title on a one time only basis in the case of the Mill Creek area. In addition, he said the bill would amend section 77-2-302, to allow the state to subsequently dispose of the property.

TOM EGGERT, DHES, testified in favor of the bill (EXHIBIT 2).

Questions From Committee Members:

REP. CLARK asked for clarification of the location of Mill Creek. He also asked if, in the process of acquiring title to the property, the state would then be responsible for the clean up, and Mr. Eggert said that the responsibility for the clean up lies with ARCO, and that the title to the land would be with ARCO.

REP. KADAS asked if there were any way that the state could stuck with the liability of the cleanup, and Mr. Eggert answered that there was a remote possibility and that there was one outstanding court case on this subject. Rep. Brown answered that he was comfortable that the state would not be held liable. He stated that DHES advised the city of Butte and Silver Bow county when the possibility of local liability with the clean up there arose. They provided guidelines to insure that the state would never be in a position of liability.

REP. ADDY asked why the Environmental Protection Agency (EPA) could not pass property directly to the party involved in performing the clean up, and Mr. Eggert replied that it was federal regulation.

REP. KADAS asked why the effective date was immediate. Rep. Brown replied that it was thought that, with current Superfund activity, an immediate date was necessary. Mr. Eggert added that there was not any activity pending.

REP. RANEY asked if there would be any objection to a July 1 effective date, and Mr. Eggert said no. Rep. Raney asked the end result of doing nothing with this issue. Mr. Eggert said there would be few cases where this authority would be necessary. However, if a similar case were to come up, the department would have to come to the Legislature for approval. This bill provides for approval in advance.

Closing by Sponsor: REP. BROWN closed, urging the committee to take a serious look at this legislation. He stated that it was necessary to prevent any possibility of federal dragging of feet.

DISPOSITION OF HB 362

Motion: REP. ADDY moved DO PASS.

Discussion: None

Amendments and Votes: REP. KADAS moved to strike Section 5.

REP. ROTH agreed with the amendment. The motion CARRIED with one dissenting vote.

Motion: REP. ADDY moved to DO PASS AS AMENDED.

Discussion: REP. COHEN requested clarification that as amended, the effective date would be October 1. Rep. Raney said yes.

Recommendation and Vote: A vote was taken on Rep. Addy's DO PASS AS AMENDED motion, and it CARRIED unanimously.

DISPOSITION OF HB 327

Hearing 1/27/89

Motion: REP. GIACOMETTO made a motion to RECONSIDER committee action on HB 327.

Discussion: REP. RANEY brought it to the committee's attention that by amending HB 327 on 1/27/89, the committee had made a mistake and had undone the intent of the bill. John North, DSL, was requested to explain the problem.

MR. NORTH said that the problem was on Page 2, Line 8, where the language "regarding the lease" was inserted following "litigation". In state law for oil and gas leases, each section has to have one lease; therefore, many operations have multiple leases. He suggested language in keeping with the committee's intention: following "litigation", insert "regarding the lease or another lease in the immediate area held by the same lessee".

REP. COHEN asked Mr. North if this bill was introduced in response to the problem with Cenex's leases on the North Fork. Mr. North said that it was and that the requirement for an EIS, required by the District Court, was now under appeal. If the Supreme were to hold against the state, the state would then have to prepare an EIS, which would take years, and extend beyond their original lease.

Amendments and Votes: REP. GIACOMETTO moved the new amendment as proposed by Mr. North. The motion CARRIED unanimously.

Recommendation and Vote: REP. GIACOMETTO moved DO PASS AS AMENDED on HB 327. REP. COHEN suggested that in keeping with committee policy, the committee should wait until Wednesday, February 1, to take final action in order to avoid making any further mistakes. There was agreement on this point, and the Chairman decided to take executive action at that time.

REP. GIACOMETTO withdrew his motion.

ADJOURNMENT

Adjournment At: 3:30 p.m.



REP. RANEY, Chairperson

BR/cm

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DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date

1-30-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper			✓
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

STANDING COMMITTEE REPORT

January 30, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 362 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 10.
Following: "1980;"
Insert: "AND"
2. Title, line 11.
Strike: "; " through "DATE"
3. Page 4, lines 15 and 16.
Strike: section 5 in its entirety

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JAN 1-30-89
HB 362
Testimony of John F. North

Interim Commissioner of State Lands

House Bill 362

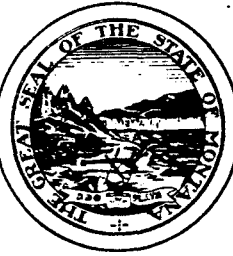
Section 77-1-211, MCA, currently prohibits the state from accepting land from the United States if the land was acquired through condemnation procedures unless the Legislature authorizes the state to obtain the property. The requirements of this section became an issue recently when the EPA and the state decided the only way to protect the health of seven families living in Mill Creek was to acquire their property so that clean-up could begin. The Department of Health does not currently have condemnation authority, so the federal government condemned the property under the Federal Superfund Act. In turn, the federal government stated that the state must accept title to the lands which were condemned. However, the state was unable to accept title to this property because of this statute. House Bill 362 would allow the state, without Legislative authorization, to accept title to lands that have been condemned by the federal government under the Superfund Act.

In addition, the bill would amend section 77-2-302, MCA, to allow the state to subsequently dispose of the property in accordance with Superfund procedures.

The Department recommends approval of this bill.

1-30-89
48362

**DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES**



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DHES TESTIMONY ON HOUSE BILL NO. 362

DSL and DHES Sponsored Bill

The State of Montana and the Federal Emergency Management Agency (FEMA) recently cooperated in the relocation of seven families subject to continual exposure to hazardous substances in Mill Creek.

The community of Mill Creek was located downwind of Smelter Hill in Anaconda, and a decision was made that the only way these families could be adequately protected was for them to relocate. The Department of Health and Environmental Sciences does not have condemnation authority so FEMA would use its authority. However, MCA Section 77-1-211(2) prevents the State from accepting land condemned by the State without legislative approval. This bill would allow the State to accept, and subsequently to dispose of, land condemned because of the presence of hazardous substances.

It is not the intent of DHES to accept and retain any land which is contaminated with hazardous substances. The arrangement envisioned at the Mill Creek site would be a model for future reference. That arrangement foresaw FEMA condemning any property that the State and EPA decided must be acquired. FEMA would transfer that property to the State, and the State would immediately transfer that property to Atlantic Richfield Company, the party responsible for the cleanup.

The law, as it currently exists, does not presently allow such an exchange to occur. This bill would enable the State to participate in this type of arrangement.

House Natural Resources SUBCOMMITTEE

DATE 1-30-89

HLB 362

[illegible]

FORM CS-33A
Rev. 1985

