

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on March 3, 1989, at

ROLL CALL

Members Present: All present except:

Members Excused: Rep. Addy

Members Absent: None

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

Announcements/Discussion: None

HEARING ON SB 29

Presentation and Opening Statement by Sponsor:

SEN. DEL GAGE, Senate District 5, said the bill came about in response to a need to clarify the fact that the Board of Oil and Gas Commission had the authority over plugging seismic shot holes. He said they had rules to that effect since 1977 without the expressed authority.

Testifying Proponents and Who They Represent:

Dee Rickman, Board of Oil and Gas

Proponent Testimony:

DEE RICKMAN testified that the Board of Oil and Gas, the requesting agency for the legislation, supported the clarification of their rule making authority in the area of seismic regulations.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor: SEN. GAGE closed.

DISPOSITION OF SB 29

Motion: REP. GILBERT moved the bill BE CONCURRED IN.

Discussion: REP. GILBERT said the Board of Oil and Gas had already been writing the rules for years, and then discovered they lacked the authority. This bill provided that authority.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously, with Rep. Gilbert agreeing to carry the bill on the floor.

HEARING ON SB 223

Presentation and Opening Statement by Sponsor:

SEN. TOM KEATING, Senate District 44, opened on the bill, which dealt with the Major Facility Siting Act. He said the act addressed facilities that converted coal to some other form. He said that no new facilities had been built under the act, perhaps due to the difficulties of the regulations. He said the act set thresholds regarding the size of the facility, the amounts of coal and electricity, and the size of the transportation. Under the act, he said the need for the product must be proven to the Department of Natural Resources and Conservation (DNRC) before a certificate was issued. In addition, it must be proven that there was not another product in the market place that could do the same job.

SEN. KEATING said possibility of converting coal to something other than electricity was a real potential. He gave examples of the conversion of coal into fertilizer or natural gas. He said the bill dealt with the two procedures mentioned previously, and only with non-utilities; i.e., operators that would convert coal to a form other than electricity. He said the bill would exempt those operators from the provisions for proving need for the product and proving that another product was not available for the same job. He said these were business decisions better made by the consumer, and in the market place, than by government. He suggested that the bill could benefit the economy of Montana by encouraging development and providing jobs.

Testifying Proponents and Who They Represent:

James Mockler, Montana Coal Council
Ken Williams, ENTECH and Western Energy Company

Proponent Testimony:

JAMES MOCKLER first told the committee what the bill did not do. It did not exempt any facility from the environmental considerations or requirements of the Facility Siting Act except for proving need for the facility or need for the product. He said that need was a subjective word, and that the government should not be in the position of determining need. He said that was a corporate decision. MR. MOCKLER submitted that the bill could impact the business climate, but would in no way negatively impact the environment.

KEN WILLIAMS said the bill could send a positive signal to potential investors in non-utility energy facilities. At the present time, he said potential investors faced the unenviable process of being second guessed by the Board of Natural Resources as to the need for the project. He said he believed that the market place should determine that. He added that the Facility Siting Act impacted primarily facilities using coal products. He said he could see no difference in the potential environmental and social impacts from other kinds of developments in the state. He said that non-utility energy conversion facilities should be treated similarly to other businesses in the state, and should not face additional hurdles.

Testifying Opponents and Who They Represent:

Ellen Pfister, Northern Plains Resource Council
Donna Small, Montana Democratic Party
Chris Kaufmann, Montana Environmental Information Center
Helen Waller, self and McCone County Agricultural Protection Organization
Kim Wilson, Montana Chapter, Sierra Club
Ron De Yong, Montana Farmers Union
Lyle Quick, self, McCone County
Virginia Jellison, Montana Low Income Coalition
Earl Reilly, Montana Senior Citizens Association

Additional Opponent Testimony:

Butch Turk, Missoula (EXHIBIT 8)
Ellen Pfister, Northern Plains Resource Council (EXHIBIT 9)

Opponent Testimony:

ELLEN PFISTER, a rancher in the Bull Mountains and a member of the Bull Mountain Land Owners Association, testified as set forth in EXHIBIT 1. She digressed from the written

statement, saying that the Facility Siting Act was originally passed into law in response to the North Central Power study, issued by the Bureau of Reclamation. This study predicted a massive development in eastern Montana. The Facility Siting Act was passed not to stop that development, but to give the state and its people a chance to have sound information in order to prepare for and accommodate such development.

DONNA SMALL, Vice Chairwoman of the Montana Democratic Party, testified as set forth in EXHIBIT 2.

CHRIS KAUFMANN testified as in EXHIBIT 3.

HELEN WALLER, a farmer/rancher and member of an affiliate organization of the Northern Plains Resource Council.

KIM WILSON testified that the Major Facility Siting Act had a dual purpose, environmental protection and community stability. As drafted, this bill would severely limit the ability of the state to meet those two goals. It would also limit the ability of the state to control its own future and development. He said the sponsor presumed that business would make the right environmental and community decisions. MR. WILSON submitted that time and time again, the opposite was experienced with large industrial developments in the state and in the region. Regarding other environmental laws being in place and providing the protection necessary even with this diminishment of the Siting Act, MR. WILSON reminded the committee that Sen. Keating had another bill which would limit the ability of the state to regulate environmental matters by limiting the MEPA analysis. He suggested that both of these bills would deliver a one-two punch to environmental matters in this area of development, and would essentially hand industry a blank check.

MR. WILSON distributed a summary of the State of the States report mentioned in the testimony of Chris Kaufmann (EXHIBIT 5). He reiterated that Montana ranked 35th out of 50 in the area of environmental protection laws and regulations, and specifically in the area of regulating growth to protect the environment, the state rated very low.

RON DE YONG said one of the reasons an examination of need was in the Major Facility Siting Act was because the state wanted major facilities to come into the state and stay long term. He said that businesses did not always look at that the same way the state did. Business would do what was profitable for business, which could often mean short term stays, while Montana wanted them to do what was right for Montana. Regarding subsidies, the length of time the subsidies were available was important, and should be required for a long period time. He said the Major Facility Siting Act was good legislation and opposed any exceptions to it.

LYLE QUICK, farmer/rancher, McCone County, and retired county Commissioner, testified as set forth in EXHIBIT 6.

VIRGINIA JELLISON, representing a number of grass roots organizations across the state with over 6,000 members, all concerned with issues of social justice and peace, stood in opposition to the bill. She said her organization felt strongly that industries needed to be good citizens as well as good businessmen. She supported the right of Montana citizens for public review of the environmental and social impact of a development in their community. She said synfuels plants were appropriately included in the Major Facility Siting Act specifically because of their considerable impact on local communities. She urged a DO NOT PASS on SB 223.

EARL REILLY, President of the MSCA, testified as set forth in EXHIBIT 7. He mentioned Colstrip 3 and 4, which was a business decision. He said California got the cheap power and Montana got the business in that deal.

ALAN DAVIS, DNRC, appeared as neither opponent nor proponent in order to explain how the department differentiated between types of utilities in the Siting Act. He said they had two different categories; one was the service area utilities, and the definition in this bill mimicked that definition; another category of utilities was the competitive utilities, those that build facilities to compete in the open market place. He said there was a less stringent test for these than the test that the service area utilities had to meet in order to get a certificate. The question before the committee was whether or not they wanted to keep the current standard, which was a less stringent standard or go to no standards at all.

Questions From Committee Members:

REP. COHEN asked about the definition of certificate as it appeared in the bill. SEN. KEATING replied that a certificate for a non-utility only dealt with environmental compatibility, whereas in the case of a utility it would require a certificate of environmental compatibility and public need. REP. COHEN said that the crucial issue was then whether or not it was a utility or not. SEN. KEATING said yes, and that the reason a certificate of need would be required for a utility was because they had a monopoly, and the rate payers would be paying for the facility in their rates. He said the certificate of need procedure would protect them from being gouged by unnecessary facilities.

REP. COHEN said he had heard it asserted that an out-of-state facility could build a facility in Montana and avoid the certificate of need requirement if all the power were sent out of state. SEN. KEATING said there may be some limitation on that if they were a transporter.

- REP. COHEN asked the same question of Alan Davis. MR. DAVIS said that was in the original draft, and that the department had worked with Sen. Keating to change the definition so that was no longer the situation. Therefore if a facility were built to serve a load in California, it would still have to satisfy the need requirement under this bill because they were transporters.
- REP. COHEN asked the same question of Chris Kaufmann. She said there had been changes in the definition of utility, and therefore she may have made that argument in error. She added that if Montana wanted to become the boiler room of the nation, it was a possibility, and whether or not that benefited Montana was arguable.
- REP. BROOKE asked Alan Davis if any business had been turned away on the basis of need. MR. DAVIS said that had not been done, and he had no idea how many businesses may not have come to Montana because of the Siting Act.
- REP. O'KEEFE asked about the language struck in the bill which was reinserted by the committee in the Senate. SEN. KEATING said the department and Montana Power Company worked out a definition of utility, which was what was in the bill. REP. O'KEEFE asked why "gas, hydrocarbon products" were combined into one word, "natural gas". SEN. KEATING said hydrocarbon was oil and coal, whereas natural gas was a separate product. ALAN DAVIS clarified that the department could not envision anyone who would produce hydrocarbon for resale.
- REP. RANEY asked if Sen. Keating's intent was that if a business were to locate near the coal fields, the impact on the community and the environment should be a business decision. SEN. KEATING said no, that just the need for the product would be the business decision. REP. RANEY suggested that would be the case together with the MEPA bill that Sen. Keating was introducing. SEN. KEATING replied that he was not interfering with the environmental protection procedure under the Montana Environmental Policy Act in that other bill, nor did he interfere with the environmental protection procedure in the Major Facility Siting Act amendment he was proposing in this bill. He cited the need for a certificate of environmental compatibility that would be needed by a facility. REP. RANEY said that if the facility was other than a public utility, they would not need a certificate of need, and there would not be public input. SEN. KEATING said there were means for public input on the environment. Regarding impacts on the lifestyle, that would be a decision of majority vs minority, with the DNRC handling the certification process.
- REP. COHEN asked for clarification of the phrase that the board may not consider alternative products from the facility other than those proposed by the applicants. SEN. KEATING said he had alluded to converting coal to fertilizer in his

opening. He said fertilizer could be made from different products than coal. In considering the certificate for this facility for fertilizer, the board, under this provision, could not consider that there was no need for the fertilizer because there was an alternative product that would compete with the product being proposed. There continued a discussion of this language, and the distinction between alternative products and byproducts.

REP. BROOKE suggested language that would distinguish byproducts from alternative products. SEN. KEATING said the drafter had said that this read that the private investor would not have to prove that there was not a competitive product out there to do the same job. He said Rep. Brooke had answered it quite well.

REP. COHEN referred the same question to Lyle Quick. LYLE QUICK said the committee was missing the point. He said the reason to prove need first was because of the impact of the failure of the plant on the social structure of the community or county. He said the local taxpayer would be left holding the bag. He said it was very important to prove on the basis of need that the facility would sustain itself and stay there. He cited the example of Beulah, North Dakota.

REP. COHEN asked if these cases were both cases which were allowed subsidies, without which they would have never gone in. MR. QUICK agreed. REP. COHEN suggested that if the product were to be subsidized, the full requirements of the act be required. He asked if that was more acceptable to Mr. Quick.

MR. QUICK said he could not answer that, but that if any plant were cited anywhere in the state, the merits of it should be that it would hold its own and sustain itself. That was why he hated to see need removed from the Siting Act. He added that coal could not be converted to anything because oil was too cheap, and that was reality.

REP. GILBERT asked if Mr. Quick had visited the synfuel plant in Beulah, ND, and if he knew its current status. MR. QUICK said he had not visited it lately, but knew it had been bought by Basin Electric. He said he did not know the terms of the sale. REP. GILBERT informed him that Basin Electric was already operating the plant as well, and suggested that the difficulties mentioned by Mr. Quick were not happening at all. MR. QUICK countered that the bad thing was that the tax payers of this nation had already spent \$2 billion on that plant, and that that expenditure would continue because it cost 7 times as much to produce natural gas from coal than to take it out of the ground.

REP. GILBERT asked if it would change the way these things worked if a private entity, with private monies and no subsidies,

came in and built the plant, lost money, and then sold it to another private entity. MR. QUICK said that synfuel production was not economically feasible.

REP. HANNAH asked Sen. Keating if he would object to an amendment that if government subsidies were involved, the facility would fall under the complete provisions of the law. SEN. KEATING said he would not object. He said they had attempted to do this in the Senate, but were unable to do so because subsidy was too difficult to define.

REP. HANNAH asked Alan Davis about the problems with the definition of subsidy. MR. DAVIS said a subsidy was impossible to define. REP. HANNAH asked if in their discussions on subsidies, they had discussed any kind of percentage breakdown the subsidy made up of the total cost of a project. MR. DAVIS said no.

JAMES MOCKLER suggested that the subsidy could be defined by the presence of a price guarantee on the product of the facility.

REP. BROOKE suggested language to clarify that alternative products were meant, not byproducts. SEN. KEATING replied that while that language would work, he felt that the meaning was clear when read within the context of the entire paragraph.

Closing by Sponsor:

SEN. KEATING said that the state needed to rebuild its economy, and could possibly do so with this bill. He said there was talk of two facilities doing something with coal other than electricity. He reminded the committee that coal in the ground was worthless. He cited Colstrip and said that reclamation was a reality. He said the environmental protections were here, and that we did not need to worry about damage to the environment.

SEN. KEATING argued the issue of subsidies, citing the example of subsidized agriculture and its desertion of rural Montana. He added that the state had not seen a desertion by industry that impacted a community, and that coal had provided a tax base for communities. He closed, saying that the bill amended out 2 unnecessary procedures from the Siting Act, which could open the door to opportunities for development, production of new wealth, jobs and a resurgence in population.

SEN. TOM KEATING, Senate District 44, opened on SB 243 which had been recommended by the Legislative Audit Committee. He said that under current law, energy conserving investments were allowed tax credits or deductions, for which the Department of Revenue had to provide a form. In actuality, he said, the investment for businesses would be a tax deduction in the normal course of accounting. Therefore, the form was not needed. This bill amended the requirement that the department provide the form to businesses because it was not necessary.

Testifying Proponents and Who They Represent:

John Northey, Office of the Legislative Auditor

Proponent Testimony:

JOHN NORTHEY stated that in 1977, this amendment had been included in the tax reform package, which did not pass. He said the Audit Committee had agreed to carry the bill in this session, a bill that was merely a clean-up of the language eliminating one form that does not change the tax treatment in any way.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. KADAS asked what would happen to the individual who had such a credit but who did not itemize. MR. NORTHEY said it would not change the treatment of the individual. The Department of Revenue was still required to provide forms, by which a tax payer could apply for a tax credit. This change only applied to corporate returns. Before a separate form had been required, but they were already able to claim it on their standard corporate return.

MR. ZACKHEIM asked if the title should be amended to accommodate Mr. Northey's last statement that it only applied to corporate returns. MR. NORTHEY said he did not care, and that the bill had been worked on by both Revenue and his office.

Closing by Sponsor: SEN. KEATING closed.

DISPOSITION OF SB 243

Motion: REP. SMITH moved the bill BE CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion on SB 243 CARRIED unanimously.

HEARING ON SB 3

Presentation and Opening Statement by Sponsor:

SEN. JOE MAZUREK, Senate District 23, opened on the bill requested by the Department of Revenue. He said the bill had been reviewed by the Revenue Oversight Committee prior to the session. He said the bill was primarily a housekeeping bill that amended the reporting and filing requirements for metal mine producers from quarterly to annually. This would eliminate the unnecessary paperwork in the form of the 3 advisory returns that had to be filed, since payments were made annually. The bill also extended the filing date from March 1 to March 31 to eliminate headaches for the department and the companies in the form of estimated returns due to timelines in the industry. The bill would change the penalty for late filing from 8% to 10% to make those penalties consistent with other penalties taxpayers have to pay. In the Senate, the bill was amended to clarify that the March 31 deadline in the bill applied only to metal producers, and not to other mineral producers. This clarification was made at the request of the industry.

Testifying Proponents and Who They Represent:

John Fitzpatrick, Pegasus Gold Corporation and the Montana Mining Association

James Mockler, Montana Coal Council

Proponent Testimony:

JOHN FITZPATRICK said the purpose of the bill was to reduce a paper load on the Department of Revenue. He said that by setting the payment date back, the filing of completed returns would be facilitated. He said there would be no fiscal impact and urged the committee's concurrence.

JAMES MOCKLER concurred with the previous proponent and supported the bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. O'KEEFE asked why the sponsor had not signed the fiscal note. SEN. MAZUREK said he had not signed it because there was no fiscal impact, and also due to the fact that there was some disagreement between the Department of Revenue and the budget office regarding fiscal impact. The budget office had said that the state might lose \$25,000. He repeated that the intent was not to change anything, and therefore no fiscal impact should be expected.

REP. O'KEEFE asked if the bill did give an additional month for the industry to pay the RIT. SEN. MAZUREK said for metal mine producers, it would delay the payment date for 30 days. He said the convenience to the Department of Revenue would outweigh any potential fiscal impact.

Closing by Sponsor: SEN. MAZUREK closed.

DISPOSITION OF SB 3

Motion: REP. SMITH moved the bill BE CONCURRED IN.

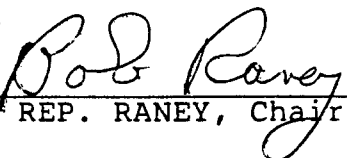
Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously, with Rep. Brooke agreeing to carry the bill in the House.

ADJOURNMENT

Adjournment At: 5:05 p.m.



REP. RANEY, Chairperson

BR/cm

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DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-3-89

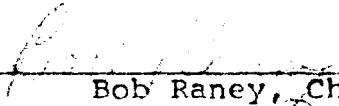
NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy			✓
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert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

STANDING COMMITTEE REPORT

March 4, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that SENATE BILL 29 (third reading copy -- blue) be concurred
in.

Signed: 
Bob Raney, Chairman

[REP. GILBERT WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 4, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that SENATE BILL 243 (third reading copy -- blue) be
concurrent in .

Signed: _____
Bob Raney, Chairman

[REP. KADAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 4, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 3 (third reading copy -- blue) be concurred in.

Signed: _____
Bob Raney, Chairman

[REP. BROOKE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

NORTHERN PLAINS RESOURCE COUNCIL

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STATEMENT AGAINST SENATE BILL 223

by

Ellen Pfister representing Northern Plains Resource Council
March 3, 1989

For the record, my name is Ellen Pfister. I'm here representing the Northern Plains Resource Council, an organization made up of 3,000 farmers, ranchers, and townspeople, primarily from rural Montana. I am a rancher in the Bull Mountains area north of Billings and a member of the Bull Mountain Landowners Association, an affiliate of NPRC.

The Major Facility Siting Act would be substantially altered if Senate Bill 223 is signed into law. The legislation changes the definition of "utility." This is significant because utilities are required by the Act to get a certificate of environmental compatibility and public need. The net effect of the amendments contained in this bill is to exempt certain types of major synthetic fuels plants from the public need certification.

It is also important to note that Senate Bill 223 effectively prohibits any assessment of the economic viability of

3-3-89

these huge facilities by the Board of Natural Resources, the Department, or any other interested and concerned parties, such as local governments. [Sections 5 and 7, amending 75-20-301(2)(c) and 75-20-501(2)(d)]

It would be foolish for the state to ignore the economic viability of a major synfuels project for these reasons:

1) Synfuels plants do not operate in a free market environment. They have been, and for the foreseeable future, will only be constructed with massive public subsidies in the form of grants and/or loan guarantees. Therefore, the developers, although they may be privately held corporations, are nevertheless, cushioned and insulated from the need to make hard-nosed financial assessments of the plants' viability.

2) Local communities and state governments, local developers and business interests, and local and state taxpayers have an enormous stake in the economic viability of these major facilities. Taxpayers will be bonding themselves for roads, schools, water treatment plants, hospitals, and numerous

other vital public facilities and services. If the private corporate developers decide the project is not advantageous, which has in fact happened twice - in Colorado and in North Dakota (Beulah's Great Plains Gasification plant and Exxon's Western Colorado oil shale project) - they can walk away from the project relatively unscathed. Not so, the town and the county, the hundreds of families who are without a livelihood, and the Main Street businessperson who expanded to serve a much larger community.

The nature of the synthetic fuels from coal technologies is such that the products are generally hydrocarbon fuels feedstocks, which may be processed and used to create a variety of endproducts ranging from fertilizers to jet fuel. A synfuels plant could produce a low BTU synthetic natural gas which could be in turn further refined or combusted for power generation. Many questions abound regarding these nascent technologies. The industry itself lacks much information on the processes, their efficiencies and costs of production.

Because of the experimental nature of the technologies and the tentative economics of the plants, it is all the more vital that the developers be accountable, as much as is practical, to

Ex. #1

3-3-89

the state permitting agencies and the communities involved. Synfuels plants are not "known quantities," like an oil refinery or an electric power plant. In fact, one might argue that comprehensive information is more vital in the case of synfuels plants than in some more traditional utility facilities.

Legislation to accomplish the goals of SB 223 has become a regular biennial feature of the Montana Legislature for the past ten years. I would urge you to reject this bill, as numerous of your predecessors have, and perhaps the message will settle in, once and for all, that exempting synfuels plants from key provisions of the Major Facility Siting Act is a bad idea.

Thank you for your attention.



EXHIBIT 2
DATE 3-3-89
HB SB 223

Testimony in opposition
to Senate Bill 223.
March 3, 1989
House Natural Resources Committee

Mr. Chairman and members of the House Natural Resources Committee.

For the record, my name is Donna Small and I'm Vice-Chairwoman of the Montana Democratic Party. It is on their behalf that I appear in opposition to Senate Bill 223.

The Montana Democratic Party has supported the Montana Major Facility Siting Act since it was first enacted. We come before you to reaffirm that support and urge that you quickly move to defeat this unnecessary piece of legislation.

Mr. Chairman and members of the committee, the Montana Major Facility Siting Act works. It allows the State of Montana, to balance the social and environmental costs of major facility construction against the public benefits to be gained by such construction, in other words, the need for such a facility.

The Montana Democratic Party submits there is a vital public interest in scrutinizing projects to insure that they are indeed viable and necessary, or State and Local governments will be vulnerable to the economic chaos that plagued Colorado and other Rocky Mountain states when the boom became bust. We ask you to please vote "do not pass" on SB 223.

Montana Democratic Central Committee • Steamboat Block, Room 306 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board

Bruce Nelson Chairman Fort Benton	Donna Small Vice Chairman Helena	Deborah Hanson Secretary Miles City	Rich De Jana Treasurer Kalispell	Gail Stoltz Executive Director Helena	Evan Barrett Nat'l Committeeman Butte	Sherlee Graybill Nat'l Committeewoman Great Falls
Boni Braunbeck Lewistown	Ralph Dixon Billings	Virginia Egli Glendive	Nancy Harte Helena	Chas Jeniker Butte	Rhonda Lankford Missoula	Debbie Lesmeister Helena
Richard Nellen Bozeman	Danny Oberg Havre	Jim Pasma Havre	Brenda Schye Glasgow	Mary Sexton Hamilton	David Smith Missoula	Bill Thackeray Havre
Kay Blehm Democratic Women's Club Billings	Marlene Egan Co. Chairs Assoc. Great Falls	Dennis Small Young Democrats Missoula	Sen. Bill Norman Missoula	Rep. John Vincent Bozeman	Sen. Fred Van Valkenburg Missoula	

TESTIMONY IN OPPOSITION TO SB 223

Mr. Chair, members of the committee, for the record my name is Chris Kaufmann, representing the Montana Environmental Information Center and its members across the state.

MEIC stands in strong opposition to this attack on one of the most important environmental laws on our books. The Major Facility Siting Act protects Montanans from the potential adverse affects of building and operating major energy facilities.

This bill will allow any private consortium on the open market ^{to} build any size energy facility without having to demonstrate need for the facility. It would allow Los Angeles Water and Power to build a mine-mouth power plant and get less scrutiny than Montana Power. It would allow Montana to become the boiler room for the energy hungry Southwest.

There is an idea out there that economic growth is at odds with a healthy environment. But the question is not whether our communities will grow--but how they will grow and at what cost. There is an idea that Montana has very strict environmental laws in comparison with other states. This is not the case. The State of the States report, which just came of the press, ranks all 50 states on 5 important environmental issues. One of those issues is how well the state's laws and programs address the impacts of growth on the environment. Only three states, Mississippi, West Virginia, and Arkansas, rank lower than Montana on this scale.

Proponents of this bill argue that the public should not interfere with or be concerned about the business decisions of private companies--that the market place will determine the wisdom of their decisions--that financial risk is sufficient ~~incentive~~ to ensure the viability of the project. But I say that the public does have an interest in such decisions. Communities spend a great deal of public money gearing up for a major boom in their local economy. They build roads, sewer lines, schools and other infrastructure for increased populations. They increase many public services. In addition, public resources are often committed to these facilities in the form of price support, loan guarentees, or interest rate subsidies. Often these projects are not viable without such subsidies. When projects are abandoned the local community suffers a tremendous economic upheaval. The siting of these major facilities must be viewed as a partnership between public and private sectors. The MFSA as it currently reads, accomplishes this.

Proponents will argue that all the environmental protections concerning the siting of these facilities have been left in place. This is not actually the case. The people of Montana always suffer environmental damage in the building and operation of major energy facilities. The environmental review process attempts to minimize the damage, but it can never take it away. Coal is still extracted, power lines still go up, etc. If the people of Montana are to suffer these impacts, we have a right to know that we will benefit from the activity. How do Montanans know they will benefit if there's been no determination of need? How will Montanan's benefit if the energy is shipped to LA? SB 223 destroys half the formula for evaluating the risks involved to a community in the siting of major energy facilities. We urge Do Not Pass on SB 223.

EXH.BIT. 4
DATE 3-3-89
HB SB 223

McCONE AGRICULTURAL PROTECTION ORGANIZATION

Circle, Montana
March 3, 1987

Chairman Raney and Members of the Committee,

My name is Helen Waller. My husband, Gordy, and I farm and ranch in McCone County, and I am here to testify in behalf of myself and the McCone Agricultural Protection Organization, an affiliate of the Northern Plains Resource Council.

Over the past several legislative sessions, attempts have been made to delete critical sections from the Major Facility Siting Act which are essential to the wise and prudent siting of facilities in Montana.

Again, I am here to express to you the importance of retaining the provisions of the Act which ensure a forum for local governments and citizens in proposed siting locations to interact in the siting process. The law in its present form provides that opportunity throughout the process of determining need and assessing alternatives.

If the "determination of need" provision were struck from the law, the Department and Board of Natural Resources would be denied the ability to gather information from which to assess the viability of the proposed facility. This inadequacy in laws of neighboring states accounts for the deplorable situations when "Private Enterprise" (subsidized heavily with taxpayer money) walked away from their projects, leaving taxpayers holding the bag and local communities in a state of havoc.

The Major Facility Siting Act does not deter any sound plans for locating plants in Montana, it simply ensures that the facility is, in fact, needed, and that reasonable alternatives have been considered, determining the proposed facility to be the best way to meet that need. The State of Montana should not allow its people to be subjected to needless social, economic or environmental impacts.

In closing, I would like to say that since the passage of the Major Facility Siting Act, continual attempts have been made to gut the bill. I have been here regularly to defend its integrity, and previous legislators have consistently and wisely rejected those changes. Senate Bill 223 is ill-conceived and not in the best interest of Montanans. I urge you to give a "do not pass" to Senate Bill 223.

Thank you.

Two coastal states top environmental group's ranking

WASHINGTON (AP) — California and Oregon are ranked highest while Tennessee and Louisiana are at the bottom in tackling environmental problems, an environmental group said Tuesday.

Montana ranked 35th among the 50 states, receiving moderate ratings for forest management and food safety, but very low marks for protection of drinking water, solid waste recycling and control of growth to protect industry.

The survey by Renew America, a private environmental and conservation organization, concluded, however, that while some states are moving to deal with certain environmental concerns, they lag behind in others.

For example, Maine was given the highest mark for dealing with water quality issues but fared poorly in forest management and only average in protecting food quality. While Oregon excelled in the overall ranking, it was considered only average in protecting food from pesticides and in its protection of drinking water.

The authors of the study also emphasized that it dealt with five environmental protection issues: forest management (Washington, best); solid waste recycling (Oregon); drinking water quality (Maine); food safety (Iowa); dealing with growth (Oregon).

"This year's analysis found significant initiatives in a few states to safeguard the environment, but the actions were the exception and not the rule," said Scott Ridley, who directed the project for Renew America.

The survey ranked the states numerically, with 50 being the highest possible when examining state

actions undertaken to deal with the five areas examined.

The report said the states with the best overall program aimed at protecting drinking water were Maine, Massachusetts, New Jersey, California and North Carolina. The states with the worst record were Arkansas, Nevada, Ohio, Tennessee and Louisiana.

It said the five states with the best programs for food safety were Iowa, California, Minnesota, South Carolina and Wisconsin. The states with the worst programs were Nevada, Indiana, West Virginia, Utah, Louisiana and Wyoming.

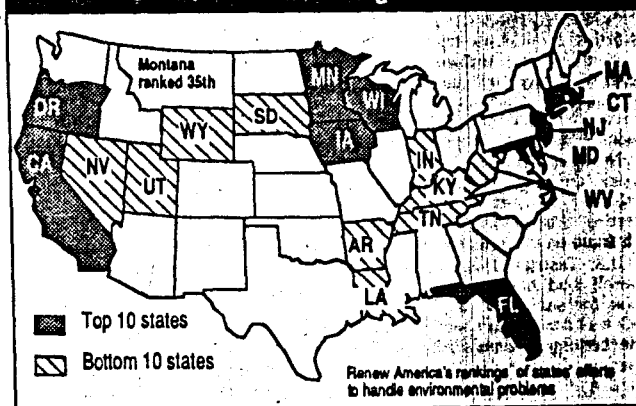
The report noted that only eight states so far have implemented comprehensive recycling programs and only 10 states have laws requiring at least some recycling.

The states given the best marks for dealing with solid waste disposal issues were Oregon, Connecticut, Florida, Iowa, Illinois, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island and Wisconsin. Those with the lowest marks were Mississippi, South Carolina and Arizona.

The study said Oregon, California, Wisconsin, Massachusetts, Florida, New York, New Jersey and Minnesota had the best programs for dealing with the impact of growth. States with the poorest programs were Arkansas, Mississippi and West Virginia.

The report said only seven states have enacted laws that attempt to protect forests by balancing the needs of timber producers and conservationists. It said the six states with the best forest management programs were Washington, California, Idaho, Oregon, Massachusetts and Minnesota.

Environmental rankings of states



WASHINGTON (AP) — The following is the ranking of the 50 states on their efforts to deal with five environmental concerns, according to Renew America, a private environmental and conservation group.

The ranking is based on a total numerical figure covering the five categories, with 50 being the highest possible total. The first figure after each state represents the state's overall score.

The five figures in parenthesis reflect how the states scored in each of the five categories with a top score of 10 possible.

Those categories, in order, are forest management, solid waste recycling, protection of drinking water, food safety and control of growth to protect the environment.

California	42 (9, 7, 8, 9, 8)	Colorado	22 (5, 3, 5, 4, 5)
Oregon	39 (9, 10, 5, 5, 10)	Delaware	22 (4, 4, 4, 5, 5)
Minnesota	38 (8, 8, 6, 8, 8)	Hawaii	22 (6, 2, 5, 4, 5)
Massachusetts	37 (8, 7, 9, 5, 8)	New Hampshire	22 (5, 4, 3, 5, 5)
Wisconsin	37 (6, 8, 7, 8, 8)	Texas	21 (3, 3, 4, 7, 4)
Iowa	34 (3, 8, 7, 10, 6)	Arizona	20 (3, 1, 8, 4, 4)
New Jersey	34 (5, 8, 9, 4, 8)	Kansas	20 (4, 3, 5, 5, 3)
Florida	32 (6, 8, 4, 6, 8)	Nebraska	20 (3, 4, 5, 5, 3)
Maryland	32 (7, 6, 6, 6, 7)	North Dakota	19 (3, 2, 4, 6, 4)
Connecticut	30 (3, 9, 6, 5, 7)	Montana	19 (3, 2, 4, 6, 4)
Washington	30 (10, 5, 3, 6, 6)	Alaska	17 (3, 3, 5, 4, 3)
Maine	29 (3, 5, 10, 4, 7)	Oklahoma	17 (2, 3, 5, 4, 3)
North Carolina	29 (5, 3, 8, 6, 7)	Alabama	16 (4, 2, 2, 6, 2)
New York	28 (4, 8, 3, 5, 8)	Mississippi	16 (4, 1, 4, 6, 1)
Pennsylvania	28 (6, 8, 3, 4, 7)	New Mexico	16 (4, 3, 2, 4, 3)
Rhode Island	28 (5, 8, 4, 4, 7)	Indiana	15 (6, 2, 2, 2, 3)
Virginia	28 (6, 4, 7, 6, 5)	Kentucky	15 (3, 2, 2, 4, 3)
Georgia	27 (5, 4, 5, 7, 6)	West Virginia	15 (3, 2, 8, 2, 1)
Illinois	27 (5, 8, 4, 4, 6)	Wyoming	15 (3, 4, 3, 3, 2)
Vermont	27 (4, 7, 5, 4, 7)	Nevada	14 (5, 4, 1, 1, 3)
Michigan	26 (4, 6, 5, 5, 6)	Arkansas	13 (3, 2, 1, 6, 1)
Idaho	25 (9, 3, 5, 5, 3)	South Dakota	13 (3, 2, 2, 4, 2)
Missouri	25 (6, 5, 5, 5, 4)	Utah	12 (2, 2, 2, 3, 3)
Ohio	24 (5, 6, 2, 5, 6)	Tennessee	11 (2, 2, 1, 4, 2)
South Carolina	24 (5, 1, 6, 8, 4)	Louisiana	10 (2, 2, 1, 3, 2)

EXHIBIT

DATE

HB

Mr. Chairman, Member of the Committee,

My name is Lyle Quick. I farm and ranch in McCone County and recently retired from the County Commission after serving 13 years. McCone County has been targeted for the development of synfuels plants and we are greatly concerned with minimizing and planning for the impacts associated with such projects.

I think the most disturbing thing about Senator Keating's bill is its total disregard for counties and local communities. At the local level it is immaterial whether a facility is regulated or unregulated - the impact to the communities is still the same. Unless the large-scale facilities exempted by SB 223 are undertaken with great care and local involvement, the effects can be devastating to local governments, businesses and taxpayers.

An example of this occurred when Exxon halted construction of its oil shale facility in Colorado. When this happened over 2000 people lost their jobs and the local developers and businessmen who planned for this growth were devastated. Local governments that had bonded to construct schools and other infrastructures needed to accommodate the influx of people were also hit hard, adding to the impact suffered by local taxpayers.

The statement has been made that those who are proposing a facility and making the investment should make the decision as to the need for their product. To that I would remind you of the synfuel plant in Beulah, N.D. which cost us taxpayers \$2 billion. The investors bore little or no risk because the Federal Government guaranteed the loans. Taxpayers were stuck with the burden when investors defaulted.

Montana's Major Facility Siting Act gives communities a tool to avoid such problems. It underscores the increasing importance of cooperation between developers and affected local citizens and government units. Senate Bill 223 would destroy this statutory flexibility. If this attempt to weaken the Act is successful, other attempts will be made until it is completely eliminated.

I thank you for the opportunity to testify here today and urge you to give SB 223 a "Do Not Pass" recommendation.

Xu 217

M.S.C.A.

EXHIBIT 3-3-89 7
DATE 3-3-89
HB SB 223

I am here today to present testimony in opposition to Senate Bill 223. My name is Earl Reilly I am president of the Montana Senior Citizens Association. We are active in all issues of concern to the senior citizens of Montana.

It is a bad idea to provide preferential treatment to any one type of business. Exempting synfuel and coal plants from the need showing of the Facility Siting Act is saying that they are somehow better or more important than other types of businesses in Montana. In fact, due to the size and expense of these types of facilities, it is even more important that we closely examine

EXHIBIT 8
DATE 3-3-89
HB SB 223

2/25/89

Dear House Natural Resources Committee members,

Perhaps this letter is unnecessary, but I want to play it safe. If SB 223 passed the Senate, I hope you give it a resounding "Do Not Pass" recommendation. This bill would change the Major Facility Siting Act to remove its application to private, non-utility projects.

This is a horrible idea. The purpose of MFSA is to protect the Montana land, water, air and people from the hazards of large facilities. I trust in this law to provide us with the opportunity to influence these projects, if not provide us with security. It doesn't make 2 cents worth of difference who's building the project. What matters is how we'll be affected by it, and what say we've had in the process.

If in the future our skies are blackened, our land is denuded, our streams are poisonous and our children are sick, it will be no consolation to know that "utilities" weren't the perpetrators.

Please vote against SB 223.

Sincerely,
Butch Turk
514 Sherwood St.
Missoula, 59802

9
DATE 2-3-89
BY SB 223

NORTHERN PLAINS RESOURCE COUNCIL

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Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

March 4, 1989

Dear Chairman Raney and Members of the Committee,

I am writing on behalf of the Northern Plains Resource Council to thank you for the excellent hearing SB 223 was given. I would also like to restate our position on the bill and clarify our position on the amendment proposed during that hearing, lest there be any confusion as to where we stand.

We remain adamantly opposed to any weakening of the Montana Major Facility Siting Act (Act). It is our opinion that SB 223 erodes the integrity of the Act by exempting certain facilities, such as synthetic fuel plants, from demonstrating "public need" for their products. Proponents of SB 223 argued that synfuel plants operate in the private sector, because they are not subject to rate of return regulation, and do not have a legally protected market area. Opponents pointed out that synfuel facilities cannot be presumed to operate in the private sector because huge federal subsidies remove investors' technical and economic risks and place them on the public (see attachment). Therefore, it is appropriate that these facilities meet the "public need" criteria of the Act.

Secondly, by prohibiting the Board from assessing whether viable markets or more appropriate alternatives exist, SB 223 circumvents environmental safeguards. Even if minimum environmental impacts are met, negative impacts occur when any major facility is sited. This is especially true for synfuel plants which produce large quantities of solid and liquid wastes containing heavy metals, such as arsenic, and chemicals known to cause cancer and mutations. For these reasons, we believe the State of Montana has a responsibility to insure that its citizens are not subjected to the impacts of facilities which cannot demonstrate "public need".

In the early 1980's, the Northern Plains Resource Council worked with industry and the Department of Natural Resources and Conservation to streamline the Act. SB 223, on the other hand, attacks the substance of the Act. We believe that it is the first step in an attempt to destroy the integrity of Montana laws providing reasonable environmental protection and local input into major development decisions. Evidence of this can be found

Ex. #9

2-3-89

in the minutes from the Senate Natural Resources Committee hearing on SB 223. On page 5 of the minutes from February 3, 1989, the following statement by James Mockler, Montana Coal Council representative, can be found: "Mr. Mockler would not object to taking the utilities out [from the requirement to show public need] too....".

Finally, we are opposed to amending SB 223 to include subsidized synfuels plants under the definition of a utility. As Mr. Allen Davis of the Department of Natural Resources and Conservation stated, it is nearly impossible to define what is a subsidy. In attempting to do so, we see a dangerous potential for creating inadvertent loop-holes. The Montana Major Facility Siting Act is a very important law that has served our state well and we ask that you keep it intact.

Thank you for your kind consideration.

Sincerely,

Ellen Pfister
by Brandt Quick
Ellen Pfister
NPRC Member

Ellen Pfister
c/o NPRC
P.O. Box 858
Helena, MT 59624

Natural Resources

BILL NO. SB-29

DATE March 3, 1989

SPONSOR Sen. Gage

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. SB-223

DATE March 3, 1989

SPONSOR Sen. Keating

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Alan Davis	DNR		
EARL J. REILLY	HELENA (M.S.C.A.)		✓
Ellen Pfister	Billings-Yell Co		✓
Lyle Quick	Circle MT.		✓
Louise Bruce	Gardiner, Bear Creek Council		✓
Ron DeYoung	MT. FARMERS UNION		✓
John Haller	Mont. Ag. Extension Org.		✓
Stan Bracklow	Trout Unlimited		✓
Don Chance	MONTANA WILDLIFE FEDERATION		✓
Virginia Jackson	MLIC		✓
Ronnie Small	Helena - MT Demo Party		✓
Kim Wills	Storrs Club		✓
Chris Kuyper	MEIC		✓
Brant Quick	NPRC		✓
Janet Ellis	Audubon		✓
Jim Mark	MT. Co. / Council	✓	
Ken Williams	Entech	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Natural Resources

BILL NO. SB-24/3

DATE March 3, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Natural Resources

BILL NO. SB 3

DATE March 3, 1989

SPONSOR Sen. Mazurek

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.