

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRPERSON BOB RANEY, on February 11, 1991,
at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SB 18

Presentation and Opening Statement by Sponsor:

SEN. GAGE, SD 5 - Cut Bank, stated SB 18 addresses some of the definition problems found in the oil and gas mitigation bill from last session. **SEN. GAGE** went through the bill explaining the changes and additions. He highlighted that new language is added in Section 2 expanding the definition of abandoned property and wells. In Section 2, State-owned lands were added as a result of a conflict between the Department of State Lands and Conoco. DSL had stated that the Oil and Gas Board did not have jurisdiction over State lands. DSL claimed that state lands are not taxable and therefore the Board does not have authority over them.

Primacy can be granted only if one agency has authority. To ensure that primacy isn't lost, Section 2 in SB 18 clarifies that DSL lands are under jurisdiction of the Board.

Proponents' Testimony:

Jim Nelson, Oil and Gas Board, supported SB 18. He said the bill is necessary to clean up jurisdictional ambiguities. In 1987, the Oil and Gas Board obtained primacy from the Environmental Protection Agency (EPA), which is beneficial for the State and for industry. If more than one state agency has primacy, then all primacy may be denied and EPA would regain it. It is important that the primacy issue be clarified. Most of the other changes are clean-up and technical in nature. Responsible parties are clearly defined in SB 18.

Janelle Fallan, Montana Petroleum Association (MPA), supported SB 18. She stated that the main problem the bill addresses, the primacy issue, was explained well by Mr. Nelson. She supported SB 18 for reasons stated by Mr. Nelson.

Doug Abelin, Northern Montana Oil and Gas, supported SB 18 for reasons previously stated.

Opponents' Testimony: none

Questions From Committee Members:

REP. JIM SOUTHWORTH commented that it appears the bill alleviates industry responsibility and places it on the State. Mr. Nelson replied that, there is no intent to put the burden on the State. The Board makes every effort to identify the responsible parties for the wells. Bond forfeitures are used as much as possible to clean up the wells. The majority of orphaned wells, wells with no identifiable responsible party, were abandoned prior to 1953. These are the wells at issue. REP. SOUTHWORTH asked how much bonds cost. Mr. Nelson answered \$5000/well or a \$10,000 blanket for numerous wells. CHAIR RANEY asked Mr. Nelson to explain "responsible person". Mr. Nelson replied "person" encompasses corporation. CHAIR RANEY asked if this wording change will enable anyone or any industry to get out from under the responsibilities. Mr. Nelson stated that there will be no changes in who is and isn't covered. REP. DICK KNOX inquired how DSL jurisdiction problem is solved by this proposal. Mr. Nelson responded that the Board of Oil and Gas is attached to DNRC for administrative purposes only. In a lawsuit filed by DSL last year, there was a challenge made to the Board's jurisdiction of oil and gas wells located on state lands. This bill is designed to clarify that the Board of Oil and Gas does have jurisdiction over oil and gas wells on state land. The bill does not abrogate the landowner and trust responsibilities of DSL in respect to its surface-related amendments.

Closing by Sponsor:

SEN. GAGE stated that SB 18 broadens the definition of responsible party to cover more people. The bill is not attempting to get people out from under their responsibilities. It, in fact, broadens and clarifies the responsibility. The bill clarifies that even if an individual or corporation doesn't have \$250,000 in assets, they still are a responsible party. The bill will result in the Board serving the people of Montana better.

HEARING ON SJR 6**Presentation and Opening Statement by Sponsor:**

SEN. BERNIE SWIFT, SD 32 - Hamilton, stated that the Western Forestry Task Force, created in 1975, is composed of designated state legislators. Montana has been a member since the origination. The group was formed to provide a collective voice in forestry related issues involving local economies. He distributed copies of minutes and an overview of the Task Force. EXHIBIT 1 & EXHIBIT 2 The committee addresses issues vital to local economies. The role of the Forest Service in providing a sustainable yield of wood fiber is of great importance. The committee deals with issues of fires, insects, and markets as none of these are limited to state boundaries. British Columbia and Alberta also have representatives on the committee. International trade agreements and tariffs also are discussed. The fiscal note applies only if all four delegates attend all eight meetings over the two years. Montana does not pay the dues. Members only take per diem and travel expenses. They do not all attend all the meetings. The Montana delegates do not expect to get all of the money depicted in the fiscal note.

Proponents' Testimony:

Keith Olsen, Montana Logging Association, supported SJR 6. He stated it provides opportunities to exchange concepts and information. The forests of Montana provide water, air and numerous other resources. They are a great value to Montana.

Questions From Committee Members:

REP. BEN COHEN asked when was the last meeting. SEN. SWIFT answered in Seattle during November. REP. COHEN asked if any Montana legislators attended the meeting. SEN. SWIFT replied no because it was the weekend of the caucus. REP. COHEN asked if SEN. HALLIGAN, the other member of the Task Force, is supportive of the resolution. SEN. SWIFT said yes. His name is on the resolution.

CHAIR RANEY inquired why use "maximum sustained yield" instead of "sustained yield." SEN. SWIFT replied they are one in the same. They mean the same thing.

REP. ORVAL ELLISON stated that the fiscal note shows no money for last year. He asked what was the authorization for last biennium. SEN. SWIFT stated it passed the Senate at \$16,000 but was cut to \$8000 in Appropriations. CHAIRMAN RANEY asked what do Montanans get back from this.

SEN. SWIFT responded it enables Montana's voice to be heard in regards to federal legislation. CHAIR RANEY asked if issues such as wilderness and multiple use are discussed. SEN. SWIFT said yes and other issues such as exportation of raw logs, and Best Management Practices. CHAIR RANEY asked when decisions are made, who has to follow them. He asked how the Task Force's work becomes relative to what takes place in the forest. SEN. SWIFT replied through Resolutions to the Federal government.

REP. COHEN stated that he is currently a delegate and that REP. BOB REAM is a former delegate. He said they will be able to provide input and answer questions during executive session.

Closing by Sponsor:

SEN. SWIFT closed by stating he hoped the committee passes favorable consideration on SJR 6.

EXECUTIVE ACTION ON HB 233

Discussion:

REP. BRUCE MEASURE, subcommittee chair, reported on the status of the railroad right-of-way subcommittee. He stated that the subcommittee, comprised of SEN. THAYER, Burlington Northern, grain cooperators, and REPS. DOLEZAL, and FAGG, concluded that the issues would be addressed most cleanly if separated into two bills. He presented a grey bill for HB 233, the amendments, and a draft proposal for a companion bill. EXHIBIT 3, 4, & 5. The situation on the Cooperatives, identified as the most important issue, is the focus of the revised HB 233. The second most important issues are the abandonment of these rail corridors and their future use. The railroad and cooperatives did not object greatly to the grey bill language. The 8.5 ft on either side of the center line of the railroad right-of-way would be excluded from the cooperative's interests. The cooperatives want to be able to purchase up to 300 ft out to the side of the railroad right-of-way. The 8.5 ft has always been excluded from purchase because they can't build on railroad right-of-way or within a certain number of feet where the car doors swing out. The cooperatives have no problem excluding the 17 ft swath. The rail bed as a recreation path is in a committee bill. EXHIBIT 5 This companion bill addresses the opportunity to have first right of refusal.

REP. REAM asked why the committee decided to separate into two bills. He expressed concern that the bills would die if separated. REP. MEASURE stated that it is a concern. The situation with the cooperatives is very serious and of immediate concern. The cooperatives had always assumed they could hold

property based on the historic relationship. It is important this bill gets through. The issue of adjacent land owners' first right of refusal was dismissed from both bills because no one expressed any significant interest and there was no rational relationship with either bill. The subcommittee opted to drop that issue from the bills.

REP. DAVE WANZENRIED, referring to Section 3 of the draft committee bill, asked how do parties match up in regards to abandonment of right-of-ways. **REP. MEASURE** responded Federal legislation directs that abandoned railroad and easements be held in such a way to ensure viability for future railroad use. It is in the best interest that the land remains public. The companion bill is a notification bill. There is a federal process in place that requires the Department of Commerce to be notified when railroads are abandoned. **CHAIR RANEY** added that the railroad may donate lands to the Department of Fish, Wildlife and Parks. This would provide recreation and maintain the railroads for future use.

REP. MIKE FOSTER suggested that the committee act on HB 233 and then deal with the companion bill. **CHAIR RANEY** stated there may not be enough time to get the draft completed before the deadlines. **REP. MEASURE** emphasized that the interests of cooperatives supercede the interest of Rails-to-Trails, but that he would like to hold HB 233 until it is certain Rails-to-Trails makes the deadlines. **REP. REAM** asked if hearings would be needed for the companion bill. **CHAIR RANEY** replied yes. **REP. REAM** stated February 21 is the deadline for introduction of committee bills. **REP. COHEN** commented that **REP. FRANCIS BARDANOUVE** had said he has no objections to combining both issues in one bill. **CHAIR RANEY** added that a combination bill might expedite the process. **REP. BOB GILBERT** stated the issue about adjacent land owners' first right of refusal should not be eliminated from the bill. **REP. MEASURE** clarified that all people have the right to purchase land. The reason for the cooperatives to have the first right was due to their large investment of facilities on the land. The only testimony from private land owners in support of providing them first right revolved around a matter of convenience. Once the railroad traffic ceases nothing would impede access across the tract. The corridor that would be preserved is the railroad bed itself, only a 17' wide section.

REP. RUSSELL FAGG stated that **REP. MEASURE** did an excellent job during the subcommittee identifying the real issues and treating them fairly. The rights of adjacent land owners and recreationists are separate issues. Adjacent landowners did not express any concerns during the subcommittee meetings. The main issue is the lease held property. Combining the issues into one bill will clutter and confuse the issues. **REP. FAGG** agreed that time frames may be tight but two separate bills is the preferred option.

REP. GILBERT expressed that the subcommittee was not aware of the consequences of their actions. Agricultural people will have a liability problem with recreational trails going through their property. CHAIR RANEY stated the subcommittee did understand as it is stated in the bill's intent. REP. ED DOLEZAL commented that REP. MEASURE did address the issues and concerns effectively by creating two bills. Tying the issues together would not result in resolving any of the issues. The lease holders initiated HB 233 and have the immediate and pressing concern. REP. ELLISON stated the reason this bill has failed in previous sessions was because there has been no right of refusal for adjacent land owners. Without it, no progress has been made. REP. DAVID HOFFMAN inquired if adjacent land owners ever have had first right of refusal. REP. MEASURE replied no. No one has ever had the first right of refusal. If the railroad leased land from whomever the predecessor in interest was, the person owning the land that the lease sat on, had a right of revertal. The property adjacent to the railroad right-of-way would revert to the holder of the dominant estate. REP. BEN COHEN stated he would like to act on HB 233 instead of holding it until the committee bill is ready.

Motion/Vote: REP. MEASURE MOVED THAT THE PROPOSED COMMITTEE BILL BE DRAFTED BY STAFFER, PAUL SIHLER. Motion carried 12 to 6. EXHIBIT 6

Discussion: REP. GILBERT stated the committee bill would take away the adjacent landowners' right of first refusal and give it to the recreationists. This is a concern for agriculture. REPS. RANEY, O'KEEFE and Paul Sihler, staffer, explained that the bill gives the recreationist the right to first refusal on the easement for a right of passage and that the Rails-to-Trails people do not want to buy any land.

Motion: REP. FAGG MOVED HB 233 DO PASS.

Motion/Vote: REP. FAGG moved to adopt amendments requested by REP. MEASURE. EXHIBIT 4 Motion carried 17 to 1 with REP. GILBERT voting no.

Discussion: REP. MEASURE stated he is concerned with the fate of the two bills considering the committee opposition he has heard. He said he would like more time to see if the committee bill could meet the deadlines. He proposed tabling the bill based on the reasons he stated.

Motion/Vote: REP. MEASURE MADE A SUBSTITUTE MOTION TO TABLE HB 233 AS AMENDED. Motion failed 4 to 14. EXHIBIT 7

CHAIR RANEY stated he recognized the good faith effort that went into developing the compromise bill. He sympathized with the problem. The emotions are high and the committee needs a couple days to consider its actions. CHAIR RANEY stated he would wait several days before taking further action on the bill.

HEARING ON HB 551

Presentation and Opening Statement by Sponsor:

REP. MARK O'KEEFE, HD 45, Helena, stated that HB 551 cleans up the Wastewater Revolving Fund Loan Act, passed last session. The fund is administered by the Department of Health and Environmental Sciences (DHES) and they will explain the technical changes in the bill.

Proponents' Testimony:

Dan Fraser, DHES, stated he was standing in for Scott Anderson. EXHIBIT 8 Mr. Fraser stated DHES supports HB 551.

Opponents' Testimony: none

Questions From Committee Members:

REP. HOWARD TOOLE asked how soon will the federal loan program be implemented and the monies available. Anne Miller, Department of Natural Resources and Conservation (DNRC), stated that DNRC is implementing the financial end of the program. State bonds will be issued this spring. Federal grants will be available soon. A number of project applications have been submitted to DHES and DNRC for their review. DNRC and DHES will review them to make sure they comply with technical and financial requirements.

Closing by Sponsor:

REP. O'KEEFE stated HB 551 cleans up the funding transfer flow specifically related to bonds and federal monies. If the bill dies, the process will still function but not as smoothly.

HEARING ON HB 485

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, HD 82 - Livingston, stated HB 485 deals with underground storage tanks. The bill is primarily a house keeping bill. The bill will enable people to stay in business while ensuring that they keep the environment clean.

Proponents' Testimony:

Jean Riley, Petroleum Tank Release Compensation Board, supported HB 485. EXHIBIT 9

Ronna Alexander, Montana Petroleum Marketers, supported HB 485. She stated she was involved in the drafting of similar legislation in previous sessions.

Franklin Gessaman, Department of Health and Environmental Sciences (DHES), supported HB 485. EXHIBIT 10

Candy Mills, Mill's Repair, supported HB 485 and presented a proposed amendment. EXHIBIT 11 She stated that while the fund may be used to demonstrate financial responsibility for \$982,500, many small businesses are unable to meet the requirements to show financial responsibility for the remaining \$17,500 by October 31, 1991, as required by underground storage tank regulations. Small businesses are unable to meet the requirements for numerous reasons: they may have low net worth, an inability to obtain a letter of credit, or insurance may not be available to stations that haven't made system upgrades that are required by 1998. The amount of \$10,000 in shared deductible seems to be sufficient to eliminate concern about tank owners' responsibility and yet it remains within the range of smaller businesses. If it isn't lowered, many small businesses will be in a state of noncompliance for a lack of ability to meet the financial responsibility requirement. Ms. Mills submitted a letter from her bank's president, Douglas Tillett that addresses the issue. EXHIBIT 12

REP. JOE BARNETT, HD 76, supported HB 485 and the proposed amendment. The amendment will allow small companies to remain in business.

Opponents' Testimony: none

Questions From Committee Members:

REP. COHEN asked Ms. Riley to respond to Ms. Mill's amendment. Ms. Riley stated the approximate difference would be \$377,000, which would raise payments by that amount. REP. COHEN asked how much money is currently in the fund. Ms. Riley replied \$5,000,000. REP. TOOLE asked what this means. Ms. Riley responded that claims have increased drastically but the ramifications are unknown. REP. TOOLE asked where DHES stood on this matter. Ms. Riley replied she would need to consult with the Board before responding to that question. VICE-CHAIR O'KEEFE asked Ms. Riley to obtain a formal opinion from the Board for the committee. She agreed to do so. REP. ELLISON commented that the issue of excessively depleting the fund is important. REP. COHEN stated that the bill didn't go low enough, therefore, it does not protect small businesses. REP. RANEY stated the bill was originally introduced last session without any co-payments. The co-insurance was added either by a veto or a threat of a veto. REP. COHEN asked if there were any objections to the Mill's amendment. REP. RANEY replied he has no objection to the amendment. It may result in a big drive on the fund. The tax goes off when the fund hits \$8,000,000 and back on when it drops to \$4,000,000. REP. HOFFMAN stated that according to Ms. Riley's handout, the Board has paid on 11 abandoned tanks to the sum of \$46,000, but the language would eliminate abandoned tanks from coverage. REP. HOFFMAN reiterated concerns stated by REP. COHEN.

REP. RANEY stated that is the one policy issue of this bill. The rest is clean-up language. REP. HOFFMAN asked REP. RANEY if his decision as sponsor of the bill was to exclude abandoned tanks. REP. RANEY replied not really. He stated his concern, along with the small business owner, is to clean up the environment. If people realize they can remove tanks for \$5000, then maybe more people will come forward. The \$17,500 may be too high and may discourage people from coming forth. There may be significant impacts to the fund if it is lowered too much. REP. HOFFMAN suggested amending the bill to include the abandoned tanks. The cost of \$46,000, which is 5% of the fund, is a small price to pay to clean up the tanks. Ms. Riley said the Board has mixed feelings on this issue. The Board put in the language not knowing what the intent of the Legislature was. It can be changed. Presently, it says a "tank containing product." The legal opinion was if the tank was underground as of April 13, 1989 then the Department would cover it. It is not actually defined as "a tank containing product". Many abandoned tanks do not have product in them.

REP. GILBERT asked REP. RANEY what are the chances for a small gas station operator to buy liability insurance for leaky underground tanks. REP. RANEY replied they can't get it. REP. GILBERT stated the fund is established in lieu of insurance. The individuals have the responsibility of making insurance payments. This is what the \$17,500 is for. It could be construed as the liability insurance premium the small business would pay if they could get insurance. REP. RANEY responded that it could be construed as that but the program was developed out of fear of the potential tremendous costs. REP. GILBERT stated he feels station owners should have some responsibility because it is their businesses that caused the problem. The potential financial burden may provide them incentive to be more responsible owners. REP. RANEY agreed and stated that \$5000 may be enough incentive. The committee may need to decide what would be an appropriate monetary amount.

REP. DOLEZAL asked Ms. Alexander to explain the rationale to exclude defunct tanks. Ms. Alexander responded that the owners must meet EPA financial requirements for insurance to remain in business. The intention of this fund was not to cover abandoned tanks, tanks with no responsible party identified. REP. TOOLE asked how the \$17,500 figure was arrived at. Ms. Alexander explained that when HB 603 was first written it was with a \$25,000 deductible with a two-year amnesty. For the first two years of the fund's operation, there would be no up-front dollars paid by the tank owner. The administration was concerned about the fund's potential liability and the fact that the fund could be bankrupt up-front. The administration decided to put in a \$35,000 shared deductible. REP. TOOLE asked how was that to be funded.

Ms. Alexander responded the \$35,000 shared deductible means, for instance, that if there's a cleanup costing \$10,000, \$5000 would be the responsibility of the tank owner and \$5000 would come from the fund. The maximum outlay by a tank owner would be \$17,500. REP. HOFFMAN asked if any fees are associated with the abandoned tanks. Ms. Alexander stated that there is a fee on gasoline purchased by a distributor. The distributor pays it once a month with taxes. If a tank has been abandoned for numerous years, it is not generating fee money. REP. GILBERT inquired if the Lust Trust Fund addresses orphaned tanks. Ms. Alexander said the Lust Trust Fund was initially established to cover orphaned tanks. Montana Petroleum Products feels that the Lust Trust Fund should cover situations when a responsible party cannot be found. The State has not worked well with this outlook.

REP. WANZENRIED asked if the change of wording on page 4, results in abandoned tanks included or excluded. Ms. Riley stated the intent is to take them out. REP. WANZENRIED asked if that will increase the number of clean-ups. Ms. Riley replied yes but that she did not know by how many and if funding problems may occur. It could jeopardize EPA approval for funding. REP. WANZENRIED inquired how many tanks may be eliminated. Ms. Riley answered that there are over 50% more tanks than they originally estimated. REP. WANZENRIED asked if she had any idea of the fiscal impact. She replied that she did not know. If ground water contamination has occurred the expense could be great. REP. NELSON asked for a definition of tanks. Ms. Riley replied it included petroleum tanks at service stations, commercial tanks and tanks 1100 gallons or less that are either above ground or below ground at residences and farms. REP. NELSON commented that there may be numerous tanks.

Closing by Sponsor:

REP. RANEY stated that the policy may have great impact. The intent of the legislation is to ensure cleanup of active tanks and to do so in a manner that will keep small businesses in operation. The bill was not intended to cover abandoned tanks. This subject may be more appropriately addressed in another bill but it can remain in HB 485 if the committee chooses. The issue of what the co-payment should be set at needs to be addressed. At some point the line needs to be drawn. REP. RANEY urged committee input and support.

HEARING ON SB 139

Presentation and Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41, Big Timber, stated SB 139 is a clean-up bill of a confusing part of Conservation District law in reference to administrative or district mill levy funding. There were two sections of this law that deals with this issue. In 1983, the legislature amended one but overlooked the other.

These amendments help to make the law consistent with other statutes and with 76-15-523. The major change is striking the words "except county tax funds". This is so the district can invest those funds in a manner consistent with other statutes. The problem is confusing for Conservation Districts. Most are investing funds in financial institutions so it won't really affect their budgeting procedures.

Proponents' Testimony:

Ray Beck, DNRC, supported SB 139. He stated the proposed bill will make existing laws easier to understand. There will be no effects on the county budget process.

Peggy Parmelee, Montana Association of Conservation Districts, supported SB 139. EXHIBIT 13

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

SEN. GROSFIELD urged passage of SB 139.

EXECUTIVE ACTION ON HB 551

Motion/Vote: REP. O'KEEFE MOVED HB 551 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 139

Motion/Vote: REP. FOSTER MOVED SB 139 DO PASS. Motion carried unanimously.

DISCUSSION ON SJR 6

REP. COHEN stated he was appointed to the Western Forestry Task Force when REP. REAM resigned. REP. COHEN stated he felt the Task Force was very biased and pro-industry. The majority of members were more interested in the free travel and "vacation" than accomplishing work. Attending Task Force meetings was just an excuse for traveling and for getting a free vacation. Because not all the delegates can go there is no continuity. Task Force members have stated that they hadn't learned anything about forestry even after serving on the Task Force for years. The Task Force was just a rubber stamp for industry. There is no effort to learn the whole picture and obtain unbiased information. There is no indication that the Task Force members are interested in working toward accomplishing those goals. This point is reflected by SEN. SWIFT'S actions when he insisted on having a meeting during Montana's State Democratic caucus. REP. COHEN stated that he felt it was not worthwhile to participate anymore.

REP. REAM stated he wasn't quite as sour as REP. COHEN but did feel uncomfortable with the situation as it stands now. He stated, in theory, the Task Force serves a beneficial purpose. It could educate members, facilitate the exchange of information, and serve as an advocate for ethical land management. The goals of the Task Force are good, however, they are not carried out or are carried out weakly.

REP. HOFFMAN suggested that the problems are the group members rather than the goals of the organization. If four good Montana members are appointed perhaps positive changes could occur. REP. COHEN responded that SEN. SWIFT is attempting to stop any positive changes, demonstrated by calling a meeting when the Democratic members could not attend. REP. VIVIAN BROOKE expressed concern over the Task Force's bias toward industry. She referred to the Task Force's minutes, and pointed out that only the pro-industry side was represented during the meetings discussing the spotted owl. REP. COHEN agreed and said that is only one example of the pro-industry bias that prevails on the Task Force.

The committee decided to continue discussion on SJR 6 at a later date.

EXECUTIVE ACTION ON HB 377

Discussion: REP. GILBERT stated HB 377 came out of The Environmental Quality Council unanimously. This megalandfill bill is a major piece of legislation, setting the foundation for proper waste management.

Motion: REP. GILBERT MOVED HB 377 DO PASS.

Discussion: CHAIR RANEY asked Paul Sihler, staffer, to explain the amendments. EXHIBIT 14 Mr. Sihler explained that amendments #1 & #10 are technical in nature, clarifying definitions.

Motion/Vote: REP. BROOKE moved to adopt amendments #1 & #10. Motion carried unanimously with Rep. Foster absent for voting.

Discussion: Mr. Sihler explained that amendment #2 amends the definition of landfill to include mono-fill. The reason for this is to address the concerns for concentrations of ash. REP. TOOLE inquired if the definition includes coal ash. Mr. Sihler said the amendment is intended to address solid waste incinerators. He stated he was not sure if coal ash is actually excluded. REP. GILBERT asked why the Northern Plains Resource Council proposed both the 50,000 tons and 35,000 tons amendments. CHAIR RANEY stated that they compromised down to 35,000 because 50,000 was too much. REP. GILBERT asked if a multiplier of 20% or 10% reduction was used. He said when Northern Plains had talked with him, they were using an 80% reduction in solids based on 220,000 tons/year to make the facilities of similar size. REP. RANEY replied they used 17.5% with the most recent set of proposals.

REP. RANEY said that Gail Kuntz, staffer, suggested adding the word "municipal" to clarify REP. TOOLE'S concerns. REP. RANEY asked Neva Hassanein, Northern Plains Resource Council, how much ash comes out of the Livingston incinerator. Ms. Hassanein replied approximately 35,000 tons. REP. COHEN suggested inserting "solid waste" before "incinerator" in amendment #2. REP. RANEY agreed.

Motion: REP. SOUTHWORTH moved to adopt amendment #2 with the word "solid waste" added before incinerator.

Discussion: REP. MEASURE asked why there is so much concern over the definition of incinerator. REP. TOOLE stated that coal incineration needs to be clarified. CHAIR RANEY said he wanted to include ash and to clarify the intent because it is very important to address imported wastes. REP. COHEN said he understood that the Environmental Protection Agency (EPA) had specified a special category for ash. Ms. Hassanein responded that fly ash is considered hazardous and therefore is subject to the hazardous waste laws. Bottom ash is not generally considered hazardous, though it may be very toxic.

Vote: Motion to adopt amendment #2 with the words "solid waste" added carried unanimously.

Discussion: Mr. Sihler explained that amendments #3 and #4 add the words "social and economic impacts" to the considerations in the permitting process.

Motion: REP. BROOKE moved to adopt amendments # 3 and #4.

Discussion: REP. COHEN inquired if the amendments were located in the appropriate place. REP. O'KEEFE replied yes. CHAIR RANEY responded that the amendments are technically fine. It is important to have social and economic factors considered when evaluating the potential impacts.

Vote: Motion to adopt amendments #3 and #4 carried unanimously.

Motion: REP. O'KEEFE moved to adopt amendment #5.

Discussion: REP. O'KEEFE stated that the word "impacts" is needed instead of "benefits" because the word "benefits" implies a positive effect. REP. GILBERT responded he would like to change to word to "changes" because "impacts" implies a negative effect. REP. REAM disagreed saying that "impact" does not imply negative effects. "Impact" is commonly used for documents of this nature. REP. O'KEEFE withdrew his motion.

Motion/Vote: REP. GILBERT moved to adopt amendment #5, using the word "changes" instead of "impacts". Motion carried unanimously.

Discussion: REP. BARNHART pointed out that inconsistencies exist in the wording relating to social and economic factors in Section 15, lines 2 and 6. Ms. Kuntz agreed. REP. DOLEZAL suggested that "environment" be struck from line 6.

Motion/Vote: REP. BARNHART moved to insert "social and economic" on page 12, line 2 following "Environmental" and to strike "environmental" from page 12, line 6. Motion carried unanimously.

Motion: REP. BROOKE moved to adopt amendments #6 and #7.

Discussion: Mr. Sihler explained that amendment #7 adds a new subsection that expounds upon the criteria list. REP. KNOX said that it appears the bill is becoming more and more restrictive. He said he will oppose the bill on those grounds. REP. BROOKE stated that it is logical to include the wording. The wording is often used in urban areas and should be included for consistency. It does not ask for too much more. REP. KNOX pointed out that the word "impact" is used again. REP. MEASURE responded "impact" is a neutral word. REP. GILBERT asked if the Environmental Impact Statement (EIS) will address these concerns. Ms. Kuntz replied yes, under the Montana Environmental Policy Act (MEPA). REP. GILBERT asked if an EIS would have to be done. Ms. Kuntz replied she assumed so. CHAIR RANEY stated that this will do the same thing as MEPA. Ms. Kuntz responded that there is a subtle difference. This will put into statute the kinds of things to be included in the permitting process.

Vote: Motion to adopt amendments #6 and #7 carried 16 to 2 with Reps. Knox and Gilbert voting no.

Motion/Vote: REP. O'KEEFE moved to adopt amendment #8. Motion carried unanimously.

Motion: REP. O'KEEFE moved to adopt amendment #9.

Discussion: Mr. Sihler stated that amendment #9 addresses transportation practices and incorporates inspection practices for illegal dumping. CHAIR. RANEY stated that garbage may be sitting for long periods of time while enroute to the megalandfill. This amendment addresses some aspects of the transport of the wastes to the dump. REP. BARNHART inquired what are transfer facilities. REP. O'KEEFE replied that it refers to garbage trucks. Mr. Sihler clarified that it refers to the transportation of the wastes from the train to the landfill. REP. BROOKE asked if the trucking routes are addressed. CHAIR RANEY replied yes. REP. BROOKE inquired how the bill left EQC without the trucking consideration incorporated. CHAIR RANEY replied the bill was modeled after the Major Facility Siting Act. The issue of transportation was inadvertently overlooked. REP. GILBERT spoke in support of the amendment saying that it is part of the licensing process.

Vote: Motion to adopt amendment #9 carried unanimously.

Discussion: Mr. Sihler explained that amendments #11 through #14 concern hearing requirements. The language is modeled after the Major Facility Siting Act. The change would be to include hearings in both Helena and the county.

REP. FOSTER asked if the hearing in Helena would be technical in nature and the one in the county for public input. Mr. Sihler replied that they would be duplicate hearings. REP. FOSTER stated based on his experience with the Public Service Commission, it is very common to have technical meetings in Helena and a satellite hearing in the county. REP. GILBERT said that holding two technical meetings is very expensive. There is no necessity for duplication. Public input could be gained via other avenues. CHAIR RANEY agreed and commented that public hearings will occur in the county through the EIS process. REP. GILBERT asked Jim Jensen, MEIC, to comment. Mr. Jensen stated that any landfill siting must follow MEPA and the Public Participation Act. MEPA requires that hearings be held in local communities. CHAIR RANEY emphasized that the amendments are redundant and unnecessary.

Motion/Vote: REP. TOOLE moved to adopt amendment #15. Motion carried unanimously.

Motion: REP. O'KEEFE moved to adopt amendment #16.

Discussion: REP. O'KEEFE stated he moved amendment #16 because it clarifies that the intent is for a minimum impact. REP. ELLISON suggested to amend it to add "acceptable" minimal adverse. REP. O'KEEFE responded that he did not feel comfortable with that suggestion because more direction and guidance is needed. REP. TOOLE agreed that guidance is needed. He stated there are problems with the words minimal and acceptable. They are too vague and open to interpretation. Terminology similar to "best available technology" may be more appropriate. REP. FAGG stated he could no longer support HB 377. He said the amendments are destroying the nature of the compromise bill. CHAIR RANEY and REP. GILBERT both stated they agreed with REP. TOOLE.

Vote: Motion to adopt amendment #16 failed 2 to 16, with Reps. O'Keefe and Brooke voting aye.

Discussion: Mr. Sihler stated that amendments #18 and #19 are additions to the list of items to be considered when siting a landfill. CHAIR RANEY stated these amendments were added to help prevent unethical practices. REP. HOFFMAN asked Mr. Sihler to explain "legal history". Mr. Sihler replied the intent is to review the history of violations or compliance of an applicant.

Motion: REP. BROOKE moved to adopt amendments #18 and #19.

Discussion: REP. BROOKE asked REP. HOFFMAN if he felt the amendments are logical. REP. HOFFMAN replied no. He said they will open up a "can of worms". REP. ELLISON stated that they are illegal.

REP. BROOKE withdrew her motion to adopt amendments #18 and #19.

CHAIR RANEY asked Ms. Kuntz to review the second set of amendments. EXHIBIT 15 Ms. Kuntz explained that the intent of amendment #3 is to have the applicant study the hydrology of the area. Amendment #5, the heart of the amendments, addresses water and a water protection plan. Part (E) of amendment #5 states that, should water be degraded or detrimentally affected, the water will be replaced or restored at no higher costs to water users than the costs of the original water use. REP. O'KEEFE stated that similar amendments will be proposed for hard rock mining permitting and regulations. He said the intent is to protect the ground and surface water resources. Many of the items would be done under the EIS. The main difference is the definition of the geographic location and of the two-year study.

Motion: REP. SOUTHWORTH moved to adopt the second set of amendments. EXHIBIT 15

Discussion: REP. DOLEZAL asked who would pay for the study. REP. O'KEEFE responded that the applicant would. REP. TOOLE stated a thorough hydrological study and protection of the hydrologic resource is vital. He asked where else in the bill is hydrology addressed. He supported the amendments. Mr. Sihler responded that the current landfill licensing application process and the Megalandfill Siting Act both address hydrology as a focus for decision making. These amendments differ in the specifics and in the definition of water protection area. CHAIR. RANEY stated that, as a sponsor of the bill and from a purely political standpoint, he is certain that if these amendments pass then the bill will die.

Motion/Vote: REP. FOSTER made a substitute motion to table the second set of amendments. Motion carried with Reps. O'Keefe and Brooke voting no.

Motion/Vote: REP. GILBERT MADE A SUBSTITUTE MOTION THAT HB 377 DO PASS AS AMENDED. Motion carried 17 to 1 with Rep. Hoffman voting no.

Discussion on Status of HB 484:

REP. REAM declared that the "True Grit" subcommittee on gravel and sand pits recommended that a substitute bill be drafted. The substitute bill, emphasizing local control, would be a cleaner approach than the current bill. CHAIR RANEY expressed concern that the bill would not meet the drafting deadlines. REP. REAM responded that Greg Petesch, Legal Council, assured him that it would be completed in time.

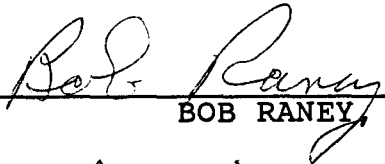
REP. COHEN said that zoning is the major problem. It doesn't seem to matter if an area has been zoned or not. REP. REAM stated that the substitute bill would give local control to the problem. Currently, citizens have no control or input. References made during the hearings that indicated people do have a say are false. CHAIR RANEY stated it appears the original bill can not be amended. REP. REAM added that the substitute bill may cause some legal problems but that it is more workable than the original bill.

Motion/Vote: REP. REAM MOVED TO HAVE STAFF DRAFT A COMMITTEE BILL TO REPLACE HB 484. Motion carried unanimously.

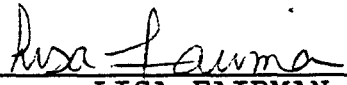
Motion/Vote: REP. O'KEEFE MOVED TO TABLE HB 484. Motion carried unanimously.

ADJOURNMENT

Adjournment: 6:30 pm.



BOB RANEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-11-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE STANDING COMMITTEE REPORT

February 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 551 (first reading copy -- white) do pass .

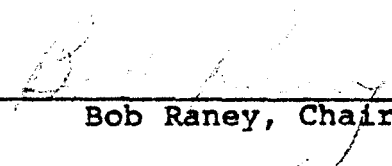
Signed: _____
Bob Raney, Chairman

HOUSE STANDING COMMITTEE REPORT

February 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 139 (third reading copy -- blue) be concurred
in .

Signed: 
Bob Raney, Chairman


CAROL B. : REP

HOUSE STANDING COMMITTEE REPORT

February 12, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 377 (first reading copy -- white) do pass as amended .

Signed: 
Bob Raney, Chairman

And, that such amendments read:

1. Page 4, line 8.

Following: "Megalandfill"

Insert: "or "facility"

2. Page 4, line 10.

Following: "waste"

Insert: "or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash"

3. Page 8, line 17.

Following: "environmental"

Insert: ", social, and economic"

4. Page 9, line 17.

Following: "environmental"

Strike: "impact"

Insert: ", social, and economic impacts"

5. Page 12, line 21.

Strike: "benefits"

Insert: "changes"

6. Page 12, line 2.

Following: "Environmental"

Insert: ", social, and economic"

7. Page 12, line 6.

Strike: "environmental"

8. Page 13, line 23.
Strike: "and"

9. Page 13, line 25.
Following: "industries;"
Insert: "and"

(m) the economic impact on the local area, local government infrastructure, and existing industry;"

10. Page 14, lines 20 and 25.
Following: ";"
Strike: "and"

11. Page 15, line 2.
Following: "waste"
Strike: "."
Insert: "; and"

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities."

12. Page 18, line 17.
Strike: "part 1,"

13. Page 19, line 22.
Following: "environmental"
Strike: "impact"
Insert: ", social, and economic impacts"

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WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
HIGHLIGHTS OF 1989 AND 1990 TASK FORCE MEETINGS
FEBRUARY 1, 1991

1989 MEETINGS

SIXTY-FIFTH MEETING, SOUTH LAKE TAHOE, MARCH 17-19, 1989,
Representative Dick Adams, Idaho, Chair

Activities included: A field trip with a briefing at the Tahoe Regional Planning Agency in Roundhill, Nevada, by William Morgan, Executive Director and Bob Harris, Supervisor, Lake Tahoe Basin Management Unit, U.S. Forest Service. The TRPA was formed to get California, Nevada and all federal and state agencies working together to protect the quality of life in the 325,000 acre basin. The agency classifies all land regarding erosion potential, requires rehabilitation of eroding property, improves transportation, conserves some land, and develops and regulates recreation.

Visited 410 acre resort on lake shore purchased by USFS from private owner and now leased to private management where recreational activities are continued. It is one of eight parcels purchased by USFS in 1979 to protect the lake shore for public access. Heard speakers.

Visited forest fire damaged area in heavily populated area. Heard from coordinating fire officials, local, state and federal about homeowner fire protection requirements.

Visited historic estate, now in federal ownership and being restored for public use. Held public meeting with Allan West, Deputy Chief USFS; Dennis Machider, Executive Director, California Conservancy; Bill Dennison, President, Timber Association of California; Lowell Smith, Nevada State Forester on fire cooperation compact; Dick Ernest, Director, California Department of Forestry and Fire; Ken Delphino, Western State Forester's Association on a strategic plan for interstate cooperation on forest resource policies. Adopted resolutions: 1) Animal and plant health inspection service for intensive rodent control research (major reforestation problem in Pacific Northwest). 2) Strongly opposed proposed diversion of federal funds now allocated to western counties, in lieu of taxes, to meet federal fire control costs. 3) Supported judicious use of herbicides to control weeds and vegetation in forest management.

SIXTY-SIXTH MEETING, KETCHIKAN AND WRANGELL, ALASKA, AUGUST 4-6,
1989, Representative Dick Adams, Idaho, Chair

Activities included: Field trip in vicinity of Ketchikan, visited Ketchikan Pulp Company. Orientation by Martin Pihl,

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General Manager. Toured mill, log storage and sawmill operations. At Clover Pass Resort heard report from Alaska State Forester Bob Dick regarding management of state lands. Took Alaska ferry to Wrangell (6 hours) had briefings on the Tongass National Forester (largest in USA), as group traveled through it, by US Forest Service staff persons.

At Wrangell, field trip to Wrangell Forest Products Company, host Ray Martin. Visited sawmill, water log storage and lumber shipping dock. Keene Khort, USFS explained activities on bus trip to interior of island. Saw recreation areas, logging areas, road construction, wildlife management and firewood gathering.

Public meeting: Speakers included Allan West, Deputy Chief, USFS on national events in forestry; Ron Humphry, Supervisor of Stikine area of Tongass National Forest regarding national wilderness legislation and management of other Tongass lands; Ron Wolf, Forester Klukwan Forest Products (a native corporation). Describe its land use program; Frank Rappel, Vice-President, Alaska Pulp Company, Sitka, explained operations and available timber supply; Mrs. Tobe Miller, President, Alaska Women in Timber, Wrangell Chapter explained the role of her organization in Alaska. Don Finny, Senior Manager, Alaska Loggers' Association, presented movie on the Tongass National Forest.

Representative Doug Sayan, Washington, reported on the efforts of his Task Force subcommittee to bring together players from all factions involved in the spotted owl issue in Washington State. The subcommittee served as a neutral body to provide a forum for numerous meetings, held at the Capitol in Olympia. A lot of progress has been made in finding common ground among the federal and state agencies, conservationists, private forest landowners, Indians and recreationists. It was the presence of the British Columbia minister that elevated the credibility of the subcommittee along with members from other Task Force states, he said.

SIXTY-SEVENTH MEETING, WASHINGTON, D.C.
SEPTEMBER 30-OCTOBER 4, 1989
Representative Dick Adams, Idaho, Chair

A series of meetings were held as follows: Jack Parnell, Deputy Secretary of Agriculture; Dale Robertson, Chief, U.S. Forest Service; and Cy Jamison, Director, Bureau of Land Management, USDI. Each government official explained new developments and problems in their agencies and responded to extensive questions from Task Force members. Task Force members also visited House and Senate members of their respective state delegations in the Congress. Resolutions were adopted on 1. Spotted owl/timber solution that maintains timber supply and jobs; 2. Support for capital gains differential; 3. Reaffirmed

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requesting US Fish and Wildlife Service not to list the Spotted owl as threatened species.

SIXTY-EIGHT MEETING, NOVEMBER 10-12, 1989, MONTEREY, CA
Representative Dick Adams, Idaho, Chair

The purpose of meeting was to coordinate with the meeting of the Western States Legislative Conference. Several members attended the conference including Representative Bernie Swift, Montana, Representative Robin Taylor, Alaska (Vice Chair), Assemblyman Dan Hauser, California and others.

A field trip traveled south on Highway One to visit the Los Padres National Forest, primarily a recreation and watershed forest; examples of the California State Park system and its administration; the continuous erosion along the coast road and the very difficult fire control logistics. Speakers included: Robert Taylor, Ranger Unit Chief, California Department of Forestry and Fire (CDF); Betsey Lyson, Regional Office, USFS, San Francisco; Dick Zechentmayer, Acting District Ranger, Monterey; Paul Thomas, Recreational Specialist, USFS; Charles Philpot, Director, Pacific Northwest Forest and Range Experiment Station; and Mr. Larry Brembry, Deputy Regional Forester, USFS, San Francisco. Speakers spoke at tour stops and at the box lunch stop at Pfeiffer Big Sur State Park. Observed the very large Molera II fire from Bixby Bridge Viewpoint; an arson-caused fire. Arson is very severe along this coast. The U.S. Coast Guard cooperated by stationing a cutter just off the coast as a platform for a coordinated fire command radio relay station, allowing communications up the steep slopes several thousand feet high. The Los Padres has over 3 million recreation visitors annually. Highway One was closed for over a year because of a huge slide in 1983. Representative Robin Taylor, Alaska, was elected Chair and Representative Bernie Swift, Montana was elected Vice Chair.

SIXTY-NINTH MEETING, April 20-22, 1991, Klamath Falls, Oregon
Representative Robin Taylor, Chair

A field trip visited the Klamath Falls Tree Farm, Weyerhaeuser Company (an intensively-managed industrial forest); the Winema National Forest, USFS; saw spotted owl nesting area outside classified owl habitat; Oregon Department of Forestry Land Management and state Forest Practices; lands owned by U.S. Bureau of Land Management (fish enhancement project, reforestation problems, recreation area and owl habitat impacts on BLM land management). The field trip was followed by a public meeting in the county court house. Speakers included:

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John Monfore, Land Manager, Weyerhaeuser Company; Martin Lugas, Forestry Manager, Weyerhaeuser; Wayne Gaskins, Western Forest Industries Association; Ward Armstrong, Executive Director, Oregon Forest Industries Council; Bob Johnson, Timber Manager, Thomas Lumber Company; Roy Woo, State Forestry Department; John Trich, Manager, Columbia Plywood Corporation; Mike Balcom, Bearcat Logging, Inc.; Dave Deggenhardt, Oregon Department of Forestry; Oki Grossarth, Supervisor, Fremont National Forest; Joe McCracken, President, Western Forest Industries Association; Paul Vetterick, Associate State Director, BLM, Portland; Allan West, Deputy Chief, USFS, Washington, D.C.

SEVENTIETH MEETING, June 29-July 1, 1991, Whitefish, Montana
Representative Robin Taylor, Chair

A field trip visited state, private and national forest lands to observe a wide variety of forest management techniques, many unique to Montana. Montana's Best Management Practices were seen at many locations and explained in detail as to their function on various ownerships. Following the field trip, a public meeting was held in Kalispell. Speakers from this meeting and the field trip included: Gary Brown, State Forester, Montana; Norm Kuennen, Montana Forestry Department; Art Stearns, Director, Washington Department Natural Resources, Olympia; Keith Olson, Montana Logger's Association; Dean Sirucek, Soil Scientist, US Forest Service; Dr. Robert Pfister, Director, Mission Oriented Research, Montana Forest and Conservation Experiment Station; Art Vail, Manager Flathead Unit, Plum Creek Timber Company; Bill Parsons, Director of Operations, Plum Creek; Steve Ambrose, USFS, Juneau, Alaska; Charlie Grenier, Vice-President Plum Creek; Chris Risbrudt, Deputy Regional Forester, USFS, Missoula, and Charles Keegan, Director Business Institute, U. of M., Missoula.

Resolutions were adopted: 1) Request the three costal governors to ask the President to arrange for convening the Endangered Species Committee; 2) support for federal legislation to allow states to restrict raw log exports.

SEVENTY-SECOND MEETING, SEATAC AIRPORT, SEATTLE, WA. November
16-18, 1990, Representative Robin Taylor, Alaska, Chair

The purpose of the meeting was a workshop to complete a revised task mission statement and set 1991 goals. These were completed (see attached).

In addition a breakfast meeting provided opportunity to discuss the Washington State Sustainable Forestry Round Table and Initiative. Speakers included Bob Rose, Washington Department of

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Natural Resources and Bob Gustavson, Director, Forest Management, Washington Forest Protection Association. Forest Inventory data available in the west was also discussed. Speakers included: Allan West, Deputy Chief, US Forest Service, Washington D.C., Cliff Smith, Deputy Minister, Alberta Forest Service and Dan Oswald, Project Leader Forest Inventory, Forest Experiment Station, Portland, OR.



WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

Established 1974

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WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE (BACKGROUND PAPER)

CHAIR

Senator Bernie Swift

VICE CHAIR

Assemblyman Dan Hauser

MEMBERS

ALASKA

Senator Dick Eliason
Senator Lloyd Jones
Representative Robin Taylor
Representative (Vacancy)

ALBERTA

Honorable LeRoy Fjordbotten

BRITISH COLUMBIA

Honorable Claude Richmond

CALIFORNIA

Senator Barry Keene
Senator (Vacancy)
Assemblyman Dan Hauser
Assemblyman (Vacancy)

IDAHO

Senator Marguerite McLaughlin
Senator George Vance
Representative Richard Adams
Representative Ray Infanger

MONTANA

Senator Bernie Swift
Senator Mike Halligan
Representative Ben Cohen
Representative (Vacancy)

OREGON

Senator Mae Yih
Senator Joan Dukes
Representative Tony Van Vleet
Representative (Vacancy)

WASHINGTON

Senator Scott Barr
Senator Patrick McMullen
Representative Simeon Wilson
Representative Jennifer Belcher

EXECUTIVE DIRECTOR

James S. Corlett

The Western States Legislative Forestry Task Force was organized in 1974. It consists of two state senators and two state representatives (assemblymen) from Alaska, California, Idaho, Montana, Oregon and Washington legislatures. Most of the state delegates represent rural-forested areas. The current chairman is Senator Bernie Swift, Montana. Elected officers serve for one year and successors are rotated among the states. In 1986, the Canadian province of British Columbia joined the Task Force as an associate member. The Province of Alberta also joined as an associate member early in 1988. Both Canadian provinces are represented by their respective forest ministers.

The mission of the Task Force is to promote forest policy decisions that will assure the full productivity of western forests, recognizing the public's interest in sustainable forestry and a balance in ecological and economic use of forest resources. In order to achieve this mission, Task Force members will:

- * Enhance their capabilities as individual legislators
- * Collect, receive and exchange forest information
- * Provide a forum for discussion and debate
- * Act as a liaison with other legislators
- * Develop consensus and coordinate action among the member states and provinces
- * Advocate where appropriate

One of the common bonds of the Task Force states is the significant federal land ownership within each state. Federal policy and land management decisions can substantially influence the economic and social structures of states, and particularly those with large federal ownerships.

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PERCENTAGE OF FEDERALLY-OWNED LAND IN STATES THAT ARE MEMBERS OF
THE LEGISLATIVE FORESTRY TASK FORCE(1)

<u>State</u>	<u>Percent Owned By U.S. Government(2)</u>
ALASKA	85.85
CALIFORNIA	47.79
IDAHO	63.74
MONTANA	29.09
OREGON	49.72
WASHINGTON	29.06

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- (1) U.S. Department of Interior, Bureau of Land Management, PUBLIC LAND STATISTICS 1985 (Washington, D.C.: U.S. Government Printing Office, 1985), p.5.
- (2) Excludes Trust Properties.

The Task Force has sought to influence federal policy by initiating unified state action on national forestry related issues. Annually or semiannually one of its quarterly meetings is held in Washington, D.C. There it has been received by the Secretaries of Agriculture and Interior, the Assistant Secretary of Commerce, the Chief of the U.S. Forest Service, the Director of the Bureau of Land Management and Presidential assistants. Its members have made numerous personal and written contacts with the Congressional delegations from each Task Force state, with appropriate Congressional committees and with key administration officials on current subject matters of concern. In April 1988, in Washington, D.C., the Task Force hosted a luncheon in the U.S. Senate for Senators and Congressmen to hear the Honorable Allen Gotlieb, Canadian Ambassador to the United States discuss the Canada/USA Free Trade Agreement. It also honored Senator John Stennis for his support for agricultural and forestry research at land grant colleges. It honored Senator Mark Hatfield in 1986, for his support of forest insect control.

Some of the issues upon which the Task Force has acted include: RARE II; Clean Air Act Amendments, Alaska Land Allocation; USFS budgets for reforestation, timber management, state and private forestry; long-range weather forecasting; uses of forest chemicals; cooperative forest fire funding; the National Forest Multiple Use Management Act; funding for the Forest and Range Renewable Resources Planning Act; economic criteria for determining federal timber harvest schedules; oversight hearings on the National Environmental Planning Act; Corps of Engineers authority to regulate dredge and fill; federal payments to states for lost revenues due to federal ownership of lands; forest insect research; USFS road funding policy; Spotted owl; Tongass National Forest; salvage timber sales; Canadian lumber imports; national forest

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planning; Gramm-Rudman Act; forest land taxes; international border forest fire cooperation; funding for emergency insect and disease outbreaks; support for vigorous U.S. forest service timber sales and road access programs; funding for applied fire management research; elimination of Japanese tariffs on U.S. softwood plywood imports; transportation of forest products to east and gulf coast ports on other than U.S. flag vessels; appropriations for the McIntire-Stennis forestry research program; modification of application of even-flow timber sale policy to better meet market-place and forest community needs; federal reimbursement authority for utilizing fire fighting resources regardless of jurisdiction (Canada); support for retention of the present 25 percent formula for timber sale receipt payments to the states and local governments; etc. Over one hundred such issues have received major Task Force attention and action.

For more information, please contact any Task Force member or the Task Force office in Portland, Oregon.

James B. Corlett
Executive Director

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<u>Meeting #</u>	<u>Date</u>	<u>Location</u>
48	November 30-December 2, 1984	Travelodge at the Wharf, San Francisco, CA
49	March 9 & 10, 1985	Sheraton Hotel, Spokane, WA
50	June 20 & 21, 1985	Harbour Towers Hotel, Victoria, B.C.
51	October 5 & 6, 1985	Hayden Lake, ID
52	December 7 & 8, 1985	Travelodge at the Wharf, San Francisco, CA
53	April 5-9, 1986	Bellevue Hotel and U.S. Capitol, Washington, D.C.
54	July 11-15, 1986	Fairbanks-Anchorage, AK
55	October 4-6, 1986	Vancouver, B.C.
56	December 12-14, 1986	Travelodge at the Wharf, San Francisco, CA
57	March 13-15, 1987	Valley River Inn, Eugene, OR
58	June 26-28, 1987	Village Red Lion Inn, Missoula, MT
59	September 18-20, 1987	Edmonton, Alberta, Canada
60	January 8-10, 1988	Carmel Mission Inn, Carmel, CA
61	April 8-13, 1988	Bellevue Hotel, Washington, D.C.
62	June 16-19, 1988	Red Lion, Port Angeles, WA
63	September 16-18, 1988	Ramada Inn, Lewiston, ID
64	December 9-11, 1988	Executive House, Victoria, B.C., Canada
65	March 17-19, 1989	Lake Tahoe Inn, South Lake Tahoe, CA
66	August 4-6, 1989	Ketchikan and Wrangell, AK
67	September 30-October 4, 1989	Quality Inn, Washington, D.C.
68	November 10-12, 1989	Monterey Hotel Resort, Monterey, CA
69	April 20-22 1990	Molatoes Inn, Klamath Falls, OR
70	June 29-July 1, 1990	Grouse Mountain Lodge, Whitefish, MT
71	September 7-9, 1990	Port O'Call, Calgary, Alberta, Canada
72	November 16-18, 1990	Red Lion Seatac, Seattle, WA

PROJECTED MEETINGS

73	March 15-17, 1991	Boise, Idaho, Field Trip Boise Interagency Fire Center; Public Meeting at Capital
74	June 21-23, 1991	Eureka, California, Private Forestry in California; Field Trip
75	September, 1991	British Columbia

BYLAWS

WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
(As Revised January 10, 1988)

PREAMBLE

The Western States Legislative Forestry Task Force is a group of designated state legislators, whose decisions do not necessarily bind either the legislatures or state governments of their respective states, representing Alaska, California, Idaho, Montana, Oregon, Washington, and the provinces of British Columbia and Alberta which shall be associate members. Each state, by appropriate leadership, will dispatch appointed delegates to this Task Force; two delegates from its Senate and two from its House of Representatives or Assembly, plus contribution of some prorated share of funding necessary for essential actions of the Task Force and for the concomitant travel expenses of delegates.

The life and work of this Task Force are considered infinite; that is, there neither can nor should be a termination of its deliberations as long as the assurance of an adequate forest base to the West remains an issue within our nation. Individual members may come and go, as their terms of office or legislative considerations dictate, but the Task Force job of continuing contributions of public and private forests to the betterment of our country and the world must continue.

Specifically, this Task Force is charged with monitoring, on behalf of its member states, decisions of national and state executive administrations; decisions -- pending and past -- of state legislatures and of the Congress; decisions of state and federal agencies; and attitudes of all segments of society affecting the maintenance and utilization of forest lands, public and private, primarily in the West, whose fiber yield is essential to human survival, while recognizing the need to preserve and utilize a reasonable amount of our timbered land base to meet other multifaceted needs of Americans.

Finally, this Task Force is obligated to join all elements of American Society and government in actions to meet those challenges which would erode the nation's timber base for any seemingly expedient reason; to make certain that the United States will have for centuries beyond our view the productive forests to sustain its internal ecological balance, meet its recreational need, and fill its wood products demand.

1. Chair; Vice-Chair

- a. The Chair shall be elected annually to serve for a full calendar year, or until a successor is duly elected, and has such duties as the task force may authorize. Elections shall be held at the first meeting following state legislative elections. The Chair shall be rotated annually among the member states.

- b. The Vice-Chair shall be elected annually to serve for a full calendar year, or until a successor is duly elected, and has such duties as the Task Force may authorize or the Chair direct. The Vice-Chair shall be rotated annually among the member states.
- c. In the event that the Chair is no longer a Task Force member, the Vice-Chair shall serve until the next regular election.
- d. In the event that both the Chair and Vice-Chair are no longer Task Force members, a special provisional meeting of the quorum will be held to elect a new group of officers.
- e. The Chair and Vice-Chair shall not be representatives of the same state, nor shall either be able to succeed him or her self.
- f. The Chair or the Vice-Chair of the Task Force may be removed for just cause by unanimous vote of at least 12 members of the Task Force, with each state represented by at least one member.

2. Quorum

A quorum shall consist of 25% of the membership. The determination of a quorum may be challenged by any member within ten (10) days of such determination by filing such challenge in writing with the Chair of the Policy Committee. Upon such filing, the Policy Committee shall review and determine if the challenge shall be upheld. If the challenge is not upheld by the Policy Committee within ten (10) days of the filing of same, the determination of quorum present shall stand.

3. Voting

Voting shall be by an individual member but no action on a roll call vote shall be taken unless the determination of a quorum has been made and a majority of those present vote affirmatively. Written proxies may be exercised by another member from the same state. Before any final determinative vote is taken on a resolution, any member may request, and upon such request, the resolution concerned shall be reduced to a writing. Associate membership shall not possess voting privilege.

4. Meeting Notice

Notice of all meetings of the Task Force shall be sent at least 21 days in advance of the meeting.

5. Executive Director

The Executive Director shall be appointed by the Task Force from those names submitted with recommendations by the members. The

Director shall serve as Secretary of the Task Force and shall perform such duties as the Chair of the Task Force may direct. The nature of the employment will remain on an independent contractor-contractee basis. The salary and its provisions are negotiable.

6. Frequency of Meetings

Meetings shall be called at the pleasure of the Chair but the Task Force shall be convened within 21 days of the demand of a majority of the member states.

7. Fiscal

Dues and contributions from member states shall be deposited in a bank account in the name of the Task Force. The dues will be established by the formula adopted at Spokane, Washington. The Executive Director, with the concurrence of the chair shall disburse monies therefrom for necessary expenses of the Task Force. All disbursements are to be made by check with the signature of both the Chair, or Vice Chair, and the Executive Director.

Dues or contributions from associate members shall be established by negotiation with the Task Force, and shall be handled in the same manner as all other dues and contributions.

All fiscal records of the Task Force shall be annually reviewed by a certified public accountant chosen by the Chair with a concurrence of a majority of the members. A copy of all the records shall be sent to the appropriate legislative oversight committees at the end of the fiscal year, as directed by each state delegation or associate member.

8. Policy Committee

- a. The Policy Committee shall consist of a legislator from each member state designated by the delegates from each state. The Chair shall represent his/her state on the Policy Committee.
- b. The Chair of the Task Force shall be the Chair of the Policy Committee.
- c. The action of the Policy Committee shall be limited to preparing policy statements consistent with established policy positions of the Task Force in response to issues and situations requiring action in such short time as to make a full Task Force meeting impossible. The Policy Committee may direct the Executive Director to take action in name of the entire Task Force.
- d. The Policy Committee may act by mail or phone when considered necessary by the Chair of the committee, but no action shall be taken unless four members vote affirmatively.

9. Members Attendance

Should a member miss three consecutive meetings the leadership of the appropriate state House (assembly), or Senate, will be asked either to excuse the member officially or to appoint a substitute.

INTRODUCED BY

House BILL NO. 233

Barbara J. Porey

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT

LEASED

OF PURCHASE OF RAILROAD RIGHT-OF-WAY LAND TO LEASEHOLDERS OF

WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY;

THE LAND, TO LANDOWNERS ADJACENT TO THE LAND, OR TO A PERSON

OR ENTITY WHO WISHES TO PURCHASE THE LAND FOR PUBLIC

RECREATIONAL USE; REQUIRING THE PUBLIC SERVICE COMMISSION TO

ADOPT RULES TO IMPLEMENT THE RIGHT, AND AMENDING SECTION

69-14-553, MCA, AND PROVIDING AN IMMEDIATE EFFECTIVE

DATE

STATEMENT OF INTENT

A statement of intent is required for this bill because

{section 3} requires the public service commission to adopt

rules establishing the procedure for resolution of disputes

between railroads selling right-of-way land and leaseholders

of the land, landowners adjacent to the land, or other

persons or entities wishing to exercise their first right of

purchase granted by this bill, it is intended that the

commission may further define terms as necessary to

implement the purpose of this bill. The commission shall

adopt rules promoting the purchase and maintenance of

right-of-way land for public recreational use. The

commission shall prescribe the procedure to be followed by

the parties after negotiations between the parties fail and

1 after application to the commission for resolution of the
 2 dispute. The commission shall provide for the use of
 3 independent appraisers and the submission of appraisals.
 4 Rules must be adopted before October 17, 1992.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 NEW SECTION. Section 1. Definitions. As used in
 8 ^{and 2} sections 1 through 3, the following definitions apply:

9 (1) "Commission" means the public service commission
 10 established in 2-15-2602;

11 (1) ~~(1)~~ "Fair market value" means:

12 (a) the price negotiated between the parties under
 13 (section 2); or

14 (b) the ~~total~~ appraised value of the land minus the
 15 appraised value of any leasehold improvements as determined
 16 by independent appraisers, a certified appraisal under

17 (2) ~~(2)~~ "Leaseholder" means a person who holds a lease or
 18 permit with respect to land ^{adjacent to} ~~within~~ a railroad right-of-way
 19 and who has constructed or owns ^{buildings} ~~improvements~~ on the land
 20 that have an appraised value of ~~\$15,000~~ ^{\$5,000} or more.

21 (4) "Prospective buyer" means the leaseholder, the
 22 landowner adjacent to the railroad right-of-way land being
 23 offered for sale, or a person or entity offering to purchase
 24 the land for a public recreational purpose;

25 (5) "Railroad" means a railroad corporation, its

1 trustee or successor in interest, or a nonrailroad-holding
 2 corporation that owns controlling interest in a railroad.
 3 (3) (6) "Right-of-way" means land ^{upon which} owned by a railroad that
 4 is contiguous to the tracks of the railroad and not farther
 5 than 300 feet from the centerline of the tracks.

6 NEW SECTION. Section 2. First right to purchase **SEE ATTACHED PAGE**
 7 negotiation process -- exception. (1) A railroad may not

8 sell or offer for sale an interest in right-of-way land
 9 unless it first extends to each leaseholder a written offer
 10 to sell the leased land to the leaseholder at fair market
 11 value. If there is no leaseholder, the railroad shall extend
 12 the written offer to the landowner adjacent to the
 13 right-of-way land being offered for sale and to persons or
 14 entities proposing to maintain the right-of-way land for
 15 public recreational use. Prospective buyers shall respond to
 16 the offer within 60 days of receipt of the written offer,
 17 and the railroad shall negotiate in good faith with a
 18 prospective buyer for a period not exceeding 90 days
 19 following the prospective buyer's response.

20 (2) After the 90-day negotiation period, either party
 21 may file a notice of dispute with the commission under
 22 [section 3]. The land may not be sold to a party other than
 23 the prospective buyer during the response and negotiation
 24 period or while a dispute is pending before the commission.
 25 (5) This section does not apply to the sale of an

1 entire operating railroad line by one operating railroad to
 2 another entity for the purpose of operating a railroad.
 3 NEW SECTION. Section 3. Dispute resolution --
 4 rulemaking -- judicial review. (1) A railroad or a
 5 prospective buyer may apply to the commission to resolve a
 6 dispute concerning fair market value or other terms arising
 7 from negotiations under [section 2].
 8 (2) The commission shall adopt rules to implement
 9 [sections 1 through 3]. The rules must establish a procedure
 10 to resolve disputes and provide for the use of independent
 11 appraisers.
 12 (3) A final decision of the commission may be reviewed
 13 by the district court for any county in which the land is
 14 located. The scope of judicial review is limited to a
 15 determination of whether substantial evidence exists to
 16 support the decision of the commission.

17 Section 4. Section 69-14-553, MCA, is amended to read:
 18 "69-14-553. Acquisition and transfer of real estate.
 19 Any such A railroad corporation may acquire by purchase or
 20 gift any lands land in the vicinity of its road or through
 21 which the same road may pass, so far as may be if the land
 22 is convenient or necessary to secure the right-of-way or
 23 such as may be if the land is granted to aid in the
 24 construction of such the road and, except as provided in
 25 [sections 1 through 3], may convey the same land in such any

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1 manner as the directors may prescribe. All deeds and
2 conveyances made by such the corporation shall must be
3 signed by the president, under ⁴the seal of the corporation."
4 NEW SECTION. Section ~~5~~⁴. Codification instruction.
5 and ² [Sections 1 through ~~3~~²] are intended to be codified as an
6 integral part of Title 69, chapter 14, and the provisions of
7 Title 69, chapter 14, apply to [sections 1 through 3].

-End-

NEW SECTION. Section 5. 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.

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

Ex. 3
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HB 233

AMENDMENTS TO SECTION 2

"(1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet of the track centerline and that uses the leasehold for transportation, regardless of the status of train operations, has a right of first refusal to purchase the land in the event the owner seeks to sell the land or transfer the leasehold estate.

(2) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment of the lease unless he first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(3) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (2). The land may not be sold or transferred during the response and negotiation periods.

(4)(a) If the owner and the leaseholder cannot agree on the fair market value of the land, they shall appoint a certified appraiser to establish the fair market value of the land.

(b) In the event that the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals must constitute the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers must appoint a third certified appraiser whose appraisal must establish the fair market value of the land.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed."

(5).....

Amendments to House Bill No. 233
First Reading Copy

Requested by Rep. Measure
For the Committee on Natural Resources

Prepared by Paul Sihler
February 8, 1991

1. Title, line 5.

Following: "PURCHASE OF"

Strike: "RAILROAD RIGHT-OF-WAY"

Insert: "LEASED"

2. Title, lines 6 through 9.

Following: the first "LAND"

Strike: the rest of line 6 through "RIGHT" on line 9

Insert: "WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY"

3. Title, line 9.

Strike: "AND"

4. Title, line 10.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1, line 12 through page 2, line 4.

Strike: the STATEMENT OF INTENT in its entirety

6. Page 2, lines 8 through 10.

Strike: "through 3" on line 8

Insert: "and 2"

Lines 9 and 10.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

7. Page 2, line 14.

Following: "the"

Strike: "total"

8. Page 2, lines 14 and 15.

Following: "land" on page 14

Strike: "minus" through "improvements," on line 15

9. Page 2, line 16.

Following: "by"

Strike: "independent appraisers"

Insert: "a certified appraisal under [section 2]"

10. Page 2, line 18.
Following: "land"
Strike: "within"
Insert: "adjacent to"

11. Page 2, line 19.
Following: "owns"
Strike: "improvements"
Insert: "buildings"

12. Page 2, line 20.
Following: "of"
Strike: "\$15,000"
Insert: "\$5,000"

13. Page 2, line 21 through page 3, line 2.
Strike subsections (4) and (5) in their entirety
Renumber: subsequent subsection

14. Page 3, line 3 through line 5.
Following: "land"
Strike: "owned by"
Insert: "upon which"
Following: "railroad"
Strike: "that" through "tracks" on line 5
Insert: "has or has had tracks"

15. Page 3, line 7 through line 24.
Following: "(1)"
Strike: the rest of line 7 through line 24 in their entirety
Insert: "A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet of the track centerline and that uses the leasehold for transportation, regardless of the status of train operations, has a right of first refusal to purchase the land in the event the owner seeks to sell the land or transfer the leasehold estate.

(2) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment of the lease unless he first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(3) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (2). The land may not be sold or transferred during the response and negotiation periods.

(4)(a) If the owner and the leaseholder cannot agree on the fair market value of the land, they shall appoint a certified appraiser to establish the fair market value of the land.

(b) In the event that the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser

who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals must constitute the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers must appoint a third certified appraiser whose appraisal must establish the fair market value of the land.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed."

Renumber: subsequent subsection

16. Page 4, lines 3 through 16.
Strike: Section 3 in its entirety
Renumber: subsequent sections

17. Page 4, line 25.
Strike: "through 3"
Insert: "and 2" .

18. Page 5, line 5 and 7.
Strike: "through 3"
Insert: "and 2"

19. Page 5.
Following line 7
Insert: "NEW SECTION. Section 5. 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.

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval."

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Printed 2:09 pm on February 11, 1991

EXHIBIT 5
DATE 2/11/91
HB N/A
Companion to
HB233

LCRTT

**** Bill No. ***

Introduced By *****

By Request of *****

A Bill for an Act entitled: "An Act providing a first right of refusal for a right-of-way to public recreational trail users on the sale of a rail bed."

WHEREAS, the legislature recognizes that there is an ever increasing demand for public recreational trails; and

WHEREAS, abandoned rail beds are uniquely suited for public recreational uses; and

WHEREAS, the potential value of abandoned rail beds as public rights-of-way should be evaluated prior to their disposal; and

WHEREAS, abandoned rail beds may be held in trust as public recreational trails until such time as the rail beds can be reactivated as a railroad.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Definitions. As used in [section 3], the following definitions apply:

(1) "Public recreational trail user" means a local government or an incorporated not for profit corporation that has as its stated purpose the development, use, or maintenance of public recreational trails.

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(2) "Public recreational use" means the uses provided in 70-17-102 (1), (5), and (7).

(3) "Rail banked" means holding an easement of right-of-way over a rail bed in trust for use as a recreational trail until such time as the rail bed is needed for transportation purposes.

(4) "Rail bed" means the fee or lesser interest in the land 8.5 feet to either side of centerline of the railroad track.

(5) "Railroad" means a railroad corporation, its trustee or successor in interest, or a nonrailroad-holding corporation that owns controlling interest in a railroad.

Section 2. Section 60-11-111, MCA, is amended to read:

"60-11-111. Identification and acquisition of railroad rights-of-way. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) The department of commerce:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsection (2)(a); and

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Printed 2:09 pm on February 11, 1991

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2/11/91
HB 233
companion
bill

(c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (2)(a) and:

(i) hold all such acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to such local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (2)(c).

(3) The department of commerce may contract with a private person or organization to complete its responsibilities under subsection (2).

~~(3)~~(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (2)(c)(i) must be administered by the department of state lands as prescribed in Title 77, until such time as the land is needed for transportation purposes."

NEW SECTION. **Section 3. First right to easement.** (1)
Except as provided in subsection (2), a railroad may not sell or offer for sale an interest in a rail bed or land adjacent to a rail bed when the sale of the adjacent land would defease the public's right to use the rail bed for a right-of-way unless it first extends a right of refusal of an easement for right-of-way to those persons or entities interested in obtaining an easement over the rail bed for public recreational use.

(a) Once a railroad and a legitimate buyer have signed a bonafide purchase agreement the railroad must by actual and

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Printed 2:09 pm on February 11, 1991

public notice offer a right of first refusal for a right-of-way over the rail bed to those entities operating as not for profit corporations whose articles contain the development of public recreational trail use as a purpose.

(b) Except as provided in subsection (c), prospective public recreational trail users shall respond to the offer for right-of-way within 180 days of the public notice required under subsection (a), and the railroad shall negotiate in good faith with a prospective public recreational trail user for a period not exceeding 360 days following a prospective public recreational trail user's response.

(c) The railroad may commission a public recreational trail user to conduct an investigation and prepare a report analyzing the feasibility of use of the rail bed for public recreational uses. If the report concludes that the subject parcel is not suited for public recreational uses then the proposed sale may close 30 days after the publication of the report.

(d) A rail bed with an easement acquired under this section is considered to be rail banked.

(2) Rail beds acquired by the railroad by an easement the terms of which limit the use of the rail bed exclusively to railroad purposes must first be offered to the owners of the reversionary estate.

-END-

DATE 2/11/91
HB - N/A - Companion
bill to HB 233

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2/11/91 BILL NO. _____ NUMBER _____

MOTION: to draft committee bill; a companion "Rails-to-Trails" bill
to HB 233.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		/
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		/
REP. BOB REAM	✓	
REP. TOM NELSON		/
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER		/
REP. DAVID HOFFMAN		/
REP. DICK KNOX		/
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	12	6

Motion to draft committee bill carried.

DATE 2/11/91
HB 233

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2/11/91 BILL NO. HB 233 NUMBER

MOTION: Rep measure made a substitute motion to table HB 233

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN		✓
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE		✓
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL		✓
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE		✓
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	4	14

Motion Failed

EXHIBIT C
DATE 2/11/91
HB 551

Amendments to Wastewater Treatment Revolving Fund Act
House Bill 551
Room 317 3:00 pm. 2/11/91
Natural Resources Committee
Raney--Chairman

I would like to testify today in support of the bill to amend the Wastewater Treatment Revolving Fund Act. The Act was passed by the last session of the legislature with the intent of creating a new financial assistance program to help communities build wastewater treatment and collection facilities. The program is capitalized with federal funds provided by a grant to the state and state funds derived through the sale of general obligation bonds. We anticipate receiving approximately 38 million dollars in federal funds which must be matched with a state 20% match contribution of 7.6 million. Assistance is provided to communities in the form of low interest loans to cover the costs of planning, design, and construction of wastewater facilities. All repayments of loans return back to the fund to provide capital for future loans.

The Amendments provided for by this bill can best be described as minor technical "cleanup" changes which came about in the process of development and implementation of this new program. The changes are supported by the EPA, the state's bond counsel (Dorsey and Whitney), and the state's financial advisor--Public Resource Advisory Group.

The first change pertains to the use of interest earnings generated from bond proceeds used to make up the state match. Previously

these earnings went to the debt service account which was used to repay the bondholders. The state's financial advisor, PRAG, suggested that we have the flexibility to use these interest earning to either repay the bondholders or reduce the amount that must be borrowed to make a loan of a specified amount. Financially, the consequences to the borrower are similar.

The second change is to correct the requirement in the original legislation that loan repayments must be credited to the federal allocation account and the state allocation account in the same proportion in which they were lent out. In actuality, loan repayments lose their federal character when paid back into the fund and therefore are credited to the state allocation account only. The funds, when initially lent out, have a number of federal requirements attached to them. When these funds revolve back into the program via loan repayments, most of the federal requirements are dropped.

The last change is the requirement of reserve accounts to be established by local borrowers to secure the loan in accordance with the standard practices governing public finance. While initially these reserves were to be mandated by administrative rules, it was the suggestion of EPA and the state's bond counsel that this requirement should also be provided for in the enabling legislation. Reserves are very common in most methods of public finance to secure the loans and to make the loans more attractive to bondbuyers. Because this program is backed, in part, by state

2/11/91
HB 551

issued general obligation bonds, we felt it important that loans have limited risk and all typical methods of securing the debt be employed.

Don J. Fleenor,
DHEC

TESTIMONY
Petroleum Tank Release Compensation Board
Jean Riley, Executive Director

The Petroleum Tank Release Compensation Board (Board) requested the proposed changes to Title 75 Chapter 11 Part 3. The Board is trying to clarify some issues which have come to light since this statute became effective in 1989. The following are the Board's reasoning behind the proposed changes and some proposed amendments which should help to further clarify the issues.

A. Definition of petroleum or petroleum products.

(15) "Petroleum" or "Petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a minimal de minimis amount of another substance.

The reason for this change is to clarify that mixtures of waste oil and waste water or other mixtures with no commercial application are excluded, and that releases of mixtures of petroleum and hazardous substances which could result in hazardous waste also would be excluded.

B. Definition of petroleum storage tank.

(16) "Petroleum storage tank" means a tank that contains is being used to actively receive, dispense, or store petroleum or petroleum products when a release is discovered or that was actively used for any of these purposes no more than 1 year before the date that a release is discovered placed out of service on a temporary basis and is in compliance with department rule and that is:

The Board would like a clarification from the Legislature as to whether or not abandoned or defunct tanks not in use at the time the law went into effect, April 13, 1989, should be covered. The proposed language would exclude the defunct tanks. To date the Board has paid in excess of \$46,000.00 on 11 abandoned tank sites.

(over)

C. Definition of release.

The Board feels that the definition of release used by the Department of Health and Environmental Sciences (DHES) Underground Storage Tank Program better describes a release from a petroleum storage tank than the CECRA definition for release. The CECRA definition includes release from the abandonment or discarding of barrels, containers, and other closed receptacles which does not fit into the definition of a petroleum storage tank.

D. Limit assignment to designated representatives.

The Board has had problems in the past with owners not paying contractors for charges that the Board found to be ineligible. These charges include replacement costs and closure costs which are excluded by statute. The language clarifies that the owner or operator remains responsible for reimbursement of contractors or consultants.

E. Extend eligibility in some non-notification situations.

The Board has found that in some cases the DHES has waived the tank notification requirements. This proposed change would allow the Board the same flexibility.

F. Recognize tribal government authority.

The objective of this change is to allow the Board and DHES to recognize authority of tribal governments over tank leaks in Indian country, as EPA would require. This mainly makes sure that the tribal authority is notified similar to a local governmental agency.

E. Clarify Board and DHES roles in claim review process.

This would revise the statutory provision in the current statute to read like the actual practice. The claims are received by the Board staff and once determined to be complete, the Board staff transfers them to DHES for their review. This has been working well and the change would reflect this.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

2/11/91

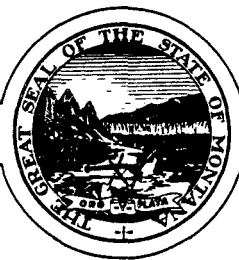
HB 485

UNDERGROUND STORAGE TANK PROGRAM

(406) 444-5970

STAN STEPHENS, GOVERNOR

FAX #(406) 444-1499



STATE OF MONTANA

OFFICE 836 Front Street
LOCATION: Helena, Montana

MAILING Cogswell Building
ADDRESS: Helena, MT 59620

TESTIMONY
for the
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
before the
HOUSE NATURAL RESOURCE COMMITTEE

HOUSE BILL 485
February 11, 1991

The Department of Health and Environmental Sciences supports the passage of House Bill 485.

The Department's Underground Storage Tank Program works closely with the Petroleum Tank Release Compensation Board. The changes mandated by House Bill 485 will enhance the Board's ability to effectively administer claims and provide reimbursement of eligible costs incurred during the cleanup and remediation of accidental petroleum releases from underground storage tanks and piping.

The Department urges the Committee to give House Bill 485 favorable consideration.

Frank Gessomjan

EXHIBIT 11
DATE 2/11
HB 485

To:
Representative Bob Raney, Chairman
House Natural Resources Committee

From:
Candy Mills, Owner
Mills Repair, Belgrade, MT

Feb. 11, 1991

Request for an amendment to HB0485

Please refer to page 6 of HB0485, line 20, which is Section 2(4) of Section 75-11-302, MCA. Regarding the shared deductible as exists in the Petroleum Tank Release Compensation Fund.

HB0485 amended to read:

As of effective date of HB0485, for releases that are discovered and reported on or after effective date, the board shall reimburse an owner or operator for 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$995,000.



EXHIBIT 13
DATE 2/11/91
SB 139

MONTANA

Association of Conservation Districts

501 North Sanders
Helena, MT 59601

(406) 443-5711

SB 139
February 11, 1991

The Montana Association of Conservation Districts, which is an organization representing the 59 conservation districts in Montana, supports SB 139.

As Ray Beck said, this will clean up Section 76-15-508 of the conservation district law and make it current, but it will also assist the conservation districts in properly administering their budgets.

We ask for your support in passing this bill.

Thank you.

Peggy L. Parmelee
Peggy L. Parmelee
Executive Vice President



Valley Bank

P.O. Box 106 • 406-388-4283
Belgrade, MT 59714

#12
DATE 2/11/91
HB 485

February 11, 1991

Honorable Robert Raney
Chairman, Natural Resources Committee
Montana House of Representatives
Helena, Montana 59601

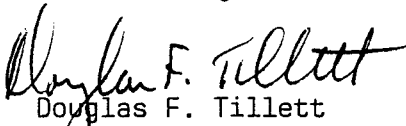
Dear Representative Raney:

Please accept this letter in support of amending language to House Bill 485 to allow for a lower deductible on the State Super Fund for the cleanup of contaminated sites. At the present level of \$17,500, many small operators are unable to provide a letter of credit to cover their share of potential clean-up projects. This burden not only limits their credit availability, which at times may be very marginal due to the smaller size of their operation, but also prohibits them from any longer range planning because of the large potential liability. I feel they certainly are not trying to avoid their responsibility, but realistically must realize the possibility of the failure of their business if called upon to provide a letter of credit of that magnitude.

Please consider a lower deductible limit as House Bill 485 is discussed.

Thank you for your time and understanding of this consequential situation.

Sincerely, .


Douglas F. Tillett
President

Amendments to House Bill No. 377
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Paul Sihler
February 10, 1991

1. Page 4, line 8.
Following: ""Megalandfill""
Insert: "or "facility""
2. Page 4, line 10.
Following: "waste"
Insert: "or any ash monofill that accepts 35,000 tons or more a
year of incinerator ash, either fly ash or bottom ash"
3. Page 8, line 17.
Following: "environmental"
Insert: ", social, and economic"
4. Page 9, line 17.
Following: "environmental"
Strike: "impact"
Insert: ", social, and economic impacts"
5. Page 12, line 21.
Strike: "benefits"
Insert: "impacts"
6. Page 13, line 23.
Strike: "and"
7. Page 13, line 25.
Following: "industries;"
Insert: "and
(m) the economic impact on the local area, local government
infrastructure, and existing industry;"
8. Page 14, lines 20 and 25.
Following: ";"
Strike: "and"

9. Page 15, line 2.

Following: "waste"

Strike: "."

Insert: "; and

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities."

10. Page 18, line 17.

Strike: "part 1,"

11. Page 19, line 3.

Strike: "date"

Insert: "dates"

Strike: "location"

Insert: "locations"

12. Page 19, line 6.

Strike: "a date"

Insert: "dates"

Strike: "a hearing"

Insert: "hearings"

13. Page 19, line 7.

Strike: "A certification hearing"

Insert: "The certification hearings"

14. Page 19, line 8.

Following: "Helena"

Strike: "or"

Insert: "and"

15. Page 19, line 22.

Following: "environmental"

Strike: "impact"

Insert: ", social, and economic impacts"

16. Page 27, lines 3 and 4.

Following: "facility" on line 3

Strike: "minimizes" on line 3 through "impact" on line 4

Insert: "constitutes a minimal adverse impact on the environment"

17. Page 27, lines 7 through 14.

Following: "regulations" on line 7

Strike: the remainder of subsection (c) through "subdivisions" on
line 14

18. Page 28, line 7.

Following: ";

Strike: "and"

19. Page 28, line 8.

Strike: "."

Insert: "; and

(f) the financial and legal history of the applicant,
including but not limited to his financial soundness or
convictions for violations of any law or regulation."

Amendments to House Bill No. 377
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 9, 1991

1. Statement of Intent, page 1.

Following: line 25

Insert: "The board shall adopt rules that define the specific subjects, types of data, and level of water monitoring that an applicant for a certificate of site acceptability for a megalandfill shall include in the 2-year baseline study of water resources, hydrology, and beneficial uses within the water protection area. The information collected by the applicant must be sufficient to allow the department to assess the cumulative impacts of the proposed megalandfill upon the hydrology, quantity, and quality of water resources and upon beneficial uses in the water protection area. The board's rules must identify the specific types of analysis an applicant shall prepare in order to provide an adequate assessment of the consequences of proposed megalandfill operations upon water resources and beneficial uses that may be diminished or degraded by the proposed megalandfill and the estimated costs of restoration and replacement of the water resources and beneficial uses.

The board's rules must define the characteristics of significant aesthetic values and significant wildlife habitat that are defined in [section 3] as beneficial uses of water resources. Significant wildlife habitat must include habitat for state and federally designated threatened and endangered species and all species of wildlife and fish that are classified as game species and for which licenses are required for hunting and fishing in the state."

2. Page 3.

Following: line 8

Insert: "(2) "Beneficial uses" means those beneficial uses of water resources defined in 85-2-102(2) and other uses of water resources that include but are not limited to maintenance of minimum stream flows, public and private water leases, significant aesthetic values, and significant wildlife habitat." Renumber: subsequent subsections

3. Page 5.

Following: line 9

Insert: "(12) "Water protection area" means the area proposed for siting a megalandfill that would be subject to the certificate and the area that is 1 mile up-gradient by 2 miles cross-gradient by 3 miles down-gradient of the respective hydrologic slopes of surface water and ground water flowing through the area that would be subject to the certificate.

(13) "Water protection plan" means the applicant's written proposal, as required pursuant to [section 13], for the protection of water resources with the water protection area.

(14) "Water resources" means all streams, lakes, wells, springs, irrigation systems, wetlands, watercourses, waterways, drainage systems, and other bodies of surface water and ground water, including natural and manmade water bodies that are outside the state's boundaries but within the boundaries of a water protection area.

(15) "Water user" means a person or entity holding a water right, as provided in Title 85, chapter 2, and any state or federal agency or unit of local government with jurisdiction over water resources or beneficial uses."

4. Page 9, line 24.

Following: "locations"

Insert: ", including a 2-year baseline study of water resources within the water protection area"

5. Page 9.

Following: line 24

Insert: "(v) for the primary location, a water protection plan that must include the following elements:

(A) a list containing the names and addresses of all water users in the water protection area;

(B) a detailed assessment of the existing water resources, hydrology, and beneficial uses within the water protection area sufficient to enable the department to assess the potential and probable cumulative impacts of the proposed megalandfill upon the hydrology, quantity, and quality of water resources and beneficial uses in the water protection area;

(C) an assessment of the consequences of the proposed megalandfill on the hydrology, quantity, and quality of water resources in the water protection area, including the potential for diminishment or degradation of water resources and the potential for adverse effects on beneficial uses;

(D) an assessment of the potential for water resources and beneficial uses that may be diminished or degraded to be permanently restored or replaced to the approximate hydrologic characteristics, quantity, and quality that existed prior to the commencement of operations of the proposed megalandfill and the proposed methods of restoration or replacement; and

(E) the estimated cost of restoring or replacing any water resources that may be diminished or degraded by the proposed megalandfill and the estimated cost of ensuring that continuation of beneficial uses within the water protection area at no greater cost to water users than under conditions that existed prior to the commencement of operation of the proposed megalandfill;"

Renumber: subsequent subsections

6. Page 10, line 4.

Following: "require"

Insert: ", except that the board shall adopt rules setting forth requirements for the content of the water protection plan"

7. Page 14, line 18.
Following: "wetlands;"
Strike: "and"

8. Page 14.
Following: line 20
Insert: "(j) the water protection plan; and"

9. Page 27, line 20.
Following: "originates;"
Strike: "and"

10. Page 27, line 23.
Following: "improvements"
Strike: "."
Insert: "; and"
Insert: "(h) that the water protection plan is adequate."

11. Page 31, line 25.
Following: "property"
Insert: "or a water user"

12. Page 32, line 8.
Following: "state."
Insert: "If the owner or water user has a beneficial use of water in the water protection area, the burden of proof is on the megalandfill operator to show with clear and convincing evidence that the damage to water resources was not caused by the operation of the megalandfill."

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Natural Resources

COMMITTEE

BILL NO. SB 18

DATE 2-11-91

SPONSOR (S)

SPONSOR(S) Sen. Gage ~ revise oil & gas laws

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[illegible]

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HOUSE OF REPRESENTATIVES
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Natural Resources COMMITTEE BILL NO. SJR 6
DATE 2-11-91 SPONSOR(S) Sen. Swift - W. Foreby Council
PLEASE PRINT PLEASE PRINT delegate PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 551
DATE 2-11-91 SPONSOR(S) Rep. O'Keefe - amend waste water treatment fund
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Thomas M. Miller</i>	<i>DNRC</i>		
<i>DAN TRASTER</i>	<i>DIES</i>	<input checked="" type="checkbox"/>	
<i>Frank J. Brennan</i>	<i>DHE</i>		

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 485

DATE 2-11-91

SPONSOR(S) Rep. Raney - Petroleum Tanks

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Gene Alexander</u>	<u>Mt. Petroleum Marketers</u>	<u>X</u>	
<u>Candy Mills</u>	<u>(Mills Repair) self</u>	<u>X</u>	
<u>Randy Mills</u>	<u>Mills Repair</u>	<u>X</u>	
<u>Franklin Gessamen</u>	<u>SDHES</u>	<u>X</u>	
<u>Jean Riley</u>	<u>Petro. Tank Release Comp. Board</u>	<u>X</u>	
<u>Chris Kaufmann</u>	<u>INEIC</u>	<u>X</u>	
<u>Joe Barnett</u>	<u>Rep. H.D. 76</u>	<u>X</u>	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. SB 139

DATE 2-11-91

SPONSOR(S) Grosfield - Conservation Board to invest
monies.

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Peggy Parmelee	MACD	✓	
Ray Suck	DNRC	✓	

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