

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN DICK KNOX, on January 18, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

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

Committee Business Summary:

Hearing: HB 121
Executive Action: HB 30 Discussion on HB 64

HEARING ON HB 121

Opening Statement by Sponsor:

REP. RUSSELL FAGG, HD 89, Billings, told the committee that HB 121 would establish standards for dam negligence and explained that the liability section of HB 121 is the heart of the bill.

The bill stipulates that dam inspections should be done regularly.

Proponents' Testimony:

Gary Fritz, Department of Natural Resources and Conservation (DNRC), stated current case law regarding water reservation in Montana is scarce and therefore, the DNRC supports HB 121. He added the flood control and recreation components to HB 121 are good components. EXHIBIT 1

Jo Brunner, Montana Water Resources Association (MWRA), testified in support of HB 121 and stated MWRA would continue to support and work with water policy in Montana.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association (MTLA), stated the Association opposed HB 121 because they are concerned the Water Policy Committee would be given ability to transform current dam policy. He said HB 121 leaves interpretation of dam failure law up to the court. He believes HB 121 is unconstitutional because it denies dam owners their rights.

Jim Jensen, Montana Environmental Information Center (MEIC), stated HB 121 offers differing standards of liability which would affect public resources, particularly water quality. He noted that the stability of stream channels is threatened by the construction of dams.

Questions From Committee Members and Responses:

REP. BOB RANEY asked REP. FAGG if HB 121 should be in the Judiciary Committee.

REP. HOWARD TOOLE asked if renters would be precluded from the dam requirements within the bill. He said there should be a statement in the bill if it is to be considered retroactive.

REP. TOOLE asked if there was a notification process within HB 121 regarding failure to warn. REP. FAGG stated that was not feasible due to the size of the state.

REP. EMILY SWANSON asked Mr. Hill to define gross negligent standards and to explain the consequences if a dam owner did not follow the level of care advised. Mr. Hill replied that the consequences for negligence would be dependent on the degree of that negligence.

Closing by Sponsor:

REP. FAGG closed by saying he felt the phrase "hydraulic shadow" should be taken out of HB 121 as there is no hydraulic shadow.

EXECUTIVE ACTION ON HB 30

Motion/Vote: Motion was made to adopt REP. GILBERT'S amendments to HB 30. Motion carried unanimously.

Motion: REP. BOB GILBERT MOVED HB 30 DO PASS AS AMENDED.
EXHIBIT 2

Discussion: REP. TOOLE asked REP. GILBERT what effect his amendment would have on Flathead County. REP. GILBERT replied that the amendment would not adversely affect Flathead County.

REP. MIKE FOSTER asked if the bill would affect old lease holders.

Motion/Vote: REP. VIVIAN BROOKE moved to adopt REP. JOHN MERCER'S amendments to HB 30. EXHIBIT 4 and 4a REP. BROOKE noted that she approved of the Statement of Intent. Motion carried.

Discussion: Michael Kakuk, EQC, stated that if land is leased, that person would not qualify to petition. Local governments cannot adopt regulations.

REP. RANEY asked if, under current law, local governments would be able to regulate leaseings? Mr. Kakuk replied no.

REP. FOSTER told the committee that although he had considered an amendment which would have eliminated reservoirs from the bill, he would not pursue it. EXHIBIT 5

REP. HARPER said that water rights on Holter and Hauser Lakes are controlled by Montana Power but that landowners can petition Lewis and Clark County to expand regulations to include these reservoirs. He added that the federal government always has supremacy.

REP. BROOKE stated that REP. MERCER'S amendments were needed to make HB 30 passable.

REP. JAY STOVALL noted that the amendments were a good compromise to control pollution in lakes.

REP. DOUG WAGNER stated HB 30 did nothing to control pollution and did not enhance the environment.

Motion/Vote: REP. WAGNER MOVED TO TABLE HB 30. Motion failed.
EXHIBIT 6

Vote: HB 30 DO PASS AS AMENDED. Motion carried. EXHIBIT 6a

EXECUTIVE ACTION ON HB 64

Motion: REP. ROLPH TUNBY moved to adopt his amendments to HB 64.
EXHIBIT 7

Discussion: REP. RANEY stated the amendments concur with the intent of similar legislation in the 1991 session. He said that EQC had debated the solid waste issue at length during that session.

REP. FAGG said he did not feel Montana should subsidize out-of-state garbage. He said he would like to see REP. TUNBY'S amendments split into two separate amendments.

REP. HARPER stated if the committee adopted the amendments, the state would now be entering into the same fee structures that the Department of Health and Environmental Sciences (DHES) wanted initially on a short term basis.

REP. RANEY said the amendment would allow the DHES to put the solid waste disposal program into place.

REP. BROOKE recommended that the committee move forward and not amend the bill. She questioned whether there would be regulations on what goes into landfills.

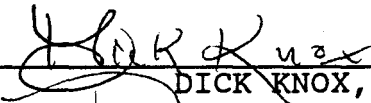
REP. RANEY reminded the committee that HB 64 was the start of allowing waste importation to Montana. He said the amendments offer significant change in waste management policy developed over the past four years. He added if the \$5 fee is levied, Montana could profit from waste importation.

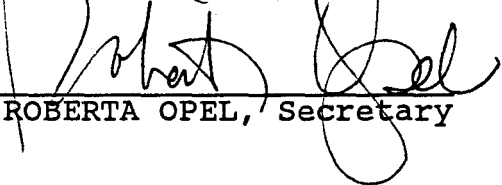
REP. GILBERT told the committee he believed executive action should be delayed on HB 64.

Following the discussion the committee agreed to delay executive action on HB 64.

ADJOURNMENT

Adjournment: 6:20 p.m.



DICK KNOX, Chairman


ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

1-18-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE	✓		
REP. DOUG WAGNER	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

January 19, 1993

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that House Bill 30 (first reading copy -- white) do pass as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read:

1. Page 1.
Following: Line 12
Insert:

"STATEMENT OF INTENT

In providing governing bodies with a local option to change the definition of a lakeshore from 20 feet to a maximum of 50 feet above the high-water elevation, it is the intent of the legislature that the governing body not automatically exclude all development within this zone. Rather, the lakeshore is intended to be a zone of closely managed activity where proposed development is reviewed and approved by the governing body pursuant to local regulations adopted under Title 75, chapter 7, part 2."

2. Page 1, line 17.
Following: "75-7-203"
Insert: "and [section 8]"

3. Page 2, line 5.
Following: "20"
Strike: "50"
Insert: "20"

4. Page 2, line 24.
Following: "(4),"

Insert: "upon receipt of a petition signed by at least 15% of the lakeshore property owners, or signed by persons owning at least 15% of the lakeshore property,"

5. Page 3, line 8.
Following: "impoundment"
Strike: "that is"

6. Page 3, line 9.
Following: "(a)"
Insert: "that is"
Following: "i"
Strike: "or"

7. Page 3, line 10.
Following: "(b)"
Insert: "that is"

8. Page 3, line 11.
Following: "Title 82"
Strike: "."
Insert: "; or
(c) when lakeshore development is regulated by a federal agency."

9. Page 3, line 13.
Following: "shall"
Insert: "": (a)"

10. Page 3, line 16.
Following: "lake"
Insert: "": and (b) comply with the requirements of [section 8(2)]"

11. Page 3, line 20.
Following: "permit"
Insert: "granted under this part"

12. Page 3, line 24.
Following: "board"
Insert: ", lake advisory committee, and conservation district"

13. Page 4.
Following: line 14
Insert: "(3) In performing its duties under this part, the governing body shall, upon request, seek the recommendation

and assistance of the local conservation district."

14. Page 5.

Following: Line 25.

Insert:

"NEW SECTION. Section 8. Change in width of lakeshore zone -- local option. (1) A governing body may, through the procedures in subsection (2), change the definition of a lakeshore in 75-7-202 from 20 horizontal feet to a maximum of 50 horizontal feet from the high-water elevation.

(2) When changing the definition of a lakeshore under subsection (1), a governing body shall:

(a) provide public notice pursuant to 7-1-4128 for a municipality or 7-1-2121 for a county;

(b) conduct a public hearing according to the procedures in 7-1-4131; and

(c) follow the procedures for the adoption of ordinances in 7-5-103.

NEW SECTION. Section 9. [standard] Codification instruction. [Sections 6 through 8] are intended to be codified as an integral part of Title 75, chapter 7, part 2, and the provisions of Title 75, chapter 7, part 2, apply to [sections 6 through 8]."

EXHIBIT 1

DATE 1-18-93

HB 121

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 121, FIRST READING

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

JANUARY 18, 1992

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

The Department of Natural Resources and Conservation (DNRC) supports House Bill 121. It is the result of a thorough review of Montana's laws and regulations concerning the safety of dams by the Legislative Water Policy Committee. The DNRC participated in that review and concurs with the Water Policy Committee proposal.

This bill addresses the fact that little precedent has been established in the courts regarding the liability standard to be applied to owners of dams in Montana. Further, the Montana Dam Safety Act only establishes a *negligence* liability standard for dams having operating permits from the DNRC. As such, it falls short in addressing many Montana dams since operating permits are issued only on high-hazard dams -- those larger than 50 acre-feet *and* where the loss of life is likely if the structure should fail.

The Dam Safety Act was passed with this liability "*carrot*" as an incentive to high-hazard dam owners to obtain operating permits. House Bill 121 proposes to extend this "*carrot*" to other types of dams as a means to better assure their safety. More specifically, it would apply a *negligence* liability standard to dams constructed, operated, and maintained under the supervision of an engineer, including private dams located on federal land.

This legislation also deals with the liability situation created when a landowner places a home or other structure downstream of an *existing* dam. Other states have wrestled with this encroachment problem which is certainly not unique to Montana. A few have provided powers to local governments to zone areas below an existing dam to exclude homes or to deny subdivisions of land below a dam. In contrast, House Bill 121 provides that, if such a dam subsequently fails, the downstream landowner must prove that the dam owner was *grossly* negligent before the dam owner can be found liable for

any damages. Under current law, if homes or other structures are placed below an existing dam, it results in the dam being classified as high-hazard and requires the dam owner to comply with established minimum state standards of configuration, operation, and maintenance. The proposed legislation serves to balance the increased cost to a dam owner of assuring the safety of a dam that, absent the new homes or structures, would not be subject to such costs.

EXHIBIT 2
DATE 1-18-93
HB 30

Amendments to House Bill No. 30
First Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
January 16, 1993

1. Page 2, line 24.

Following: "(4)."

Insert: "upon receipt of a petition signed by at least 15% of the
lakeshore property owners,"

2. Page 3, line 8.

Following: "impoundment"

Strike: "that is"

3. Page 3, line 9.

Following: "(a)"

Insert: "that is"

Following: "i"

Strike: "or"

4. Page 3, line 10.

Following: "(b)"

Insert: "that is"

5. Page 3, line 11.

Following: "Title 82"

Strike: "."

Insert: "; or

(c) when lakeshore development is regulated by a federal
agency."

6. Page 3, line 13.

Following: "shall"

Insert: ": (a)"

7. Page 3, line 16.

Following: "lake"

Insert: "; and (b)(i) provide a public notice pursuant to 7-1-
4128 for a municipality or 7-1-2121 for a county;

(ii) conduct a public hearing according to the procedures in
7-1-4131; and

(iii) follow the procedures for the adoption of ordinances
in 7-5-103"

EXHIBIT 3
DATE 1-18-93
HB 30

Amendments to House Bill No. 30
First Reading Copy

Requested by Rep. Driscoll
For the Committee on Natural Resources

Prepared by Paul Sihler
January 4, 1993

1. Page 3, line 20.
Following: "permit"
Insert: "granted under this part"

EXHIBIT ⁴

DATE 18-93

HB 30

Amendments to House Bill No. 30
First Reading Copy

Requested by Rep. Mercer
For the Committee on Natural Resources

Prepared by Paul Sihler
January 15, 1993

1. Page 1.
Following: Line 12
Insert:

"STATEMENT OF INTENT

In providing governing bodies with a local option to change the definition of a lakeshore from 20 feet to a maximum of 50 feet above the high-water elevation, it is the intent of the legislature that the governing body not automatically exclude all development within this zone. Rather, the lakeshore is intended to be a zone of closely managed activity where proposed development is reviewed and approved by the governing body pursuant to local regulations adopted under Title 75, chapter 7, part 2."

2. Page 1, line 17.
Following: "75-7-203"
Insert: "and [section 8]"

3. Page 2, line 5.
Following: "~~20~~"
Strike: "50"
Insert: "20"

4. Page 5.
Following: Line 25.
Insert:

"NEW SECTION. Section 8. Change in width of lakeshore zone -- local option. (1) A governing body may, through the procedures in subsection (2), change the definition of a lakeshore in 75-7-202 from 20 horizontal feet to a maximum of 50 horizontal feet from the high-water elevation.

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(b) conduct a public hearing according to the procedures in 7-1-4131; and

(c) follow the procedures for the adoption of ordinances in 7-5-103.

NEW SECTION. Section 9. {standard} Codification instruction. [Sections 6 through 8] are intended to be codified as an integral part of Title 75, chapter 7, part 2, and the provisions of Title 75, chapter 7, part 2, apply to [sections 6 through 8]."

EXHIBIT 49DATE 1-18-93HB 30

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEEBILL NO. HB 30

ROLL CALL VOTE

Rep. Mercer's Amendments

DATE

1/18/93

NAME	AYE	NO	
Jody Bird	X		
Vivian Brooke	X		
Rugg Fagg	X		
Gary Feland	X		
Mike Foster	X		
Bob Gilbert	X		
Hal Harper	X		
Scott Orr		X	
Bob Raney		X	
Dore Schwinden	X		
Jay Stovall	X		
Emily Swanson	X		
Howard Toole	X		
Doug Wagner		X	
Rolph Tunby, Vice Chairman	X		
Dick Knox, Chairman	X		

Amendments to House Bill No. 30
First Reading Copy

Requested by Rep. Foster
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
January 15, 1993

1. Title, lines 7 and 8.
Following: "GOVERNMENTS;" on line 7
Strike: "AUTHORIZING" through "RESERVOIRS;" on line 8
2. Title, line 11.
Following: "75-7-202,"
Strike: "75-7-203,"
3. Page 2.
Following: line 17
Strike: Section 2 in its entirety
Renumber: subsequent sections
4. Page 4, line 2.
Following: "section"
Strike: "7"
Insert: "6"

EXHIBIT 6
DATE 1-18-93
HB 30

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

BILL NO.

ROLL CALL VOTE

TB Table HB 30

DATE

1/18/93

NAME	AYE	NO	
Jody Bird		✓	
Vivian Brooke		✓	
Rugg Fagg		✓	
Gary Feland	✓		
Mike Foster		✓	
Bob Gilbert		✓	
Hal Harper		✓	
Scott Orr	✓		
Bob Raney		✓	
Dore Schwinden		✓	
Jay Stovall		✓	
Emily Swanson		✓	
Howard Toole		✓	
Doug Wagner	✓		
Rolph Tunby, Vice Chairman	✓		
Dick Knox, Chairman		✓	

EXHIBIT 69
DATE 1-18-93
HB 30

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

ROLL CALL VOTE

DATE 1/18/93 BILL NO. HB 30 NUMBER

MOTION:

NAME	AYE	NO
Jody Bird	✓	
Vivian Brooke	✓	
Russ Fagg	✓	
Gary Feland		✓
Mike Foster	✓	
Bob Gilbert	✓	
Hal Harper	✓	
Scott Orr		✓
Bob Raney	✓	
Dore Schwinden	✓	
Jay Stovall	✓	
Emily Swanson	✓	
Howard Toole	✓	
Doug Wagner		✓
Rolph Tunby, Vice Chairman		✓
Dick Knox, Chairman	✓	

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Natural Resources COMMITTEE BILL NO. HB 121
DATE 1-18-93 SPONSOR(S) Fry

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GARY FRITZ	DNRC	X	
<i>[Signature]</i>	MURA	X	
Russell B Hill	MTA		X
Jim Jensen	MEIC		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.