MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN ALVIN ELLIS, JR., on January 6, 1995, at 3:00 PM

ROLL CALL

Members Present:

Rep. Alvin A. Ellis, Jr., Chairman (R)

Rep. Peggy Arnott, Vice Chairman (Majority) (R)

Rep. Vicki Cocchiarella, Vice Chairman (Minority) (D)

Rep. Matt Denny (R)

Rep. Dan W. Harrington (D)

Rep. Jack R. Herron (R)

Rep. Joan Hurdle (D)

Rep. Bob Keenan (R)

Rep. Sam Kitzenberg (R)

Rep. Gay Ann Masolo (R)

Rep. Norm Mills (R)

Rep. William Rehbein, Jr. (R)

Rep. John "Sam" Rose (R)

Rep. George Heavy Runner (D)

Rep. Debbie Shea (D)

Rep. Richard D. Simpkins (R)

Rep. Diana E. Wyatt (D)

Members Excused: Rep. Sonny Hanson

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council

Renae Decrevel, Committee Secretary

Please Note: These are summary minutes. Testimony and

discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 44, HB 57, HB 58

Executive Action: No executive action taken

HEARING ON HB 44

Opening Statement by Sponsor:

REP. JOE QUILICI explained that HB 44 is a bill that could save the schools some energy costs. In 1989, the energy retrofit program for public buildings was started. Now there is a program that the Department of Natural Resources, Montana Power Co., and the State Board of Investments, have gotten together to energy retrofit schools. He remembers taking his grandson to Ramsey School in Butte to play sports and it was so cold in there that you could hardly stand it. That particular school now has the energy retrofit program. All that HB 44 does is change the debt terms from five years to 10 years. There are a lot of schools that cannot pay back a loan in five years, but with the savings from the energy retrofit, they are able to pay back in 10 years. What happens is that it saves the state money and it saves the schools money. It also makes the schools energy efficient.

Proponents' Testimony:

Tom Livers, Department of Natural Resources and Conservation. Written Testimony, Exhibit #1

Gary Willis, Montana Power Company, said he believes in this program because it's a cooperative effort between the Montana Power Company, Office of Public Instruction, Department of Natural Resources and Conservation and the Board of Investments. It is a win situation for our customers to have a lower energy bill and it is a win situation for us to end up with electricity or fuel that we can sell to future customers without spending huge amounts of money to get it from another power company or build a power plant. We should be able to do this with more schools instead of the few that can make it work under a five year payback. He supports his bill and MPC supports this bill.

Don Waldron, Montana Rural Education Association, said "About eight years before I retired as a school superintendent we had an energy audit and I did exactly what they told me to do. I took the highest priority thing first and when I left eight years later, I had only completed three of those major retrofits to cut down on energy loss. The comfort that is involved is almost worth it alone, but if we can get some participation of private money into this and extend the debt date to 10 years I can see that every school should be into the business of getting an energy loan and start saving energy right away. I urge your support of this bill."

Loran Frazier, School Administrators of Montana, spoke in support of HB 44. "I was basically going to testify on the example that was already given in Deer Lodge, because there are other schools in a similar situation and they need to do some energy conservation. However, presently because of the general fund reserve limit and budget limit, they do not have the money to do the project up front. The extended five years would help them get into this and there are several of them that would like to do it but presently cannot afford it."

Michael Keedy, Montana School Board Association, said the public is not fond of government spending, it certainly despises government waste and HB 44 gives the chance to see that the

government functions more cost effectively, at least in the area of energy consumption. This bill does this without the need for a general appropriation. It does it without additional cost to the public schools, and with potentially considerable savings to tax payers.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. SIMPKINS asked REP. QUILICI, where the schools are getting the money to pay back a five year loan. REP. QUILICI responded by asking REP. SIMPKINS to read line 23 on the bill. Qualified energy projects, which means projects designed to reduce energy in the schools are for energy projects, energy retrofits. REP. SIMPKINS continued saying that they obligated themselves for five years before, so wondered where that money was coming from to pay back the obligation. He states that the Intercap Fund was put in to specifically help schools and if that is where they have been getting the money they may not be able to get the money in the future because that has a five year limit.

REP. QUILICI responded by saying that he is not sure that he can answer that question and that maybe Tom Livers can answer.

Tom Livers said the primary financing is the Board of Investments Intercap Fund, and under that program the schools are allowed five years for financing. They have used that as a financing vehicle to engineer projects so that they have a positive cash flow within five years and the energy savings from those projects pays the debt that they have realized under Intercap. This is how the process is currently working and the bill would allow a school and the Intercap Fund to go for 10 years.

REP. SIMPKINS said that they still want to use the Intercap Fund, but instead of paying back a loan in five years they want to pay it back in 10 years and he does not feel that this legislation does that.

REP. DAVID EWER representing the Board of Investments, said they look at credit and the ability to pay and they have a rule that the loans do not exceed the useful life of the project. If there are any concerns, they may limit a loan to three or five years or under this legislation even 10 years.

REP. SIMPKINS wanted to clarify for himself, that with this piece of legislation, was there no need for any type of legislation to extend the Intercap loan 10 years rather than five? REP. DAVID EWER said that for this particular purpose, he thinks that this bill does what the sponsor wants it to do.

Closing by Sponsor:

REP. QUILICI stated that if they will read over this bill it is specifically for energy and energy-related programs for schools.

It would result in an energy cost savings that is projected to meet the debt service of these bonds. MPC in most cases puts up the seed money for these energy projects. "This bill is a real good bill. It is not only good for the school districts it is good for local communities. You would be surprised how many craftsman and engineers in the community that it puts to work."

HEARING ON HB 57

Opening Statement by Sponsor:

REP. DAVID EWER said he agreed to sponsor this bill by request of the Department of Commerce. What the bill proposed to do is to transfer the administrative authority this oversight responsibility from the Department of Commerce, to the Commissioner of Higher Education. He read to the committee the kinds of responsibilities that the law currently requires of the Department of Commerce. The Department of Commerce needs to maintain and assure the quality of content that each course or program of instruction, training, and study are such that it may be reasonably achieved; state the objectives of the course or program offered, ensure that the institution has adequate space, equipment, instructional materials, and personnel to provide education of good quality; that the education and experience qualifications of directors, administrators, supervisors and instructors are such that reasonably insure the students will receive education consistent with the objectives of the course or program of study; and that adequate records are maintained by the institution to show attendance, programs or grades and that satisfactory standards are recorded to show performance. "These are the kind of missions that belong in an agency that understands education. Montana is the only state in the union whose Department of Commerce oversees this function. administrative function that requires us to assure the public that they are getting something for their money and also requires us to protect people and their tuition. There is a bonding program so that we don't have proprietary schools come into the state, put up a sign that says get your license or certification, and then fly out of Montana, leaving innocent Montana students standing without nothing to show for it. We have no funding for this program. He read a letter from Chief Counsel Annie Bartos, which said the number of employees in the bureau from 1975 to 1981 was 2.25. The letter goes on to say that when it was with the Department of Business Regulation, the budget for the program was \$48,000, today it is zero. He agreed to carry the bill because, "If we are going to have a statute that says we are going to do something, and we think that it is in the public interest, let's do it."

Proponents' Testimony:

Annie Bartos, Chief Legal Counsel of the Department of Commerce, stated that HB 57 is an answer to the problem that REP. EWER

20-30-202, of the present law requires that the Department of Commerce oversee the curriculum and determination as to whether or not the education program, objectives of the schools are being met by evaluating the curriculum of the school. We need to oversee and review the professional experience and education of the instructors. The Department of Commerce is not an educational agency. It is the Commission of Higher Education that is an educational agency. It is the Department of Commerce mission to promote economic development of the state. handout is one that REP. EWER has discussed, which came out of a national regulatory handbook, that shows where other private postsecondary education programs are placed. In each of the other states, those programs are placed with an educational agency, department, or board. Montana is a sole state that has that program with the Department of Commerce. There may be opponents to this bill, that would claim that the Commissioner of Higher Education is constitutionally prohibited from overseeing this The constitution does not require the Commissioner of Higher Education to oversee private postsecondary programs, the Montana Constitution does not prohibit the Commissioner of Higher Education from overseeing these schools. The university systems are going through a evolutionary process; what used to be called the vocational technical schools are now called colleges of technology. She wanted to briefly demonstrate examples from the Helena College of Technology. The courses include accounting technology, automotive technology, aviation, data processing, and industrial electronics. The business courses include accounting, business correspondence, paralegal studies, income tax preparation, spread sheets. This is comparable to what the private postsecondary schools are offering. The point is that the Commissioner of Higher Education is already overseeing these same courses in a public entity, it seems totally irrational that the Commissioner of Higher Education should not also take over this program.

Annie Bartos passed out a brochure and information, Exhibit 2 and Exibit 2A

Jon Noel, Director of the Department of Commerce, said he has interest in this bill, because at one time he was the Chief Executive Officer of the largest proprietary school system in the This was called Devrey, which covers 30,000 students on 11 campuses throughout the United States and Canada. accredited in its four-year degree program by Northcentral Accreditation. Its two-year program is accredited by the National Association of Trade and Technical Schools. He can assure us that the scrutiny they were under by those accrediting agencies, particularly the Masters Association of Trade and Technical Schools, was extreme. What has not been said, is that Devrey, which does operate in the state of Montana, is not subject to scrutiny by the Department of Commerce under this law, because it is accredited by an accrediting agency that is recognized by the Board of Regents. The only schools that the commerce is charged with regulating are those schools that are not accredited and supervised by an organization that is recognized by the Board of

anyone. They come in and buy a license and put up a bond and they start educating students. If we cannot put this in the hands of somebody that does have the capability of doing what the accrediting agencies do," then he suggests passing REP. EWERS second bill which is a bill to "kill the whole thing." He would also suggest that there is another alternative, and that is to say that no proprietary school can operate in the state of Montana, unless it is accredited by an accrediting agency that the Board of Regents is willing to accept. "This is a real serious problem and it is one that we need to deal with."

Richard Crofts, Deputy Commissioner for Higher Education, said he is very much in agreement of many of the points that have been made by the representative that is sponsoring the bill. have many concerns about it and believe it is truly a serious situation. The responsibilities of oversight that are in the codes are very significant and needs to be done by a state agency. He said a good argument can be made that it should be done by a state agency that has something to do with education. The obvious concern is that simply moving the problem from one state agency to another doesn't alter or quarantee the provision of meaningful evaluation and supervision. If the state of Montana wants it done, the state of Montana should be willing to identify the cost of doing it and support the agency to which this task is given. It is not a small task to essentially perform the accreditation function for a group of individuals in institutions of that size. The director of the Department of Commerce has mentioned that one alternative would be to let proprietary institutions operate only if they have received accreditation by agencies recognized by the Board of Regents. "We need the resources with which to do it."

LeRoy Schramm, Legal Counsel for the Commissioner of Higher Education said the state constitution states that the Regents additionally shall supervise and coordinate other public educational institutions assigned by law. He doesn't know if under the present wording, it means that you cannot assign them to supervise and coordinate private institutions. Before going forward with this bill it might be worthwhile to ask the Legislative Council to give an opinion on the question on whether or not the Regents could enforce the statute. He thinks it is a question that needs to be answered before the legislation gets too far down the road.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. ROSE asked REP. EWER to provide a fiscal note on this. REP. EWER said he would. The reason that REP. ROSE is asking is

because in the university system, they are talking about additional FTE's and he would like to know the cost involved. REP. EWER stated that the fiscal note does not really show any costs because there is no presumption under this bill that there are going to be FTE's and funding. His sense is that if this bill is passed then The Appropriations Committee will have to make a decision to fund this.

- REP. SIMPKINS asked Richard Crofts if this program, as proposed in HB 57, will need any more people or any more cash.
- Mr. Crofts answered that he prepared a fiscal note. He put together an estimate of about \$20,000 salary, not counting the fringe benefits which are about 1\4 of the salary. So the figure would be about \$25,000.
- REP. MILLS asked Mr. Noel how much was in the budget now for exercising the duties that they have now and how much saving in the budget will occur. Mr. Noel answered that they have nothing in the budget and explained that the whole activity is a part of the consumer affairs department, which has two people. They do not spend any time on this issue, aside from opening the checks for license fees and depositing them.
- REP. KEENAN asked Mr. Noel what kinds of license fees there are. Annie Bartos said there is a fee of \$50 for a school to be licensed in the State of Montana, \$25 for agents to be licensed to have a permit, and the total amount is approximately \$1,650 per year.
- **REP. KEENAN** asked what kind of complaints they get about these institutions. **Annie Bartos** said that during the last year, they did not receive any complaints involving the postsecondary education programs. They merely license the schools.
- REP. KEENAN asked how many licenses have been issued in 1994.
- Mr. Noel answered that it is about 100 per year.
- REP. ARNOTT asked Annie Bartos what the total was for fees that were collected. Annie Bartos said that the total fees last year were \$1,665 for all the permits that were issued.

Closing by Sponsor:

REP. EWER reminded everyone that this is a compelling dilemma that we have put the Department of Commerce in and he thinks this bill is a logical bill to consider. Another reason why there perhaps have not been many complaints is because of the \$10,000 bond that has to be put down. If a school walks out on its clientele, there is \$10,000 left on the table.

HEARING ON HB 58

Opening Statement by Sponsor:

REP. EWER stated that this bill is a companion bill. There is language there that if one or the other of HB 57 or HB 58 passes, then the other one is dead. This bill says that we will repeal this part of the code unless the other bill passes.

Proponents' Testimony:

Annie Bartos, Chief Legal Counsel for the Department of Commerce, stated the department's support of HB 58 for the same reasons stated on the record of HB 57.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. EWER closed the meeting.

ADJOURNMENT

Adjournment: 4:00 pm.

REP ALVIN ELLIS JR., Chairman

RENAE DECREVEL, Secretary

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HOUSE OF REPRESENTATIVES

Education

ROLL CALL

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NAME	PRESENT	ABSENT	EXCUSED
Rep. Alvin Ellis, Chairman	X		
Rep. Peggy Arnott Vice Chairman, Majority	\downarrow		
Rep. Vicki Cocchiarella, Vice Chairman, Minority	X		
Rep. Matt Denny	X		
Rep. Sonny Hanson			X
Rep. Dan Harrington	X		
Rep. George (Heavy Runner)	X		
Rep. Jack Herron	Υ		
Rep. Joan Hurdle	X		
Rep. Bob Keenan	X		
Rep. Sam Kitzenberg	X		
Rep. Gay Ann Masolo	}		
Rep. Norm Mills	X		
Rep. Bill Rehbein	X		
Rep. Sam Rose	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		
Rep. Debbie Shea	X		
Rep. Dick Simpkins	X	**	
Rep. Diana Wyatt	X		

January 6

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TESTIMONY ON HOUSE BILL 44

My name is Tom Livers. I'm representing the Department of Natural Resources and Conservation, and I'm here to support House Bill 44.

This legislation would extend school debt term limits from five to ten years for specific energy conservation projects. This would be limited to projects qualified under the state's schools energy retrofit financing program and financed through the Board of Investments. The net result of this bill will be to increase energy and cost savings to schools across Montana, without any increase in state or local tax liability.

It's possible to structure energy efficiency improvements in public buildings so that the energy cost savings is greater than the associated financing costs. We do this with our own state government facilities. The difficulty schools face is needing to amortize their debt within the five years allowed under the Board of Investment's INTERCAP program, which are the best financing terms available to Montana schools for this type of work. This five-year limit makes it more difficult to build these projects with a positive cash flow. This is the problem that HB 44 addresses.

At the direction of the Legislature, DNRC last year developed a retrofit financing program for energy improvements in Montana schools. We did this without new legislation or new bureaucracy, by threading together and modifying existing programs operated by DNRC, the Montana Power Company, and the Board of Investments. This program -- E= mc^2 -- is described in the brochure I've passed out along with my testimony.

The program has gotten off to a very good start, with more than two dozen districts participating in the first year. However, we've identified many good projects that do not yield positive cash flow when financed over five years. When this is the case, one of three things happens:

- 1. The school comes up with a substantial amount of up-front capital in order to buy down the principal amount of the loan;
- The school implements only a few high return measures thus skimming the cream and leaving other good measures undone; or
- 3. The school drops the project.

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Some schools are able to come up with up-front capital. Many, particularly the smaller schools, are not. Some are willing to skim the cream, which we believe is not a sound economic outcome in the long term. Some projects are dropped.

The Deer Lodge School District is a typical example. We have identified cost-effective energy efficiency improvements totalling \$97,313. Under our E=mc² partnership, we expect the Montana Power Company to cover approximately \$36,000 of this, leaving an up-front project cost of about \$61,000. This work is projected to save the school almost \$8,500 each year in energy costs.

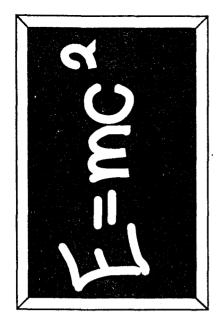
If the school is limited to five years in which to amortize its \$61,000 share of the project, it will see an annual debt payment of more than \$14,500, which is a negative cash flow of about \$6,000 per year. If the school were to buy down the principal to a cash-neutral position, it would cost them \$26,000 up front -- money they don't have to commit.

If House Bill 44 passes and the school is able to amortize its \$61,000 share over ten years, it would then see an annual debt payment of about \$8,400, which yields a slightly positive cash flow for the project while the debt is being retired. More significantly, after the debt is retired, the school will continue to realize the full \$8,400 annual savings for the life of the improvements; these savings will increase as energy costs continue to escalate.

This bill would not require schools to amortize energy projects over ten years. It would allow them the option of going up to ten years when it makes economic sense to do so.

It's often said that government should operate more like a business. In certain areas, that's possible. This is one place in which government can and does operate like a business. Properly designed energy efficiency projects are sound economic investments. They save energy and tax money in public buildings.

DNRC recognizes the concerns regarding voter control of long-term school debt. We believe that an extended debt term, limited to cost-effective energy projects, is in the best interest of the schools, taxpayers, utility ratepayers and state government. It will reduce unnecessary energy consumption in Montana schools, and save everyone money. I urge you to support House Bill 44, and I will try to answer any questions you may have. Thank you.



EXHIBIT

schools.

 $E = mc^2$ is a partnership between the

Department of Natural Resources

and Conservation, the Montana Board

of Investments, the Office of Public instruction, and the Montana Power Company. It combines government

and private sector resources to maximize energy and cost savings for Find out more about E = mc2. Fill out the attached card, or call:

What next?

Key Accounts Representative Energy Division, DNRC Connie Onstad

Telephone: 444-6777

Fax: 444-6721

Helena, MT 59620-9983

P. O. Box 202301

A solution for saving energy and money in our schools

NO POSTAGE

BUSINESS REPLY

FIRST-CLASS MAIL PERMIT NO. 30 HELENA MT

POSTAGE WILL BE PAID BY THE ADDRESSEE

DNRC ENERGY DIV CONNIE ONSTAD PO BOX 202301 HELENA MT 59620-9983



Efficiency managing costs carefully

Energy savings pays

It's no secret that energy efficiency pays for itself, especially here in Montana. Improvements in lighting, controls, ventilation systems, boilers and building insulation can yield significant savings. The key is finding money to pay for these improvements.

That's where $E = mc^2$ comes in.

What is E = mc²?

- h a comprehensive approach to energy conservation
- (1) a public-private partnership that combines the technical and financial resources of state government and Montana's utilities
- from A to Z with little or no hassle
- 9- a flexible, customized program tailored to the specific needs of your school or district
- ♠ a solution to rising energy costs in Montana schools

How does it work?

- 1. Contact the Department of Natural Resources and Conservation. A DNRC key accounts representative will explain the program and how it might fit your needs.
- Your DNRC representative will arrange an energy use evaluation, at no cost to you, to determine the rough savings potential for your facility.
- 3. If the evaluation shows potential, DNRC will arrange an indepth engineering analysis. Again, the analysis is done at no cost to you just a good-faith commitment to follow through with some or all the identified measures.
- 4. Once the analysis is finished, your account representative will help you put together an energy retrafit project and financing package that meets your specific needs.
- 5. Your energy cost savings will cover your project finance payments.
- Performance contracts can be included in this program to guarantee your energy cost savings.

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MONTANA DEPARTMENT OF COMMERCE

EXHIBIT # 2A

DATE 1-4-95

B. HB # 57

Director's Office 1424 9th Avenue PO Box 200501 Helena, MT 59620-0501

Phone: (406) 444-3494 FAX: (406) 444-2903 TDD: (406) 444-2978

House Bill 57 and House Bill 58 Proprietary School Administration Transfer from Department of Commerce to Commissioner of Higher Education; Repeal of Proprietary School Law

Comparison of Location of Private Postsecondary School Administration Reflected in 50 States

1) State Departments of Education

AL, ID, KS, MI, NE, NJ, NY, OR, PA, SD, UT, VT, VA, WY

Total = 14

2) State Commissions or Departments of Higher Education or Offices of Public Instruction

CO, CT, DE, ME, MD, NM, SC, TN

Total = 8

3) State-funded Boards/Miscellaneous Commissions or Agencies (NOTE: None of these are professional licensing boards)

AK, AR, AZ, CA, DC, FL, GA, HI, IL, IN, IA, KY, LA, MA, MN, MO, MS, NC, ND, NH, NV, OH, OK, RI, TX, WA, WI, WV

Total = 28

4) Departments of Commerce or Economic Development Department

MT

Total = 1

*** Figures, extracted from the March 1994 release of the Directory of State Regulators, reflect 50 states and Washington, DC.

If you have any questions, please contact Annie M. Bartos, Chief Legal Counsel, Department of Commerce, telephone number (406) 444-3553.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for <u>HB0057</u>, as introduced

<u>DESCRIPTION OF PROPOSED LEGISLATION</u>: An act transferring the administration of postsecondary education institutions from the Department of Commerce to the Commissioner of Higher Education; amending various sections; and providing an effective date.

ASSUMPTIONS:

- 1. The Commissioner of Higher Education, with a staff of over 30 FTE, can better absorb the impact of an unfunded mandate than the 2.25 FTE within the Department of Commerce Office of Consumer Affairs. Additionally, Commissioner of Higher Education staff better possess the requisite knowledge, skills, abilities, and expertise to better administer the postsecondary education program.
- better administer the postsecondary education program.

 The number of postsecondary educational institutions annually seeking licensure will remain static.
- 3. The Department of Commerce is unable to transfer any appropriation authority for this program as it exists as an unfunded mandate.

FISCAL IMPACT:

Revenues: Department of Commerce Office of Consumer Affairs: Postsecondary License Fees	FY96 Difference (1,670)	FY97 Difference (1,670)
General Fund	(1,670)	(1,670)
Net Impact: Department of Commerce Office of Consumer Affairs: General Fund	FY96 Difference (1,670)	FY97 Difference (1,670)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: None.

TECHNICAL NOTES:

None.

DAVE LEWIS, BUDGET DIRECTOR DATE Office of Budget and Program Planning

DAVID EWER, PRIMARY SPONSOR DATE

Fiscal Note for <u>HB0057</u>, as introduced

Fiscal Note Prepared by: Patrick Trammelle
Agency: Department of Commerce
Telephone Number: 444-5439

HOUSE OF REPRESENTATIVES VISITORS REGISTER

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HOUSE OF REPRESENTATIVES VISITORS REGISTER

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Annie BARRS	Dept of Commerce	X	
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS

ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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Don Waldron	MREA	~	
Without & Keely	MSBA	X	
Tom Livers	DNRC.	\ \ X	
Hary Willis	M. P.C.	X	
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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